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SENATE BILL NO. 775

Offered January 8, 2025

Prefiled December 24, 2024

A BILL to amend the Code of Virginia by adding a section numbered 24.2-1005.1:1, relating to elections; election offenses; dissemination of artificial audio or artificial visual media to influence an election; penalty.

Patrons—Surovell and Salim

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 24.2-1005.1:1 as follows:

§ 24.2-1005.1:1. Dissemination of artificial audio or artificial visual media to influence an election; penalty.

A. As used in this section:

"Artificial audio or artificial visual media" means any video recording, motion picture film, sound recording, electronic image, or photograph, or any technological representation of speech or conduct substantially derivative thereof, (i) that depicts a candidate for public office engaging in speech or conduct in which the candidate did not engage, (ii) that is so realistic that a reasonable person would believe it depicts the actual speech or conduct of such candidate, and (iii) the production of which is substantially dependent on technical means rather than the ability of another individual to physically or verbally impersonate such candidate.

"Journalism" means the gathering, preparing, collecting, photographing, recording, writing, editing, reporting, or publishing of news or information that concerns local, national, or international events or other matters of public interest for dissemination to the public.

"News organization" means any (i) newspaper or magazine issued at regular intervals and having a general circulation; (ii) recognized press association or wire service; (iii) licensed radio or television station that engages in journalism; or (iv) business that, by means of photographic or electronic media, engages in journalism and employs an editor overseeing the journalism function that follows commonly accepted journalistic practice as evidenced by (a) membership in a state-based journalism organization, including the Virginia Press Association and the Virginia Association of Broadcasters; (b) membership in a national journalism organization, including the National Press Club, the Society of Professional Journalists, and the Online News Association; (c) membership in a statewide or national wire news service, including the Capital News Service, The Associated Press, and Reuters; or (d) its continuous operation since 1994 or earlier.

"Newsperson" means any person who, for a substantial portion of his livelihood or for substantial financial gain, engages in journalism for a news organization. "Newsperson" includes any person supervising or assisting another person in engaging in journalism for a news organization.

B. A person who knowingly disseminates artificial audio or artificial visual media intended to influence a political campaign shall include a conspicuous statement at the beginning of such media that states "THIS MEDIA DOES NOT REPRESENT A TRUE RECORDING OF THE CANDIDATE." Any visual media shall display such conspicuous statement in a fashion that takes up at least 33 percent of the viewing area. Any audio media shall include a verbal reading of such conspicuous statement that takes at least five seconds to complete.

C. Any person who violates the provisions of this section is guilty of a Class 2 misdemeanor. However, if such person knows or reasonably should have known that such artificial audio or artificial visual media being disseminated is deceptive or misleading and such dissemination (i) takes place within 90 days before an election, (ii) is made without the consent of the depicted candidate, and (iii) is made with the intent to injure a candidate or influence the result of an election, such person is guilty of a Class 1 misdemeanor.

D. In addition to the criminal penalty provided in subsection C, a violation of this section shall also create a civil cause of action. Any (i) depicted individual, (ii) candidate for office who has been injured or is likely to be injured by the distribution of artificial audio or artificial visual media, or (iii) entity that represents the interests of voters likely to be deceived by the distribution of artificial audio or artificial visual media shall be entitled to institute an action for preventative relief, including an application for a permanent or temporary injunction, restraining order, or other order, against the person who has disseminated the artificial audio or artificial visual media. The action shall be instituted in the circuit court of the locality where the violation occurred and shall be filed within 90 days of a party nomination event, a primary election, or a general election. Such action shall be given priority over all pending matters before the court. In any such action, the court may allow a private plaintiff to recover reasonable costs and attorney fees, and

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59 shall award such costs and attorney fees if such plaintiff is the prevailing party.

60 E. The provisions of this section shall not apply to (i) any content that constitutes satire or parody that is
61 substantially dependent on the ability of an individual to impersonate a candidate physically or verbally and
62 not upon technology or artificial intelligence or (ii) any news organization or newsperson engaged in
63 journalism that disseminates any artificial audio or artificial visual media prohibited by this section as part
64 of a bona fide newscast, news interview, news documentary, or on-the-spot coverage of a bona fide news
65 event if the broadcast or publication clearly acknowledges, through content or disclosure, in a manner that
66 can easily be heard and understood by the average listener or viewer, that there are questions about the
67 authenticity of the media.