

HOUSE BILL 198

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01r0829

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

Introduced and read first time: January 16, 2020

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Election Law – Online Campaign Material – Use of Deepfakes**

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

28 BY repealing and reenacting, without amendments,
29 Article – Election Law
30 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.



1 Annotated Code of Maryland
2 (2017 Replacement Volume and 2019 Supplement)

3 BY adding to
4 Article – Election Law
5 Section 13–401.1
6 Annotated Code of Maryland
7 (2017 Replacement Volume and 2019 Supplement)

8 BY repealing and reenacting, with amendments,
9 Article – Election Law
10 Section 13–405.1 and 13–602(a)(9) and (b)
11 Annotated Code of Maryland
12 (2017 Replacement Volume and 2019 Supplement)

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

15 **Article – Election Law**

16 1–101.

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

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

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

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

23 (iii) is published, distributed, or disseminated.

24 (2) “Campaign material” includes:

25 (i) a qualifying paid digital communication;

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

28 (iii) an oral commercial campaign advertisement.

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

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

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

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

3 **13-401.1.**

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

6 (2) "DEEPPFAKE" MEANS AN AUDIO RECORDING, A VIDEO RECORDING,
7 OR A PHOTOGRAPH THAT:

8 (I) IS CAMPAIGN MATERIAL;

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

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

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

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

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

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

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

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

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

7 13-405.1.

8 (a) (1) The State Administrator may:

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

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

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

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

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

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

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

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

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

1 **(IV) REQUIRE AN ONLINE PLATFORM TO REMOVE A DEEPFAKE**
2 **THAT DOES NOT COMPLY WITH § 13-401.1 OF THIS SUBTITLE.**

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

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

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

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

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

15 **(I)** clear and convincing evidence that a violation of §
16 13-401 or § 13-405 of this subtitle is being committed;

17 **(II) A PREPONDERANCE OF THE EVIDENCE THAT A VIOLATION**
18 **OF § 13-401.1 OF THIS SUBTITLE IS BEING COMMITTED.**

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

21 13-602.

22 (a) (9) A person may not:

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

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

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

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

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

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

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