

AMENDED IN SENATE JULY 3, 2024
AMENDED IN SENATE JUNE 11, 2024
AMENDED IN ASSEMBLY MAY 20, 2024
AMENDED IN ASSEMBLY APRIL 24, 2024
AMENDED IN ASSEMBLY APRIL 1, 2024
AMENDED IN ASSEMBLY MARCH 21, 2024
CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 2655

**Introduced by Assembly Members Berman and Pellerin
(Principal coauthor: Assembly Member Cervantes)
(Coauthor: Assembly Member Bennett)**

February 14, 2024

An act to amend Section 35 of the Code of Civil Procedure, and to add Chapter 7 (commencing with Section 20510) to Division 20 of the Elections Code, relating to elections.

LEGISLATIVE COUNSEL’S DIGEST

AB 2655, as amended, Berman. Defending Democracy from Deepfake Deception Act of 2024.

Existing law establishes requirements for the conduct of election campaigns, including requirements regarding the endorsement of candidates, political corporations, campaign funds, fair campaign practices, and libel and slander. Existing law, until January 1, 2027, prohibits any person, committee, or other entity from distributing, with actual malice, materially deceptive audio or visual media of a candidate for elective office with the intent to injure the candidate’s reputation or

to deceive a voter into voting for or against the candidate, within 60 days of the election. Existing law requires specified actions pertaining to elections to be given precedence when they are filed in court, including actions involving the registration of voters, the certification of candidates and measures, and election contests, and, until January 1, 2027, actions involving the foregoing prohibition against materially deceptive media.

This bill, to be known as the Defending Democracy from Deepfake Deception Act of 2024, would require a large online platform, as defined, to block the posting or sending of materially deceptive content related to elections, during specified periods before and after an election. The bill would require a large online platform to label certain additional content inauthentic, fake, or false during specified periods before and after an election.

The bill would require a large online platform to develop procedures for California residents to report content that has not been blocked or labeled in compliance with the act. The bill would also authorize candidates for elected office, elected officials, elections officials, the Attorney General, and a district attorney or city attorney to seek injunctive relief against a large online platform for noncompliance with the act, as specified, and would assign precedence to such actions when they are filed in court.

The bill would exempt from its provisions a regularly published online newspaper, magazine, or other periodical of general circulation that routinely carries news and commentary of general interest, if the publication complies with specified disclosure requirements. The bill would also exempt content that is satire or parody.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 35 of the Code of Civil Procedure, as
- 2 amended by Section 1 of Chapter 343 of the Statutes of 2023, is
- 3 amended to read:
- 4 35. (a) Proceedings in cases involving the registration or denial
- 5 of registration of voters, the certification or denial of certification
- 6 of candidates, the certification or denial of certification of ballot
- 7 measures, election contests, actions under Section 20010 of the
- 8 Elections Code, actions under Chapter 7 (commencing with Section

20510) of Division 20 of the Elections Code, and actions under Chapter 2 (commencing with Section 21100) of Division 21 of the Elections Code shall be placed on the calendar in the order of their date of filing and shall be given precedence.

(b) This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

SEC. 2. Section 35 of the Code of Civil Procedure, as amended by Section 2 of Chapter 343 of the Statutes of 2023, is amended to read:

35. (a) Proceedings in cases involving the registration or denial of registration of voters, the certification or denial of certification of candidates, the certification or denial of certification of ballot measures, election contests, actions under Chapter 7 (commencing with Section 20510) of Division 20 of the Elections Code, and actions under Chapter 2 (commencing with Section 21100) of Division 21 of the Elections Code shall be placed on the calendar in the order of their date of filing and shall be given precedence.

(b) This section shall become operative January 1, 2027.

SEC. 3. Chapter 7 (commencing with Section 20510) is added to Division 20 of the Elections Code, to read:

CHAPTER 7. DEFENDING DEMOCRACY FROM DEEPPFAKE
DECEPTION ACT OF 2024

20510. This chapter shall be known and may be cited as the Defending Democracy from Deepfake Deception Act of 2024.

20511. The Legislature finds and declares all of the following:

(a) California is entering its first-ever generative artificial intelligence (AI) election, in which disinformation powered by generative AI will pollute our information ecosystems like never before. Voters will not know what images, audio, or video they can trust.

