

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 3540

STATE OF NEW JERSEY

DATED: MAY 20, 2024

The Assembly Judiciary Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 3540.

This bill establishes criminal and civil penalties for the production or dissemination of deceptive audio or visual media, commonly known as “deepfakes.”

PROHIBITIONS

The bill establishes a crime of the third degree if a natural person, without license or privilege to do so, generates or creates, or causes to be generated or created, deceptive audio or visual media with the intent that it be used as part of a plan or course of conduct to commit any crime, including but not limited to:

- (1) a crime or offense under chapters 14 (sexual offenses), 16 (bias crimes), 20 (theft), 21 (forgery and fraud), 28 (perjury), or 29 (obstruction of justice) of Title 2C of the New Jersey Statutes;
- (2) advertising commercial sex abuse of a minor;
- (3) endangering the welfare of children and child pornography;
- (4) threats or improper influence in official and political matters;
- (5) false public alarms;
- (6) harassment;
- (7) cyber-harassment; or
- (8) hazing.

The trier of fact may infer that a work of deceptive audio or visual media was generated or created without license or privilege to do so if the work was generated or created using a commercially or publicly available generative artificial intelligence system in violation of the terms of service, terms of use, or end user license agreement of the system.

The bill also establishes a crime of the third degree if a natural person, without license or privilege to do so, solicits, uses, or discloses a work of deceptive audio or visual media as part of a plan or course of conduct to commit any crime.

The bill also establishes a crime of the third degree if a natural 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 this bill.

CRIMINAL PENALTIES

A crime of the third degree is punishable by a three to five year term of imprisonment, a fine of up to \$15,000, or both. In addition, the bill imposes an additional fine of up to \$30,000. A conviction for a violation of this bill does not merge with a conviction for the underlying crime in which the deepfake is used.

CIVIL REMEDIES

Under the bill, a person would be liable to the victim of a violation of the bill, who may bring a civil action in the Superior Court. Victims are not limited to persons depicted in the deepfake, but includes any person who suffers personal, physical, or psychological injury or incurs loss of or injury to personal or real property as a result of the violation. The bill further provides that a conviction is not 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.

EXCEPTIONS

The bill contains certain free speech exceptions if a deepfake that is clearly identified as a work of deceptive audio or visual media is disclosed in connection with criticism, comment, satire, parody, news reporting, teaching, scholarship, or research. Additionally, the bill does not apply to interactive computer service providers pursuant to 47 U.S.C. s.230, such as websites or social media platforms, nor to developers or providers of artificial intelligence technology, provided that to the extent the developer provider allows for the public dissemination of consumer generated media, the developer or provider exercises commercially reasonable efforts to ensure that consumer generated media does not violate the bill. The bill does not apply to television, cable, or radio stations, or other carriers of advertising, such as websites, billboards, newspapers, magazines, mobile apps, or streaming video platforms, through which an advertisement containing deceptive audio or visual media appears, when the owner, publisher, or operator of the advertising medium has no knowledge of the intent, design, or purpose of the advertiser. Finally, the bill does not apply to broadcasters, websites, newspapers, or magazines that routinely carry news and commentary of general interest that broadcast or publish a deepfake, provided that it is done for the purpose of disseminating newsworthy facts and contains a disclaimer concerning the inaccurate nature of the deepfake.