SB 2: "An Act relating to disclosure of election-related deepfakes; relating to use of artificial intelligence by state agencies; and relating to transfer of data about individuals between state agencies."

00 SENATE BILL NO. 2

01 "An Act relating to disclosure of election-related deepfakes; relating to use of artificial

02 intelligence by state agencies; and relating to transfer of data about individuals between

03 state agencies."

04 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

05 *** Section 1.** AS 15.80 is amended by adding a new section to read:

06 **Sec. 15.80.009. Deepfake disclosure requirement.** (a) A person may not

07 make or retain the services of another to make an election-related communication that

08 the person knows or reasonably should know includes a deepfake relating to a

09 candidate or proposition without including the following disclosure statement with the

10 election-related communication: "This communication has been manipulated or

11 generated by artificial intelligence or by another means." If the election-related

12 communication includes a print or video component, the statement must be placed in

13 the election-related communication so the statement is easily discernible, and, for a

14 broadcast, cable, satellite, Internet, or other digital communication, the statement must

01 remain onscreen throughout the entirety of the election-related communication. In an

02 election-related communication that consists only of audio, the statement must be read

03 (1) at the beginning of the audio, at the end of the audio, and, if the

04 audio is longer than two minutes in duration, at least once every two minutes during

05 the audio; and

06 (2) in a manner that is easily heard.

07 (b) A person may not remove the disclosure statement described in (a) of this

08   section from an election-related communication that the person knows or reasonably

09   should know includes a deepfake.

10 (c) A person who violates (a) or (b) of this section is liable to a candidate or

11 proposition group for damages suffered as a result of the violation, full reasonable

12   attorney fees, and costs.

13 (d) A candidate or proposition group suffering damages as a result of an

14 election-related communication made in violation of (a) of this section, or the removal

15 of the disclosure statement from an election-related communication in violation of (b)

16 of this section, may bring an action for damages under (c) of this section, or for

17   injunctive relief to prohibit dissemination of the election-related communication.

18   (e) This section does not apply to a deepfake that is

19   (1) satire or parody;

20 (2) broadcast by a radio, television, cable, or satellite provider as part

21 of a newscast, news interview, news documentary, or on-the-spot coverage of a news

22 event, if the broadcast clearly acknowledges, through content or disclosure, in a

23 manner easily heard or read by the average listener or viewer, that there are questions

24   about the authenticity of the deepfake; or

25 (3) broadcast by a person who is paid to broadcast an election-related

26   communication made by another person.

27   (f) In this section,

28 (1) "deepfake" means an image, audio recording, or video recording of

29 an individual's appearance, conduct, or spoken words that has been created or

30 manipulated with machine learning, natural language processing, or another

31 computational processing technique in a manner to create a realistic but false image,

01 audio, or video that

02   (A) would appear to a reasonable person to depict a real

03 individual saying or doing something that did not actually occur; or

04 (B) provides a fundamentally different understanding or

05 impression of an individual's appearance, conduct, or spoken words than the

06 understanding a reasonable person would have from an unaltered, original

07 version of the media;

08   (2) "election-related communication" means a communication that

09   (A) directly or indirectly identifies a candidate or proposition;

10 and

11 (B) is disseminated to an audience that includes voters who will

12 have the opportunity to vote on the candidate or proposition identified in the

13 communication;

14   (3) "proposition" has the meaning given in AS 15.13.065(c);

15 (4) "proposition group" means a person registered with the Alaska

16 Public Offices Commission to make expenditures in support of or in opposition to a

17 proposition under AS 15.13.050.

18 *** Sec. 2.** AS 44.99 is amended by adding new sections to read:

19 **Article 7. Use by State Agencies of Artificial Intelligence and Data About Individuals.**

20 **Sec. 44.99.700. Inventory.** (a) Every two years, the department shall conduct

21 an inventory of all state agency systems that employ generative artificial intelligence

22 for consequential decisions. Each state agency shall assist the department as necessary.