(b) In a few clicks, using current technology, bad actors now have the power to create a false image of a candidate accepting a bribe or a fake video of an elections official “caught on tape” saying that voting machines are not secure, or to generate the Governor’s voice telling millions of Californians their voting site has changed.

1 (c) In the lead-up to the 2024 presidential elections, candidates
2 and parties are already creating and distributing deepfake images
3 and audio and video content. These fake images or files can spread
4 to millions of Californians in seconds and skew election results or
5 undermine trust in the ballot counting process.

6 (d) The labeling information required by this bill is narrowly
7 tailored to provide consumers with factual information about the
8 inauthenticity of particular images, audio, video, or text content
9 in order to prevent consumer deception.

10 (e) In order to ensure California elections are free and fair,
11 California must, for a limited time before and after elections,
12 prevent the use of deepfakes and disinformation meant to prevent
13 voters from voting and to deceive voters based on fraudulent
14 content. Accordingly, the provisions of this chapter are narrowly
15 tailored to support California's compelling interest in protecting
16 its free and fair elections.

17 20512. For purposes of this chapter, the following terms have
18 the following meanings:

19 (a) "Advertisement" means any general or public communication
20 that is authorized or paid for with the purpose of supporting or
21 opposing a candidate for elective office.

22 (b) "Deepfake" means audio or visual media that is digitally
23 created or modified such that it would falsely appear to a reasonable
24 person to be an authentic record of the actual speech or conduct
25 of the individual depicted in the media.

26 (c) "Election communication" means a general or public
27 communication that is not an "advertisement" and that concerns
28 any of the following:

- 29 (1) A candidate for elective office.
30 (2) Voting or refraining from voting in an election.
31 (3) The canvass of the vote.
32 (4) Voting machines, ballots, voting sites, or other property or
33 equipment related to an election.
34 (5) Proceedings or processes of redistricting or the electoral
35 college.

36 (d) (1) "Elections official" means any of the following persons,
37 but only in their capacity as a person charged with holding or
38 conducting an election, conducting a canvass, assisting with the
39 holding or conducting of an election or a canvas, or performing
40 another duty related to administering the provisions of this code:

1 (A) An elections official as defined in Section 320.

2 (B) The Secretary of State and their staff.

3 (C) A temporary worker, poll worker, or member of a precinct
4 board.

5 (D) Any other person charged with holding or conducting an
6 election, conducting a canvass, assisting with the holding or
7 conducting of an election or a canvas, or performing another duty
8 related to administering the provisions of this code.

9 (2) The requirements of this chapter relating to content
10 portraying an elections official apply only if the large online
11 platform knows or should know that the person is an elections
12 official.

13 (e) (1) “Materially deceptive content” means audio or visual
14 media that is digitally created or modified, and that includes, but
15 is not limited to, deepfakes and chatbots, such that it would falsely
16 appear to a reasonable person to be an authentic record of the
17 content depicted in the media.

18 (2) “Materially deceptive content” does not include any audio
19 or visual media that contains only minor modifications that do not
20 significantly change the perceived contents or meaning of the
21 content. Minor changes include changes to the brightness or
22 contrast of images, removal of background noise in audio, and
23 other minor changes that do not impact the content of the image
24 or audio or visual media.

25 (f) “Large online platform” means a public-facing internet
26 website, web application, or digital application, including a social
27 ~~network~~, *media platform as defined in Section 22675 of the*
28 *Business and Professions Code*, video sharing platform, advertising
29 network, or search engine that had at least 1,000,000 California
30 users during the preceding 12 months.

31 20513. (a) Any large online platform, using state-of-the-art,
32 best available tools to detect materially deceptive content, shall
33 develop and implement procedures for blocking and preventing,
34 and shall, if the large online platform knows ~~or should know~~ *or*
35 *acts with reckless disregard for the fact* that the materially
36 deceptive content meets the requirements of this ~~section~~, *section*,
37 block and ~~prevent~~, *prevent* the posting ~~or sending~~ of any materially
38 deceptive content, if ~~all~~ *both* of the following conditions are met:

39 (1) The content is posted ~~or sent~~ during the applicable time
40 period or periods set forth in subdivision (c).

