

# ASSEMBLY, No. 3006

## STATE OF NEW JERSEY 219th LEGISLATURE

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**Sponsored by:**

**Assemblywoman PAMELA R. LAMPITT**

**District 6 (Burlington and Camden)**

**SYNOPSIS**

Requires certain disclosures of intentionally deceptive audio or visual media.

**CURRENT VERSION OF TEXT**

As introduced.



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2

1 AN ACT concerning disclosures of intentionally deceptive audio or  
2 visual media and supplementing Title 56 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. As used in P.L. , c. (C. ) (pending before the  
8 Legislature as this bill):

9 “Advanced technological false personation record” or “record”  
10 means any deceptive audio or visual media that a reasonable person,  
11 having considered the visual or audio qualities of the record and the  
12 nature of the distribution channel in which the record appears,  
13 would believe accurately exhibits:

14 any material activity of a living person which the living person  
15 did not in fact undertake and was produced without the consent of  
16 the living person and the exhibition of which is substantially likely  
17 to either further a criminal act or result in improper interference in  
18 an official proceeding, public policy debate, or election; or

19 any material activity of a deceased person that the deceased  
20 person did not in fact undertake, that was produced without the  
21 consent of the deceased person or the heirs thereof and the  
22 exhibition of which is substantially likely to either further a  
23 criminal act or result in improper interference in an official  
24 proceeding, public policy debate, or election.

25 “Material activity” means any falsified speech, conduct, or  
26 depiction which causes, or a reasonable person would recognize has  
27 a tendency to cause, perceptible individual or societal harm,  
28 including misrepresentation, reputational damage, embarrassment,  
29 harassment, financial losses, the incitement of violence, the  
30 alteration of a public policy debate or election, or the furtherance of  
31 any unlawful act.

32 “Deceptive audio or visual media” means any video recording,  
33 motion picture film, sound recording, electronic image, or  
34 photograph, or any technological representation of speech or  
35 conduct substantially derivative thereof that appears to authentically  
36 depict any speech or conduct of a person who did not in fact engage  
37 in the speech or conduct and the production of which was  
38 substantially dependent upon technical means, rather than the  
39 ability of another person to physically or verbally impersonate the  
40 person.

41

42 2. a. A person who produces an advanced technological false  
43 personation record with the intent to distribute the record over the  
44 Internet or with knowledge that the record shall be so distributed,  
45 and which a person in this State has the ability to access via the  
46 Internet, shall ensure the record complies with:

47 (1) the watermark requirement pursuant to subsection b. of this  
48 section; and

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1 (2) in the case of an audiovisual record, the disclosure  
2 requirements under subsection c. of this section;

3 (3) in the case of a visual record, the disclosure requirements  
4 under subsection d. of this section; or

5 (4) in the case of an audio record, the disclosure requirements  
6 under subsection e. of this section.

7 b. An advanced technological false personation record which  
8 contains a moving visual element shall contain an embedded digital  
9 watermark clearly identifying the record as containing altered audio  
10 or visual elements.

11 c. An advanced technological false personation record  
12 containing both an audio and a visual element shall include:

13 (1) not less than one clearly articulated verbal statement that  
14 identifies the record as containing altered audio and visual  
15 elements, and a concise description of the extent of the alteration;  
16 and

17 (2) an unobscured written statement in clearly readable text  
18 appearing at the bottom of the image throughout the duration of the  
19 visual element that identifies the record as containing altered audio  
20 and visual elements, and a concise description of the extent of the  
21 alteration.

22 d. An advanced technological false personation record  
23 exclusively containing a visual element shall include an unobscured  
24 written statement in clearly readable text appearing at the bottom of  
25 the image throughout the duration of the visual element that  
26 identifies the record as containing altered visual elements, and a  
27 concise description of the extent of the alteration.

28 e. An advanced technological false personation record  
29 exclusively containing an audio element shall include, at the  
30 beginning of the record, a clearly articulated verbal statement that  
31 identifies the record as containing altered audio elements and a  
32 concise description of the extent of the alteration, and in the event  
33 the record exceeds two minutes in length, not less than one  
34 additional clearly articulated verbal statement and additional  
35 concise description at some interval during each two-minute period  
36 thereafter.

37

38 3. a. The provisions of P.L. , c. (C. ) (pending before  
39 the Legislature as this bill) shall not apply with respect to any  
40 advanced technological false personation record:

41 (1) containing alternative disclosures regarding the falsity of the  
42 exhibited material activities which a reasonable person would deem  
43 to be more prominent than those required pursuant to section 2 of  
44 P.L. , c. (C. ) (pending before the Legislature as this bill);

45 (2) during the process of producing the record, provided the  
46 ultimately distributed record is in compliance;

47 (3) which primarily contains images or sound recordings of  
48 actual persons, such as performing artists, and have not been

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1 substantially digitally modified;

2 (4) created in connection with editing a motion picture,  
3 television, music, or similar production or creating a derivative  
4 production thereof, the original content of which was created prior  
5 to the enactment of P.L. , c. (C. ) (pending before the  
6 Legislature as this bill), in which the person appearing provided  
7 consent to their original appearance; or

8 (5) appearing in a context such that a reasonable person would  
9 not mistake the falsified material activity for actual material activity  
10 of the exhibited living person, such as parody shows or  
11 publications, historical reenactments, or fictionalized radio,  
12 television, or motion picture programming.

