# **DEEPFAKE GUIDANCE DOCUMENT**

As a result of recent legislation, Colorado law requires clear disclosures on “deepfake” communications during election seasons. Deepfake communications are any type of communication generated by artificial intelligence (AI) that falsely represents a candidate’s or elected official’s actions or statements.[[1]](#footnote-2) Failure to include a clear and conspicuous disclosure statement may result in civil penalties. Additionally, the law grants to candidates and incumbents the right to take legal action if they are targeted by deepfakes. This legislation aims to prevent the use of deepfakes to spread misinformation or disinformation that pose a threat to free and fair elections.

## What is included?

* Deepfake: A deepfake communication is an image, video, audio, or multimedia AI-generated content that appears to be authentic or truthful, but, actually, depicts a candidate or incumbent appearing to say or do something they did not say or do.
* Candidate: For purposes of this law, “candidate” means either or both
  + (a) persons who seek nomination or election to any local, state, or federal office in Colorado in any primary, general, school district, special district, or municipal election including judges and justices who seek retention, and/or
  + (b) incumbent office holders regardless of whether they are seeking reelection.
* Prohibition: During the specified election seasons, this law prohibits the distribution, publication, broadcasting, transmission, or display of a deepfake communication about a candidate or incumbent to voters for that office without a compliant disclaimer. The prohibition applies only to the person sharing the communication and only if the person knows the communication is false or has reckless disregard as to whether it is truthful.
* Restriction: This restriction applies within 60 days before any primary election and 90 days before a general election. The prohibition applies to deepfake communications that continue during the election season even if they began being disseminated before the start of the election season.

## Disclosure or Safe Harbor:

* The prohibition does not apply to a communication with a clear and conspicuous disclosure stating: *“This (image/audio/video/multimedia) has been edited and depicts speech or conduct that falsely appears to be authentic or truthful.”*
* The disclosure is considered “clear and conspicuous” if all the below are met:
* Visual communication: the disclaimer font size is same or larger as the largest font size used or if no text, a font size that is easily readable.
* Audio communication: the disclosure is spoken clearly and matches the tone and style of the rest of the message. It must be read at the beginning and end of the communication and every minute if the audio is more than two minutes long.
* Metadata: must identify the tool used to create the deepfake and the date and time the deepfake was created.
* Permanent: The disclosure and metadata must be permanent and unable to be easily removed by a subsequent user.
* Other regulations: The disclosure must comply with other required disclosure statements required by the Secretary of State and the Federal Communications Commission.

## Exceptions or Exemptions:

This law does not apply to:

* A radio or TV station that broadcasts a deepfake during a legitimate news story, if it clearly indicates that the truthfulness of the communication is in question.
* A radio or TV station when they are paid to broadcast a deepfake communication.
* A website, newspaper, magazine, or other periodical that publishes a deepfake communication and clearly states that the communication includes a deepfake and does not accurately represent a candidate or incumbent.
* Media content that constitutes satire or parody.
* The provider of technology used in the creation of a deepfake.
* A provider of interactive computer service, as defined in 47 U.S.C. sec. 230 (f)(2).

Enforcement:

* Any person who believes a violation of this section has occurred may file a written complaint with the [Colorado Secretary of State](https://www.sos.state.co.us/pubs/elections/CampaignFinance/home.html).[[2]](#footnote-3)

1. [Colorado House Bill 24-1147](https://leg.colorado.gov/bills/hb24-1147) – Candidate Deepfake Disclosures. See also, section 1-45-103, C.R.S. [↑](#footnote-ref-2)
2. [Campaign Finance Complaints, section 1-45-111.7(2), C.R.S.](https://advance.lexis.com/documentpage/?pdmfid=1000516&crid=4049b1cf-8f9f-4f7c-9259-b8481404f762&nodeid=AABAAGAABAAU&nodepath=%2FROOT%2FAAB%2FAABAAG%2FAABAAGAAB%2FAABAAGAABAAU&level=4&haschildren=&populated=false&title=1-45-111.7.+Campaign+finance+complaints-initial+review+-+curing+violations+-+investigation+and+enforcement+-+hearings+-+advisory+opinions+-+document+review+-+collection+of+debts+resulting+from+campaign+finance+penalties+-+definitions.&config=014FJAAyNGJkY2Y4Zi1mNjgyLTRkN2YtYmE4OS03NTYzNzYzOTg0OGEKAFBvZENhdGFsb2d592qv2Kywlf8caKqYROP5&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A6C4N-YC13-RX0M-7091-00008-00&ecomp=6gf59kk&prid=67c06f61-cdf4-4f87-8cd9-29c5e01a0a39) [↑](#footnote-ref-3)