1 (2) The materially deceptive content is any of the following:

2 (A) A candidate for elective office portrayed as doing or saying
3 something that the candidate did not do or say and that is
4 reasonably likely to harm the reputation or electoral prospects of
5 a candidate.

6 (B) An elections official portrayed as doing or saying something
7 in connection with the performance of their elections-related duties
8 that the elections official did not do or say and that is reasonably
9 likely to falsely undermine confidence in the outcome of one or
10 more election contests.

11 (C) An elected official portrayed as doing or saying something
12 that influences the election that the elected official did not do or
13 say and that is reasonably likely to falsely undermine confidence
14 in the outcome of one or more election contests.

15 ~~(3) The person or entity who created the materially deceptive~~
16 ~~content did so knowing it was false or with reckless disregard for~~
17 ~~the truth. There shall be a rebuttable presumption that the person~~
18 ~~or entity knew the materially deceptive content was false or acted~~
19 ~~with reckless disregard for the truth if the content would cause a~~
20 ~~reasonable person to have a fundamentally different understanding~~
21 ~~or impression of the content than the person would have if hearing~~
22 ~~or seeing an authentic version of the content.~~

23 (b) (1) Notwithstanding paragraph (1) of subdivision (a), ~~a large~~
24 ~~online platform shall not prevent this section shall not apply to a~~
25 ~~candidate for elective office; office who, during the time period~~
26 ~~set forth in subdivision (c), from portraying (c), portrays~~ themselves
27 as doing or saying something that the candidate did not do or say,
28 ~~but only~~ if the digital content includes a disclosure stating the
29 following: “This _____ has been manipulated.” The blank in this
30 disclosure shall be filled in with whichever of the following terms
31 most accurately describes the media:

32 (A) Image.

33 (B) Audio.

34 (C) Video.

35 (2) (A) For visual media, the text of the disclosure shall appear
36 in a size that is easily readable by the average viewer and no
37 smaller than the largest font size of other text appearing in the
38 visual media. If the visual media does not include any other text,
39 the disclosure shall appear in a size that is easily readable by the

1 average viewer. For visual media that is video, the disclosure shall
2 appear for the duration of the video.

3 (B) If the media consists of audio only, the disclosure shall be
4 read in a clearly spoken manner and in a pitch that can be easily
5 heard by the average listener, at the beginning of the audio, at the
6 end of the audio, and, if the audio is greater than two minutes in
7 length, interspersed within the audio at intervals of not greater than
8 two minutes each.

9 (c) (1) Except as provided in paragraph (2), any large online
10 platform shall block and prevent the content described in
11 subdivision (a), and any candidate for elective office shall include
12 the disclosure required by subdivision (b), during a period
13 beginning 120 days before the election and through the day of the
14 election.

15 (2) If the content described in subdivision (a) depicts or pertains
16 to elections officials, any large online platform shall block and
17 prevent the content during a period beginning 120 days before the
18 election and ending on the 60th day after the election.

19 20514. (a) ~~(1)~~ Any large online platform, using
20 state-of-the-art, best available tools to detect materially deceptive
21 content shall develop and implement procedures for labeling such
22 content as inauthentic, fake, or false if ~~all~~ *both* of the following
23 conditions are met:

24 ~~(A)~~

25 (1) The materially deceptive content is either of the following:

26 ~~(i)~~

27 (A) Included within subdivision (a) of Section 20513, but is
28 posted ~~or sent~~ outside the applicable time period described in
29 subdivision (c) of Section 20513.

30 ~~(ii)~~

31 (B) Appears within an advertisement or election communication
32 and is not subject to Section 20513.