23 An inventory must include, at a minimum, the following information for each system:

24   (1) the name of the system;

25   (2) the vendor that provides the system, if any;

26   (3) a description of the general capabilities and uses of the system;

27 (4) whether the state agency completed an impact assessment of the

28   system under AS 44.99.710 before the system's implementation; and

29 (5) the date of completion of the most recent state agency impact

30   assessment of the system under AS 44.99.710.

31 (b) The department shall remove from the inventory a system that is no longer

01   used by a state agency.

02   (c) The department shall publish each inventory on the department's Internet

03   website.

04 **Sec. 44.99.710. Impact assessments.** (a) At least once every two years, the

05 head of a state agency that uses a system that employs generative artificial intelligence

06 for consequential decisions shall conduct an impact assessment of the system. An

07   impact assessment must include, at a minimum, an analysis of

08   (1) the efficacy of the system;

09   (2) the human oversight involved in the system;

10   (3) the accountability mechanisms in place for the system;

11 (4) the process by which an individual may appeal a decision made or

12   facilitated by the system;

13 (5) the current and potential benefits, liability, and risks to the state

14 from the system, including risks related to cybersecurity and intellectual property and

15   any measures used to mitigate liability and risks;

16 (6) the current and potential effects of the system on the liberty,

17 finances, livelihood, and privacy interests of individuals in the state, including effects

18   from any use of geolocation data by the system;

19 (7) any unlawful discrimination against or unlawful disparate impact

20 on an individual or a group of individuals that has resulted or may result from the

21   system; and

22 (8) the policies and procedures that govern the process of using the

23   system for consequential decisions.

24 (b) A state agency that completes an impact assessment shall provide the

25 assessment to the department, and the head of the agency shall consult with the

26   commissioner of administration to determine future use of the system by the agency.

27 **Sec. 44.99.720. Requirements for use of artificial intelligence by state**

28 **agencies.** (a) A state agency that uses a system that employs generative artificial

29   intelligence for consequential decisions shall

30 (1) notify each individual who may be legally or significantly affected

31   by the use of the system;

01   (2) obtain an individual's consent before soliciting or acquiring

02   sensitive personal data from or about the individual that will be used by the system;

03   (3) provide an appeals process that includes manual human review for

04   an individual who is legally or significantly affected by the use of the system; and

05   (4) inform a prospective employee of the state agency about any video

06   interview that involves the use of generative artificial intelligence and obtain the

07   prospective employee's consent before employing generative artificial intelligence.

08   (b) A state agency may not use a system that employs artificial intelligence for

09   consequential decisions if the system involves

10   (1) biometric identification, including facial recognition;

11   (2) emotion recognition;

12   (3) cognitive behavioral manipulation of individuals or groups; or

13   (4) social scoring.

14 (c) A state agency may not use a system that employs artificial intelligence for

15 consequential decisions if the system uses data hosted in a country designated by

16   regulation as a foreign adversary.

17 (d) A state agency may contract with a person for a system that employs

18 artificial intelligence for consequential decisions only if the person has implemented

19 security and privacy controls as specified by the National Institute of Standards and

20 Technology in Special Publication 800-53, Revision 5, published in September 2020

21 or in regulations adopted by the department designating a publication revising or

22   superseding Special Publication 800-53.

23 **Sec. 44.99.730. Transfer of data between state agencies.** Unless required by

24 law, a state agency may not transfer data about an individual to another state agency

25   without giving notice to the individual.

26 **Sec. 44.99.740. Regulations.** (a) The department shall adopt regulations under

27 AS 44.62 (Administrative Procedure Act) concerning the development, procurement,

28 implementation, use, and ongoing assessment of systems that employ generative

29 artificial intelligence by state agencies for consequential decisions. The regulations

30   must include, at a minimum, provisions that

31 (1) govern the procurement, implementation, and ongoing assessment

01   of each system;

02   (2) require a state agency to conduct an impact assessment of each

03   system under AS 44.99.710 before its implementation;

04   (3) ensure that a system does not result in unlawful discrimination or

05   an unlawful disparate impact on an individual or a group of individuals;

06   (4) provide for the ongoing assessment of each system; and

07   (5) designate countries that constitute foreign adversaries, considering

08   determinations made by the United States.

