

HOUSE BILL 198

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By: **Delegates Cain, Bartlett, Carey, Chang, and Chisholm**

Introduced and read first time: January 16, 2020

Assigned to: Ways and Means

A BILL ENTITLED

AN ACT concerning

Election Law – Online Campaign Material – Use of Deepfakes

FOR the purpose of prohibiting certain persons from willfully or knowingly influencing or attempting to influence a voter's decision to go to the polls or to cast a vote for a particular candidate by publishing, distributing, or disseminating a deepfake online within a certain period of time before an election; providing that the prohibition does not apply to a person who discloses certain information on the deepfake in a certain manner; providing that certain provisions of this Act do not require service providers of online platforms to ensure that persons publishing, distributing, or disseminating campaign material comply with certain provisions of law; authorizing the State Administrator of Elections to investigate a potential violation of certain provisions of this Act by a person that publishes, distributes, or disseminates a deepfake; authorizing the State Board of Elections to request that the Attorney General institute an action in a circuit court for injunctive relief to require a person that publishes, distributes, or disseminates a deepfake to comply with certain provisions of this Act or to require an online platform to remove a deepfake that does not comply with certain provisions of this Act; requiring the State Board to notify a person that publishes, distributes, or disseminates a deepfake and that is the subject of an investigation of certain circumstances before requesting that the Attorney General seek an injunction; authorizing a circuit court to grant injunctive relief only if the Attorney General shows a violation by a preponderance of the evidence; prohibiting a person from publishing, distributing, or disseminating, or causing to be published, distributed, or disseminated, campaign material in violation of certain provisions of this Act; providing that a certain person is subject to certain penalties for a certain violation; providing for the application of certain provisions of this Act; defining certain terms; providing for a delayed effective date; and generally relating to the use of deepfakes in online campaign material.

BY repealing and reenacting, without amendments,
Article – Election Law
Section 1–101(a), (k), and (dd–1) and 13–602(b)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Annotated Code of Maryland
(2017 Replacement Volume and 2019 Supplement)

BY adding to

Article – Election Law

Section 13–401.1

Annotated Code of Maryland

(2017 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,

Article – Election Law

Section 13–405.1 and 13–602(a)(9) and (b)

Annotated Code of Maryland

(2017 Replacement Volume and 2019 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Election Law

1–101.

(a) In this article the following words have the meanings indicated unless a different meaning is clearly intended from the context.

(k) (1) “Campaign material” means any material that:

(i) contains text, graphics, or other images;

(ii) relates to a candidate, a prospective candidate, or the approval or rejection of a question or prospective question; and

(iii) is published, distributed, or disseminated.

(2) “Campaign material” includes:

(i) a qualifying paid digital communication;

(ii) any other material transmitted by or appearing on the Internet or other electronic medium; and

(iii) an oral commercial campaign advertisement.

(dd–1) “Online platform” means any public–facing website, web application, or digital application, including a social network, ad network, or search engine, that:

(1) has 100,000 or more unique monthly United States visitors or users for

a majority of months during the immediately preceding 12 months; and

- (2) receives payment for qualifying paid digital communications.

13-401.1.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “DEEPPFAKE” MEANS AN AUDIO RECORDING, A VIDEO RECORDING, OR A PHOTOGRAPH THAT:

(I) IS CAMPAIGN MATERIAL;

(II) IS ENHANCED OR OTHERWISE ALTERED BY COMPUTER-GENERATED SOFTWARE; AND

(III) DEPICTS AN ACTION, A SOUND, OR A VOCALIZATION THAT DID NOT OCCUR AS ENHANCED OR OTHERWISE ALTERED.

(3) “ONLINE” MEANS APPEARING ON ANY PUBLIC-FACING INTERNET WEBSITE, WEB APPLICATION, OR DIGITAL APPLICATION, INCLUDING A SOCIAL NETWORK OR PUBLICATION.

(B) THIS SECTION APPLIES TO ANY CANDIDATE, CAMPAIGN FINANCE ENTITY, PERSON REQUIRED TO REGISTER UNDER § 13-306, § 13-307, OR § 13-309.2 OF THIS TITLE, OR AN AGENT OF A CANDIDATE, CAMPAIGN FINANCE ENTITY, OR PERSON REQUIRED TO REGISTER UNDER § 13-306, § 13-307, OR § 13-309.2 OF THIS TITLE.

(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PERSON SUBJECT TO THIS SECTION MAY NOT WILLFULLY OR KNOWINGLY INFLUENCE OR ATTEMPT TO INFLUENCE A VOTER’S DECISION TO GO TO THE POLLS OR TO CAST A VOTE FOR A PARTICULAR CANDIDATE BY PUBLISHING, DISTRIBUTING, OR DISSEMINATING A DEEPPFAKE ONLINE WITHIN 90 DAYS BEFORE AN ELECTION.