33 ~~(B) The person or entity who created the materially deceptive~~
34 ~~content did so knowing it was false or with reckless disregard for~~
35 ~~the truth. There shall be a rebuttable presumption that the person~~
36 ~~or entity knew the materially deceptive content was false or acted~~
37 ~~with reckless disregard for the truth if the content would cause a~~
38 ~~reasonable person to have a fundamentally different understanding~~
39 ~~or impression of the content than the person would have if hearing~~
40 ~~or seeing an authentic version of the content.~~

1 ~~(C)~~

2 (2) The large online platform knows ~~or should know~~ or acts
3 with reckless disregard for the fact that the materially deceptive
4 content meets the requirements of this section.

5 (b) The label required by subdivision (a) shall permit users to
6 click or tap on it and to inspect all available provenance data about
7 the materially deceptive content in an easy-to-understand format.

8 (c) The labeling requirement set forth in subdivision (a) applies
9 during any of the following time periods, to the extent applicable:

10 (1) The period beginning one year before the election and
11 through the day of the election.

12 (2) The period beginning one year before the election and ending
13 on the 60th day after the election, if the content depicts or pertains
14 to elections officials, the electoral college process, a voting
15 machine, ballot, voting site, or other property or equipment related
16 to an election, or the canvass of the vote.

17 (3) During a governmental process related to redistricting that
18 is required or authorized by state or local law.

19 20515. (a) A large online platform shall provide an easily
20 accessible way for California residents to report to that platform
21 content subject to Section 20513 or 20514 that was not blocked
22 or labeled as required. The online platform shall respond to the
23 person who made the report, within 36 hours of the report,
24 describing any action taken or not taken by the online platform
25 with respect to the content.

26 (b) A candidate for elective office, elected official, or elections
27 official who has made a report to a large online platform under
28 subdivision (a) and who either has not received a response within
29 36 hours or disagrees with the response, may seek injunctive or
30 other equitable relief against the online platform to compel
31 compliance with this chapter. The plaintiff shall bear the burden
32 of establishing the violation through clear and convincing evidence.
33 ~~The court shall award a prevailing plaintiff reasonable attorney's~~
34 ~~fees and costs.~~ An action under this subdivision shall be entitled
35 to precedence in accordance with Section 35 of the Code of Civil
36 Procedure.

37 20516. The Attorney General or any district attorney or city
38 attorney may seek injunctive or other equitable relief against any
39 large online platform to compel compliance with this chapter. The
40 plaintiff shall bear the burden of establishing the violation through

1 clear and convincing evidence. ~~The court shall award a prevailing~~
2 ~~plaintiff reasonable attorney's fees and costs.~~ An action under this
3 section shall be entitled to precedence in accordance with Section
4 35 of the Code of Civil Procedure.

5 20517. This chapter applies to materially deceptive content,
6 regardless of the language used in the content. If the language used
7 is not English, the disclosure required by subdivision (b) of Section
8 20513 and the label required by Section 20514 must appear in the
9 language used as well as in English.

10 ~~20518. A large online platform that blocks or labels any~~
11 ~~materially deceptive content shall maintain a copy of the digital~~
12 ~~content for a period of not less than five years from the election~~
13 ~~and shall make such digital content available to the Secretary of~~
14 ~~State, the Fair Political Practices Commission, and researchers, if~~
15 ~~requested.~~

16 ~~20519.~~

17 20518. (a) This chapter does not preclude a large online
18 platform from blocking or labeling any materially deceptive content
19 outside of the time periods specified in Sections 20513 and 20514.

20 (b) This chapter does not preclude any online platform not
21 subject to this chapter from blocking or labeling any materially
22 deceptive content.

23 ~~20520.~~

24 20519. This chapter does not apply to either of the following:

25 (a) A regularly published online newspaper, magazine, or other
26 periodical of general circulation that routinely carries news and
27 commentary of general interest, and that publishes any materially
28 deceptive content that an online platform is required to block or
29 label based on this chapter, if the publication contains a clear
30 disclosure that the materially deceptive content does not accurately
31 represent any actual event, occurrence, appearance, speech, or
32 expressive conduct.

33 (b) Materially deceptive content that constitutes satire or parody.

34 ~~20521.~~

35 20520. The provisions of this chapter are severable. If any
36 provision of this chapter or its application is held invalid, that
37 invalidity shall not affect other provisions or applications that can
38 be given effect without the invalid provision or application.

O