

MICHIGAN ELECTION LAW (EXCERPT)
Act 116 of 1954

***** 168.932f.added THIS ADDED SECTION IS EFFECTIVE FEBRUARY 13, 2024 *****

168.932f.added Distribution of materially deceptive media; prohibition; violation; misdemeanor; penalties; injunctive relief; definitions.

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

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

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

(c) The person intends the distribution to harm the reputation or electoral prospects of a candidate in an election, and the distribution is reasonably likely to cause that result.

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

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

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

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

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

(i) Appears throughout the entirety of the video.

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

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

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

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

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

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

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

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

(e) If the media was generated by editing an existing image, audio, or video, the media includes a citation directing the viewer or listener to the original source from which the unedited version of the existing image, audio, or video was obtained.

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

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

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

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

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

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

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

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

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

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

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

(10) As used in this section:

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

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

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

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

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

(iii) Was produced by artificial intelligence as that term is defined in section 2 of the Michigan campaign finance act, 1976 PA 388, MCL 169.202.

History: Add. 2023, Act 265, Eff. Feb. 13, 2024.

Popular name: Election Code