

ASSEMBLY SCIENCE, INNOVATION AND TECHNOLOGY
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 3540

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 4, 2024

The Assembly Science, Innovation and Technology Committee reports favorably and with committee amendments Assembly Bill No. 3540.

As amended and reported, this bill establishes criminal penalties for the production or dissemination of deceptive audio or visual media, commonly known as “deepfakes.”

As amended, the bill defines deceptive audio or visual media as “any video recording, motion picture film, sound recording, electronic image, photograph, any technological representation of speech or conduct substantially derivative thereof, or any forgery or facsimile of a document or writing, that appears to a reasonable person to realistically depict any speech, conduct, or writing of a person who did not in fact engage in the speech, conduct, or writing and the production of which was substantially dependent upon technical means, rather than the ability of another person to physically or verbally impersonate the person.

The bill establishes a crime of the third degree if a person, without license or privilege to do so, generates or creates, or causes to be generated or created, deceptive audio or visual media that is used as part of a plan or course of conduct to commit any crime or offense including but not limited to certain crimes of offenses listed in the bill.

The bill also establishes a crime of the third degree if a person, without license or privilege to do so, discloses a work of deceptive audio or visual media that the person knows or should reasonably know was created in violation of the provisions of this bill. As amended, the bill establishes an affirmative defense if the disclosed work is clearly identified as a work of deceptive audio or visual media, but such affirmative defense shall not apply where the disclosed work depicts nudity or pornography. A crime of the third degree is ordinarily punishable by a term of three to five years imprisonment, a fine of up to \$15,000, or both. However, the bill provides that a court may impose a fine of up to \$30,000.

Under the bill, a person would be liable to the individual depicted in the deceptive audio or visual media, who may bring a civil action in

the Superior Court. The bill further provides that a conviction is not to be a prerequisite for a civil action. The civil action authorized by this bill is to be in addition to, and not in lieu of any other civil action, injunctive relief, or other remedy available at law. The bill further provides that a final judgment rendered in favor of the State in any criminal proceeding prevents the person from denying the same conduct in any civil action brought under the bill.

The bill provides that it should not be construed to alter or negate any rights, obligations, or immunities of an interactive computer service provider under federal law. The bill also provides that criminal and civil penalties imposed pursuant to the bill only apply to the news media or a news agency if the news media or agency broadcasts or publishes a work of deceptive audio or visual media that the news media or agency knows was created in violation of the bill, and fails to clearly identify the work as deceptive audio or visual media.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- (1) change the definition of “deceptive audio or visual media”;
- (2) establish an affirmative defense to prosecution for unlawful disclosure of deceptive audio or visual media if the disclosed work is clearly identified as a work of deceptive audio or visual media, but such affirmative defense shall not apply where the disclosed work depicts nudity or pornography;
- (3) provide that a person commits a crime of the third degree if, without license or privilege to do so, the person generates or creates, or causes to be generated or created, a work of deceptive audio or visual media used as part of a plan or course of conduct to commit any crime or offense including, but not limited to, certain crimes and offenses listed in the bill. As introduced, the bill provides that a person commits a crime of the third degree, if without license or privilege to do so, the person generates or creates, or causes to be generated or created, a work of deceptive audio or visual media for an unlawful purpose and provides that a trier of fact may infer the deceptive audio or visual media was generated or created for an unlawful purpose if the work is subsequently used as part of a plan or course of conduct to commit certain offenses listed in the bill as introduced; and
- (4) provide that a conviction arising under this bill will not merge with another conviction arising under this bill or with any of the underlying offenses outlined in this bill.