



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

SB3746

Introduced 2/14/2020, by Sen. Cristina Castro

#### SYNOPSIS AS INTRODUCED:

10 ILCS 5/Art. 29D heading new  
10 ILCS 5/29D-5 new  
10 ILCS 5/29D-10 new  
705 ILCS 35/28

from Ch. 37, par. 72.28

Amends the Election Code. Prohibits the distribution, with malice, of campaign material that contains a picture into which a candidate for public office or another person is superimposed. Prohibits, within 60 days of an election at which a candidate for elective office will appear on the ballot, the distribution, with actual malice, of materially deceptive audio or visual media of the candidate with the intent to injure the candidate's reputation or to deceive a voter into voting for or against the candidate. Provides remedies and exceptions for violating the provisions. Amends the Circuit Court Act. Provides that 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, and election contests shall be placed on the calendar in the order of their date of filing and shall be given precedence.

LRB101 16668 SMS 66055 b

1 AN ACT concerning elections.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Election Code is amended by adding Article  
5 29D as follows:

6 (10 ILCS 5/Art. 29D heading new)

7 ARTICLE 29D. CAMPAIGN MATERIALS

8 (10 ILCS 5/29D-5 new)

9 Sec. 29D-5. Campaign material disclosures.

10 (a) As used in this Section:

11 "Actual malice" means the knowledge that the image of a  
12 person has been superimposed on a picture or photograph to  
13 create a false representation or a reckless disregard of  
14 whether or not the image of a person has been superimposed on a  
15 picture or photograph to create a false representation.

16 "Campaign material" includes, but is not limited to, any  
17 printed matter, advertisement in a newspaper or other  
18 periodical, television commercial, or computer image.

19 (b) Except as provided in subsection (c), a person, firm,  
20 association, corporation, campaign committee, or organization  
21 shall not, with actual malice, produce, distribute, publish, or  
22 broadcast campaign material that contains (1) a picture or

1 photograph of a person or persons into which the image of a  
2 candidate for public office is superimposed or (2) a picture or  
3 photograph of a candidate for public office into which the  
4 image of another person or persons is superimposed.

5 (c) A person, firm, association, corporation, campaign  
6 committee, or organization may produce, distribute, publish,  
7 or broadcast campaign material that contains a picture or  
8 photograph prohibited by subsection (b) only if each picture or  
9 photograph in the campaign material includes the following  
10 statement in the same point size type as the largest point size  
11 type used elsewhere in the campaign material: "This picture is  
12 not an accurate representation of fact." The statement shall  
13 be immediately adjacent to each picture or photograph  
14 prohibited by subsection (b).

15 (d) Any registered voter may seek a temporary restraining  
16 order and an injunction prohibiting the publication,  
17 distribution, or broadcasting of any campaign material in  
18 violation of this Section. Upon filing a petition under this  
19 Section, the plaintiff may obtain a temporary restraining order  
20 in accordance with Section 11-101 of the Code of Civil  
21 Procedure.

22 (e) A candidate for public office whose likeness appears in  
23 a picture or photograph prohibited by subsection (b) may bring  
24 a civil action against any person, firm, association,  
25 corporation, campaign committee, or organization that  
26 produced, distributed, published, or broadcast the picture or

1 photograph prohibited by subsection (b). The court may award  
2 damages in an amount equal to the cost of producing,  
3 distributing, publishing, or broadcasting the campaign  
4 material that violated this Section, in addition to reasonable  
5 attorney's fees and costs.

6 (f) This Section does not apply to a holder of a license  
7 granted pursuant to the federal Communications Act of 1934 (47  
8 U.S.C. Sec. 151 et seq.) in the performance of the functions  
9 for which the license is granted.

10 (g) This Section does not apply to the publisher or an  
11 employee of a newspaper, magazine, or other periodical that is  
12 published on a regular basis for any material published in that  
13 newspaper, magazine, or other periodical. For purposes of this  
14 subsection (g), a "newspaper, magazine, or other periodical  
15 that is published on a regular basis" does not include any  
16 newspaper, magazine, or other periodical that has as its  
17 primary purpose the publication of campaign advertising or  
18 communication.

19 (10 ILCS 5/29D-10 new)

20 Sec. 29D-10. Deceptive campaign materials.

21 (a) As used in this Section, "materially deceptive audio or  
22 visual media" means an image or an audio or video recording of  
23 a candidate's appearance, speech, or conduct that has been  
24 intentionally manipulated in a manner such that both of the  
25 following conditions are met:

1           (1) The image or audio or video recording would falsely  
2           appear to a reasonable person to be authentic.

3           (2) The image or audio or video recording would cause a  
4           reasonable person to have a fundamentally different  
5           understanding or impression of the expressive content of  
6           the image or audio or video recording than that person  
7           would have if the person were hearing or seeing the  
8           unaltered, original version of the image or audio or video  
9           recording.