(2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY TO A PERSON WHO DISCLOSES, IN A CLEAR AND CONSPICUOUS MANNER AT THE BEGINNING OF THE AUDIO RECORDING OR VIDEO RECORDING OR ON THE PHOTOGRAPH:

(I) THAT THE SUBSTANCE OF THE AUDIO RECORDING, VIDEO RECORDING, OR PHOTOGRAPH HAS BEEN ENHANCED OR OTHERWISE ALTERED; AND

(II) THE INFORMATION REQUIRED BY § 13-401 OF THIS SUBTITLE.

(D) THIS SECTION DOES NOT REQUIRE SERVICE PROVIDERS OF ONLINE PLATFORMS, INCLUDING WEB HOSTING AND INTERNET SERVICE PROVIDERS, TO ENSURE THAT PERSONS PUBLISHING, DISTRIBUTING, OR DISSEMINATING CAMPAIGN MATERIAL COMPLY WITH § 13-401 OR § 13-403 OF THIS SUBTITLE.

13-405.1.

(a) (1) The State Administrator may:

(I) investigate a potential violation of § 13-401 or § 13-405 of this subtitle by a purchaser of a qualifying paid digital communication; OR

(II) INVESTIGATE A POTENTIAL VIOLATION OF § 13-401.1 OF THIS SUBTITLE BY A PERSON THAT PUBLISHES, DISTRIBUTES, OR DISSEMINATES A DEEPPFAKE.

(2) In furtherance of an investigation under paragraph (1) of this subsection, the State Administrator may issue a subpoena for the attendance of a witness to testify or the production of records.

(3) A subpoena issued under this subsection shall be served in accordance with the Maryland Rules.

(4) If a person fails to comply with a subpoena issued under this subsection, on petition of the State Administrator, a circuit court of competent jurisdiction may compel compliance with the subpoena.

(b) (1) At the conclusion of an investigation under subsection (a)(1) of this section, subject to paragraph (2) of this subsection, the State Board may request that the Attorney General institute an action in a circuit court for injunctive relief in accordance with the Maryland Rules to:

(i) require a purchaser of a qualifying paid digital communication to comply with § 13-401 or § 13-405 of this subtitle; [or]

(ii) require an online platform to remove a qualified paid digital communication that does not comply with § 13-401 of this subtitle or if the purchaser of the communication does not comply with § 13-405 of this subtitle;

(III) REQUIRE A PERSON THAT PUBLISHES, DISTRIBUTES, OR DISSEMINATES A DEEPPFAKE TO COMPLY WITH § 13-401.1 OF THIS SUBTITLE; OR

(IV) REQUIRE AN ONLINE PLATFORM TO REMOVE A DEEPPFAKE THAT DOES NOT COMPLY WITH § 13–401.1 OF THIS SUBTITLE.

(2) Before requesting that the Attorney General seek an injunction under paragraph (1) of this subsection, the State Board shall:

(i) notify a purchaser of a qualifying paid digital communication who is the subject of an investigation of the circumstances that gave rise to the investigation; [and]

(II) NOTIFY A PERSON THAT PUBLISHES, DISTRIBUTES, OR DISSEMINATES A DEEPPFAKE AND THAT IS THE SUBJECT OF AN INVESTIGATION OF THE CIRCUMSTANCES THAT GAVE RISE TO THE INVESTIGATION; AND

~~[(ii)]~~ **(III)** provide the person reasonable opportunity to be heard at a public meeting of the State Board.

(3) A circuit court may grant injunctive relief under this subsection only if the Attorney General shows by:

(I) clear and convincing evidence that a violation of § 13–401 or § 13–405 of this subtitle is being committed;

(II) A PREPONDERANCE OF THE EVIDENCE THAT A VIOLATION OF § 13–401.1 OF THIS SUBTITLE IS BEING COMMITTED.

(4) A person who violates an injunction issued under this subsection is subject to the penalties provided in § 13–605(b) of this title.

13–602.

(a) (9) A person may not:

(I) publish or distribute, or cause to be published or distributed, campaign material that violates § 13–401 of this title; **OR**

(II) PUBLISH, DISTRIBUTE, OR DISSEMINATE, OR CAUSE TO BE PUBLISHED, DISTRIBUTED, OR DISSEMINATED, CAMPAIGN MATERIAL THAT VIOLATES § 13–401.1 OF THIS TITLE.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is:

(1) **(I) EXCEPT AS PROVIDED IN ITEM (II) OF THIS ITEM,** subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year or both; [and]

(II) FOR A VIOLATION RELATED TO § 13-401.1 OF THIS SUBTITLE, SUBJECT TO A FINE NOT EXCEEDING \$5,000 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH; AND

(2) ineligible to hold any public or party office for 4 years after the date of the offense.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect January 1, 2021.