

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Prohibit the Distribution of Deceptive Images or Audio or Video Recordings with the Intent To Influence the Outcome of an Election

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 21-A MRSA §34 is enacted to read:

§ 34. Materially deceptive audio or visual media

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Materially deceptive audio or visual media" means an image or an audio or video recording of a candidate's appearance, speech or conduct that has been intentionally manipulated in a manner that would cause a reasonable person:

(1) To mistakenly believe that the image or audio or video recording is authentic; and

(2) To have a fundamentally different understanding or impression of the expressive content of the image or audio or video recording than that person would have if the person were hearing or seeing the unaltered, original version of the image or audio or video recording.

"Materially deceptive audio or visual media" does not include any image or audio or video recording that constitutes satire or parody.

B. "Person" means an individual, committee, firm, partnership, corporation, association or organization.

2. Prohibition. Except as provided in subsection 3 or 4, a person may not, with actual malice and within 60 days of an election at which a candidate will appear on the ballot, publish or distribute materially deceptive audio or visual media of the candidate with the intent to injure the candidate's reputation or to deceive a voter into voting for or against the candidate.

3. Exception; disclosure. Notwithstanding subsection 2, a person may, within 60 days of an election at which a candidate will appear on the ballot, publish or distribute an image or an audio or video recording that would otherwise qualify as materially deceptive audio or visual media of the candidate if the image or audio or video recording is accompanied by a disclosure as described in this subsection.

A. If the material is an image, the following disclosure must be printed immediately adjacent to the image in a font size that is easily readable by the average viewer and that is no smaller than the largest font size of other text, if any, published or distributed with the image: "This image has been manipulated."

B. If the material is a video recording, the following disclosure must appear for the duration of the video recording in a font size that is easily readable by the average viewer and that is no smaller than the largest font size of other text, if any, included in the video recording: "This video has been manipulated."

C. If the material is an audio recording, the following disclosure must be read in a clearly spoken manner and in a pitch that can be easily heard by the average listener, at the beginning and end of the audio recording and, if the audio recording is greater than 2 minutes in length, interspersed within the audio recording at intervals of no greater than 2 minutes each: "This audio has been manipulated."

4. Persons exempt. Notwithstanding subsection 2, the following persons may publish or distribute materially deceptive audio or visual media in the following circumstances:

A. A radio or television broadcasting station, including a cable or satellite television operator, programmer or producer, may broadcast materially deceptive audio or visual media as part of a bona fide newscast, news interview or news documentary or on-the-spot coverage of a bona fide news event if the broadcast includes in a clear statement that can be easily heard or read by the average listener or viewer that there are questions about the authenticity of the materially deceptive audio or visual media;

B. A radio or television broadcasting station, including a cable or satellite television operator, programmer or producer, may broadcast materially deceptive audio or visual media if it is paid to do so; and

C. The owner of a publicly accessible website or the publisher or printer of a regularly published newspaper, magazine or other periodical of general circulation, including an Internet or electronic publication, that routinely carries news and commentary of general interest may publish materially deceptive audio or visual media if the media is accompanied by a clear statement that the materially deceptive audio or visual media does not accurately represent the speech or conduct of the candidate whose appearance, speech or conduct is manipulated in the media.

5. Injunctive relief. A candidate whose voice or image appears in a materially deceptive audio or visual media published or distributed in violation of this section may seek a temporary restraining order and injunction prohibiting publication or distribution of the materially deceptive audio or visual media. The candidate bears the burden of proving a violation of this section by clear and convincing evidence.

6. Monetary damages. A candidate whose voice or image appears in a materially deceptive audio or visual media published or distributed in violation of this section may bring a civil action against the person that published or distributed the materially deceptive audio or visual media for the recovery of general or special damages as well as reasonable attorney's fees and court costs. The candidate bears the

burden of proving a violation of this section by clear and convincing evidence. Nothing in this subsection may be construed to preclude a candidate from seeking monetary or equitable relief through other actions as permissible by law.

7. **Laws unaffected.** This section may not be construed to alter any rights, obligations or immunities of an interactive computer service under 47 United States Code, Section 230.

SUMMARY

This bill prohibits a person from publishing or distributing, with actual malice and within 60 days of the date of an election, materially deceptive audio or visual media of a candidate who will appear on the ballot with the intent to injure the candidate's reputation or to deceive a voter into voting for or against the candidate. The bill defines "materially deceptive audio or visual media" as an image or an audio or video recording of a candidate that has been intentionally manipulated in a way that would cause a reasonable person to mistakenly believe that the image or recording is authentic and that would cause the person to have a fundamentally different understanding or impression of the content of the image or recording than the person would have if the image or recording was unaltered. An image or audio or video recording that constitutes satire or parody is not considered materially deceptive audio or visual media. The bill authorizes a candidate whose voice or image appears in materially deceptive audio or visual media to bring a civil action seeking injunctive relief or monetary damages. In such an action, the candidate bears the burden of proving the violation by clear and convincing evidence.

The bill's prohibition against the distribution of materially deceptive audio or visual media does not apply if the materially deceptive audio or visual media is accompanied by a disclosure indicating that the image or audio or video recording has been manipulated; distributed as part of a news broadcast that includes a clear statement that there are questions about the authenticity of the image or audio or video recording; broadcast by a radio or television broadcasting station that has been paid to broadcast the materially deceptive audio or visual media; or published by an Internet website or regularly published newspaper, magazine or other periodical, as long as the materially deceptive audio or visual media is accompanied by a statement that it does not accurately represent the speech or conduct of the candidate.

This bill is based on a recently enacted California law.