

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 3540

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 26, 2024

The Assembly Budget Committee reports favorably and with committee amendments Assembly Bill No. 3540 (1R) 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 is disclosed in connection with criticism, comment, satire, parody, news reporting, teaching, scholarship, or research that a reasonable viewer or listener would not believe to authentically depict speech or conduct. 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, where the advertising channel or medium's role in disclosing the advertisement is limited to the selling of advertising time or space, or where an advertising channel or medium is prohibited by federal law from censoring the advertisement regardless of its content. 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 solely for the purpose of disseminating newsworthy facts and

contains a disclaimer identifying the deepfake. 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. A person who discloses a deepfake that the person knows or reasonably should know was created in violation of the bill commits a crime of the third degree, unless one of the free speech exception under subsection g. of the bill applies;

2. A sentence for a conviction for a violation of the bill will run consecutively to a sentence for a conviction of the underlying crime pursuant to subsections b. and e. of the bill;

3. The disclosure of a deepfake that constitutes criticism, comment, satire, parody, news reporting, teaching, scholarship, or research does not violate the bill where a reasonable viewer or listener would not believe the deepfake to authentically depict speech or conduct;

4. 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, where the advertising channel or medium's role in disclosing the advertisement is limited to the selling of advertising time or space, or where an advertising channel or medium is prohibited by federal law from censoring the advertisement regardless of its content; and

5. 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 solely for the purpose of disseminating newsworthy facts and contains a disclaimer identifying the deepfake.

FISCAL IMPACT:

Fiscal information for this bill is currently unavailable.