10          (b) Except as provided in subsection (c), a person,  
11          committee, or other entity shall not, within 60 days of an  
12          election at which a candidate for elective office will appear  
13          on the ballot, distribute, with actual malice, materially  
14          deceptive audio or visual media of the candidate with the  
15          intent to injure the candidate's reputation or to deceive a  
16          voter into voting for or against the candidate.

17          (c) The prohibition in subsection (b) does not apply if the  
18          audio or visual media includes a disclosure stating: "This ....  
19          has been manipulated."

20          (d) The blank in the disclosure required by subsection (c)  
21          shall be filled with whichever of the following terms most  
22          accurately describes the media:

23               (1) Image.

24               (2) Video.

25               (3) Audio.

26          (e) For visual media, the text of the disclosure shall

1 appear in a size that is easily readable by the average viewer  
2 and no smaller than the largest font size of other text  
3 appearing in the visual media. If the visual media does not  
4 include any other text, the disclosure shall appear in a size  
5 that is easily readable by the average viewer. For visual media  
6 that is video, the disclosure shall appear for the duration of  
7 the video.

8 (f) If the media consists of audio only, the disclosure  
9 shall be read in a clearly spoken manner and in a pitch that  
10 can be easily heard by the average listener, at the beginning  
11 of the audio, at the end of the audio, and, if the audio is  
12 greater than 2 minutes in length, interspersed within the audio  
13 at intervals of not greater than 2 minutes each.

14 (g) A candidate for elective office whose voice or likeness  
15 appears in a materially deceptive audio or visual media  
16 distributed in violation of this Section may seek injunctive or  
17 other equitable relief prohibiting the distribution of audio or  
18 visual media in violation of this Section. An action under this  
19 subsection (g) shall be entitled to precedence in accordance  
20 with Section 28 of the Circuit Courts Act.

21 (h) A candidate for elective office whose voice or likeness  
22 appears in a materially deceptive audio or visual media  
23 distributed in violation of this Section may bring an action  
24 for general or special damages against the person, committee,  
25 or other entity that distributed the materially deceptive audio  
26 or visual media. The court may also award a prevailing party

1 reasonable attorney's fees and costs. This subsection (h) shall  
2 not be construed to limit or preclude a plaintiff from securing  
3 or recovering any other available remedy.

4 (i) In any civil action alleging a violation of this  
5 Section, the plaintiff shall bear the burden of establishing  
6 the violation through clear and convincing evidence.

7 (j) This Section shall not be construed to alter or negate  
8 any rights, obligations, or immunities of an interactive  
9 service provider under Section 230 of Title 47 of the United  
10 States Code.

11 (k) This Section does not apply to:

12 (1) a radio or television broadcasting station,  
13 including a cable or satellite television operator,  
14 programmer, or producer, that broadcasts materially  
15 deceptive audio or visual media prohibited by this Section  
16 as part of a bona fide newscast, news interview, news  
17 documentary, or on-the-spot coverage of bona fide news  
18 events if the broadcast clearly acknowledges through  
19 content or a disclosure, in a manner that can be easily  
20 heard or read by the average listener or viewer, that there  
21 are questions about the authenticity of the materially  
22 deceptive audio or visual media;

23 (2) a radio or television broadcasting station,  
24 including a cable or satellite television operator,  
25 programmer, or producer, when it is paid to broadcast  
26 materially deceptive audio or visual media;

1           (3) an Internet website or a regularly published  
2           newspaper, magazine, or other periodical of general  
3           circulation, including an Internet or electronic  
4           publication, that routinely carries news and commentary of  
5           general interest and that publishes materially deceptive  
6           audio or visual media prohibited by this Section if the  
7           publication clearly states that the materially deceptive  
8           audio or visual media does not accurately represent the  
9           speech or conduct of the candidate; and

10           (4) materially deceptive audio or visual media that  
11           constitutes satire or parody.

12           (1) The provisions of this Section are severable. If any  
13           provision of this Section or its application is held invalid,  
14           that invalidity shall not affect other provisions or  
15           applications that can be given effect without the invalid  
16           provision or application.

17           Section 10. The Circuit Courts Act is amended by changing  
18           Section 28 as follows:

19           (705 ILCS 35/28) (from Ch. 37, par. 72.28)

20           Sec. 28. The said courts may, from time to time, make all  
21           such rules for the orderly disposition of business before them  
22           as may be deemed expedient, consistent with law.

23           Proceedings in cases involving the registration or denial  
24           of registration of voters, the certification or denial of



1 certification of candidates, the certification or denial of  
2 certification of ballot measures, and election contests shall  
3 be placed on the calendar in the order of their date of filing  
4 and shall be given precedence.

5 (Source: Laws 1933, p. 435.)