

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 3540**

with committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 24, 2024

The Assembly Appropriations Committee reports favorably and with committee amendments Assembly Bill No. 3540 ACS.

This bill establishes criminal and civil penalties for the production or dissemination of deceptive audio or visual media, commonly known as “deepfakes.” As amended, the bill clarifies certain free speech exceptions applicable to interactive computer service providers, cloud services providers, commercial developers or providers of artificial intelligence technology, advertisers, the news media, and other media companies.

#### 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

As amended, the bill contains certain free speech exceptions if a deepfake that is clearly identified as a work of deceptive audio or visual media or, if the deceptive nature of the work is unknown or unverified, clearly identified as a possible 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, cloud services providers, or commercial developer or provider of artificial intelligence technology pursuant to 47 U.S.C. s.230. 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. 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. If the deceptive nature of the work is unknown or unverified, the broadcast or publication is required to clearly contain a disclaimer which is either shown or read aloud that identifies the work as a possible work

of deceptive audio or visual media. Finally, the bill does not apply to disclosures in connection with a law enforcement investigation or pursuant to court order, or in furtherance of an investigation concerning fraud, cybersecurity, identity theft, harassment, or a violation of a commercial computer network's contractual terms of service.

COMMITTEE AMENDMENTS:

The committee amended the bill to clarify that:

1. If the deceptive nature of the work is unknown or unverified, a person disclosing a possible deepfake is required to clearly identify the work as a possible work of deceptive audio or visual media in order to comply with the bill;

2. The bill will not apply to an interactive computer service provider, cloud services provider, or commercial developer or provider of artificial intelligence technology.

3. The bill no longer requires that an interactive computer service provider, cloud services provider, or commercial developer or provider of artificial intelligence technology exercise commercially reasonable efforts to ensure that consumer generated media does not violate the bill;

4. The bill will not apply to advertisers whether or not the advertiser has knowledge of the intent, design, or purpose of the advertiser; and

5. Disclosure of a deepfake can be allowed in connection with a law enforcement investigation, pursuant to a court order, or in furtherance of an investigation concerning fraud, cybersecurity, identity theft, harassment, or a violation of a commercial computer network's contractual terms of service.

FISCAL IMPACT:

Fiscal information for this bill is currently unavailable.