

**SUBSTITUTE FOR
HOUSE BILL NO. 5144**

A bill to amend 1954 PA 116, entitled
"Michigan election law,"
(MCL 168.1 to 168.992) by adding section 932f.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **Sec. 932f. (1) Except as otherwise provided in subsection (2),**
2 **a person shall not distribute, or enter into an agreement with**
3 **another person to distribute, materially deceptive media if all of**
4 **the following apply:**

5 **(a) The person knows the media falsely represents a depicted**
6 **individual.**

7 **(b) The distribution occurs within 90 days before an election.**

8 **(c) The person intends the distribution to harm the reputation**
9 **or electoral prospects of a candidate in an election, and the**

1 distribution is reasonably likely to cause that result.

2 (d) The person intends the distribution to change the voting
3 behavior of electors in an election by deceiving the electors into
4 incorrectly believing that the depicted individual in fact engaged
5 in the speech or conduct depicted, and the distribution is
6 reasonably likely to cause that result.

7 (2) The prohibition in subsection (1) does not apply if all of
8 the following conditions are met:

9 (a) The media includes a disclaimer informing the viewer that
10 the media has been manipulated by technical means and depicts
11 speech or conduct that did not occur. The following disclaimer is
12 sufficient, but not necessary, to satisfy the requirement under
13 this subdivision:

14 "This _____ (image, audio, or video) has been
15 manipulated by technical means and depicts speech or conduct that
16 did not occur."

17 (b) If the media is a video, the disclaimer meets all of the
18 following requirements:

19 (i) Appears throughout the entirety of the video.

20 (ii) Is clearly visible to and readable by an observer.

21 (iii) Is in letters at least as large as the majority of any
22 text communication, or if there is no other text communication, in
23 a size that is easily readable by the average viewer.

24 (iv) Is in the same language as the language used in the video
25 media.

26 (c) If the media consists only of audio and contains no image
27 or video, the disclaimer is read at the beginning and end of the
28 media in a clearly spoken manner, in a pitch that can be easily
29 heard by the average listener, and in the same language as the

1 audio media.

2 (d) If the media is an image, the disclaimer meets all of the
3 following requirements:

4 (i) Is clearly visible to and readable by the average viewer.

5 (ii) If the media contains other text, is in letters at least
6 as large as the majority of the other text.

7 (iii) Is in the same language as the language used in the image
8 media.

9 (3) A person that violates this section is guilty of a crime
10 as follows:

11 (a) For a first violation, a misdemeanor punishable by
12 imprisonment for not more than 90 days or a fine of not more than
13 \$500.00, or both.

14 (b) If a violation occurs within 5 years of a previous
15 conviction for a violation under this section, a felony punishable
16 by imprisonment for not more than 5 years or a fine of not more
17 than \$1,000.00, or both.

18 (4) Subject to subsection (9), the attorney general, a
19 depicted individual, a candidate for office who has been injured or
20 is likely to be injured by the distribution of materially deceptive
21 media, or any organization that represents the interests of voters
22 likely to be deceived by the distribution of materially deceptive
23 media, may seek permanent injunctive relief against a person that
24 violates this section in any of the following courts:

25 (a) The circuit court for the county in which a party to the
26 alleged violation resides.

27 (b) The circuit court for the county in which the materially
28 deceptive media at issue could deceive and influence electors in an
29 upcoming election.

1 (5) Upon the filing of a complaint for injunctive relief under
2 subsection (4), the court must review the complaint to determine
3 whether the complaint is frivolous. If the court determines that
4 the complaint for injunctive relief is frivolous, the court shall
5 issue an order suspending the defendant's obligation to respond to
6 the complaint and shall order the plaintiff to show cause why the
7 complaint for injunctive relief should not be dismissed. If the
8 plaintiff fails to respond to the court or the plaintiff's response
9 to the court confirms that the complaint for injunctive relief is
10 frivolous, the court shall dismiss the complaint for injunctive
11 relief. If the plaintiff's response to the court assures the court
12 that the complaint for injunctive relief is not frivolous, the
13 court shall direct the defendant to answer the complaint for
14 injunctive relief.

15 (6) If a court finds that a complaint for injunctive relief is
16 frivolous under subsection (5), the court, in addition to
17 dismissing the complaint, may award costs and attorney fees to the
18 defendant and may issue any appropriate sanctions permitted under
19 the Michigan court rules or the court's inherent authority against
20 the plaintiff and the plaintiff's attorney.

21 (7) A plaintiff seeking permanent injunctive relief under
22 subsection (4) must prove by clear and convincing evidence that the
23 defendant against whom the injunction is sought knew the media at
24 issue falsely represents the depicted individual.

25 (8) If a plaintiff, other than the attorney general, is
26 awarded permanent injunctive relief under this section, the court
27 may award costs and attorney fees to the plaintiff.

28 (9) A plaintiff shall not seek preliminary injunctive relief
29 in an action described in subsection (4).

1 (10) As used in this section:

2 (a) "Depicted individual" means an individual who is falsely
3 represented in a materially deceptive media.

4 (b) "Election" includes, but is not limited to, a federal,
5 statewide, legislative, judicial, county, or local election or
6 primary election.

7 (c) "Materially deceptive media" means any image, audio, or
8 video that meets all of the following requirements:

9 (i) Falsely depicts an individual engaging in speech or conduct
10 in which the depicted individual did not in fact engage.

11 (ii) A reasonable viewer or listener would incorrectly believe
12 that the depicted individual engaged in the speech or conduct
13 depicted.

14 (iii) Was produced by substantially relying on technical means
15 other than another individual's ability to physically or verbally
16 impersonate the depicted individual.