



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 5144 (Substitute H-1 as reported without amendment)
House Bill 5145 (as reported without amendment)
Sponsor: Representative Penelope Tsernoglou (H.B. 5144)
Representative Noah Arbit (H.B. 5145)
House Committee: Elections
Senate Committee: Elections and Ethics

CONTENT

House Bill 5144 (H-1) would add section 932f to the Michigan Election Law to do the following:

- Prohibit a person from distributing, or entering into an agreement with another person to distribute, materially deceptive media under certain circumstances.
- Exempt eligible media from this requirement if the media included a disclaimer and prescribe requirements for this disclaimer.
- Prescribe misdemeanor and felony penalties for a violation of the bill.
- Allow individuals potentially harmed by materially deceptive media to seek permanent injunctive relief against the distributor; however, an individual could not seek preliminary injunctive relief in an action.

House Bill 5145 would include sentencing guidelines in the Code of Criminal Procedure for the felony proposed in House Bill 5144 (H-1). The bill would make a subsequent offense of distributing or agreeing to distribute materially deceptive media a Class E felony against the Public Trust, punishable by up to five years' imprisonment.

House Bill 5145 is tie-barred to House Bill 5144.

MCL 168.932f (H.B. 5144)
MCL 777.11d (H.B. 5145)

BRIEF RATIONALE

According to testimony before the Senate Committee on Elections and Ethics, the accessibility of technology such as artificial intelligence and software such as Photoshop has contributed to misinformation in the electoral process. Doctored images have long been shared by voters on the Internet; however, some people have concern that the increasing usage of doctored photos by political leaders may give them more legitimacy. For example, in 2020, a U.S. Representative from Arizona, Paul A. Gosar, tweeted a photo edited to make it appear as if former President Barack Obama was shaking hands with Iranian President Hassan Rouhani, a situation that did not happen.¹ With the 2024 presidential election approaching, it has been suggested that Michigan impose restrictions on edited election-related media to limit the spread of misinformation.

Legislative Analyst: Abby Schneider

¹ Harwell, Drew, "Doctored images have become a fact of life for political campaigns. When they're disproved, believers 'just don't care'", *The Washington Post*, Jan. 14, 2020.

FISCAL IMPACT

House Bill 5144 (H-1)'s criminal penalties could have a negative fiscal impact on the State and local government. Violations of the proposed Act would be punishable as misdemeanors and felonies of different severity. More misdemeanor and felony arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. Misdemeanor convictions could increase county jail and local probation supervision costs, which vary by jurisdiction and are thus indeterminate. Based on 2022 data, the average cost to State government for felony probation supervision is approximately \$4,800 per probationer per year. For any increase in prison intakes the average annual cost of housing a prisoner in a State correctional facility is an estimated \$45,700. Per diem rates for housing a prisoner in a state correctional facility range from a low of \$98 to a high of \$192 per day, depending on the security level of the facility. Additionally, any associated fine revenue would increase funding to public libraries.

House Bill 5145 would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

Overall, the bills would have an indeterminate fiscal impact on local court systems. Any impact would depend on the bills impact on caseloads, administrative costs, and criminal fine revenue, which is constitutionally dedicated to county libraries.

Date Completed: 11-13-23

Fiscal Analyst: Joe Carrasco, Jr.