09   (b) The department may adopt additional regulations under AS 44.62

10   (Administrative Procedure Act) necessary to implement AS 44.99.700 - 44.99.730.

11 **Sec. 44.99.750. Civil liability for harm.** (a) An individual who suffers harm

12 as a result of a violation of AS 44.99.700 - 44.99.730, a violation of a regulation

13 adopted under AS 44.99.740, or gross negligence or reckless or intentional misconduct

14 relating to the use of artificial intelligence by a state agency may bring a civil action in

15   the superior court against the state agency.

16 (b) An individual who suffers harm under (a) of this section may recover

17 damages for the harm to the individual, punitive damages under AS 09.17.020, and

18   full reasonable attorney fees and costs in a civil action brought under this section.

19 (c) Nothing in this section authorizes an individual to bring a cause of action

20   against a person other than a state agency.

21 **Sec. 44.99.760. Exemptions.** (a) AS 44.99.710, 44.99.720(a), 44.99.720(b)(1),

22 44.99.730, and regulations adopted under AS 44.99.740(a) do not apply to systems

23 that the Department of Public Safety uses for investigation of criminal offenses,

24   missing persons, or other exigent circumstances.

25 (b) Information collected under AS 44.99.700(a)(3) related to a system that

26 the Department of Public Safety uses for investigation of criminal offenses, missing

27 persons, or other exigent circumstances may not be included in the inventory

28 published on the department's Internet website under AS 44.99.700(c) and is

29 confidential and not subject to disclosure under AS 40.25.100 - 40.25.295 (Alaska

30   Public Records Act).

31   **Sec. 44.99.770. Definitions.** In AS 44.99.700 - 44.99.770,

01   (1) "artificial intelligence" means generative artificial intelligence or

02   rules-based artificial intelligence;

03   (2) "biometric identification" means the analysis of an individual's

04   physical or behavioral characteristics to uniquely identify the individual;

05   (3) "cognitive behavioral manipulation" means the use of a subliminal

06   technique for the purpose of influencing an individual's behavior to achieve a desired

07   outcome;

08   (4) "consequential decision" means a conclusion, decision, or

09   judgment by a state agency that can affect an individual's legal rights, employment,

10   finances, health, or licensure;

11   (5) "department" means the Department of Administration;

12 (6) "emotion recognition" means the analysis of an individual's bodily

13 expressions, including facial and verbal expressions, to identify or predict the

14   individual's emotions;

15 (7) "generative artificial intelligence" means a machine-based system

16 designed to operate with varying levels of autonomy that may exhibit adaptiveness

17 after deployment and that, for explicit or implicit objectives, infers how to generate

18   outputs from input the system receives;

19   (8) "individual" means a natural person;

20 (9) "rules-based artificial intelligence" means a computational program

21 or algorithm designed to process information in a logical way that does not produce

22   inferential output beyond its original programming and query parameters;

23   (10) "sensitive personal data" means

24 (A) data that reveals an individual's racial or ethnic origin,

25   political opinions, or religious or philosophical beliefs;

26   (B) an individual's genetic data;

27 (C) an individual's biometric data when used for biometric

28   identification;

29   (D) an individual's geolocation data;

30 (E) an individual's bank account information or financial

31   records; or

01   (F) an individual's social security number or another personal

02   identifier issued to an individual by a government or institution;

03   (11) "social scoring" means evaluating, classifying, rating, or scoring

04   the trustworthiness or social standing of an individual based on behavior or

05   socioeconomic, political, or religious status;

06 (12) "state agency" means the University of Alaska, a public

07 corporation of the state, or a department, institution, board, commission, division,

08 authority, committee, or other administrative unit of the executive branch of state

09   government.

10   *** Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to

11 read:

12   APPLICABILITY. AS 44.99.750, enacted by sec. 2 of this Act, applies to acts or

13 omissions occurring on or after the effective date of this Act.