13 b. The watermark requirement pursuant to section 2 of P.L. ,  
14 c. (C. ) (pending before the Legislature as this bill) shall not  
15 apply with respect to any class of advanced technological false  
16 personation records which the Attorney General determines by  
17 regulation should be excluded.

18

19 4. The Attorney General, in coordination with any other State  
20 agency the Attorney General deems necessary, shall submit a report  
21 to the Governor and, pursuant to section 2 of P.L.1991, c.164  
22 (C.52:14-19.1), the Legislature no later than five years after the date  
23 of enactment of P.L. , c. (C. ) (pending before the  
24 Legislature as this bill), and five years thereafter, describing trends  
25 related to prosecutions and civil penalties pursued pursuant to  
26 P.L. , c. (C. ) (pending before the Legislature as this bill) and  
27 recommending any updates to P.L. , c. (C. ) (pending before  
28 the Legislature as this bill) necessitated by the emergence of new  
29 technologies.

30

31 5. a. It shall be an unlawful practice and a violation of  
32 P.L.1960, c.39 (C.56:8-1 et seq.) to violate the provisions of P.L. ,  
33 c. (C. ) (pending before the Legislature as this bill).

34 b. A person shall be guilty of a crime of the third degree, in  
35 addition to any other penalty provided by law, if the person  
36 knowingly omits or obscures the disclosure requirements of section  
37 2 of P.L. , c. (C. ) (pending before the Legislature as this  
38 bill):

39 (1) with the intent to humiliate or otherwise harass the person  
40 falsely exhibited, provided the advanced technological false  
41 personation record contains sexual content of a visual nature and  
42 appears to feature the person engaging in such sexual acts or in a  
43 state of nudity;

44 (2) with the intent to cause violence or physical harm, incite  
45 armed or diplomatic conflict, or interfere in an official proceeding,  
46 including an election, provided the advanced technological false  
47 personation record did in fact pose a credible threat of instigating or  
48 advancing these outcomes;

1 (3) in the course of criminal conduct related to fraud, including  
2 securities fraud and wire fraud, false personation, or identity theft;  
3 or

4 (4) by a foreign power, or an agent thereof, with the intent of  
5 influencing a domestic public policy debate, interfering in a federal,  
6 State, local, or territorial election, or engaging in other acts which  
7 the power may not lawfully undertake.

8

9 6. The Attorney General shall, pursuant to the "Administrative  
10 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules  
11 and regulations, as appropriate, to effectuate the purposes P.L. ,  
12 c. (C. ) (pending before the Legislature as this bill), which  
13 shall include, but not be limited to:

14 a. a process by which any producer of audio, visual, or  
15 audiovisual content may seek an advisory opinion regarding the  
16 legality of their proposed production pursuant to P.L. ,  
17 c. (C. ) (pending before the Legislature as this bill);

18 b. a response to requests made pursuant to subsection a. of this  
19 section for advice not later than 30 days after the date of  
20 submission;

21 c. not pursuing an enforcement action pursuant to P.L. ,  
22 c. (C. ) (pending before the Legislature as this bill) against any  
23 producer who relied in good faith on an advisory opinion;

24 d. procedures to govern the issuance of waivers from any  
25 requirements or liabilities pursuant to P.L. , c. (C. ) (pending  
26 before the Legislature as this bill) to additional categories of  
27 advanced technological false personation records upon petition of  
28 any producer thereof if the producer can demonstrate compliance  
29 with P.L. , c. (C. ) (pending before the Legislature as this  
30 bill) would impede their ability to engage in otherwise lawful  
31 activities protected by the First Amendment of the Constitution of  
32 the United States; and

33 e. one year of the effective date of P.L. , c. (C. )  
34 (pending before the Legislature as this bill), rules governing the  
35 technical specifications of the digital watermarks required pursuant  
36 to section 2 of P.L. , c. (C. ) (pending before the Legislature  
37 as this bill), which shall include, if it is determined appropriate by  
38 the Attorney General, a requirement for watermarks to contain  
39 embedded metadata.

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41 7. This act shall take effect immediately.

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STATEMENT

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46 This bill requires a person who produces an "advanced  
47 technological false personation record," as that term is defined in  
48 the bill, with the intent to distribute the record over the Internet or  
49 with knowledge that the record is to be so distributed, and which a

1 person in this State has the ability to access via the Internet, to  
2 ensure the record contains certain disclosures. An advanced  
3 technological false personation record (record) which contains a  
4 moving visual element is to contain an embedded digital watermark  
5 clearly identifying the record as containing altered audio or visual  
6 elements. A record containing both an audio and a visual element is  
7 to include not less than one clearly articulated verbal statement that  
8 identifies the record as containing altered audio and visual  
9 elements, and a concise description of the extent of the alteration  
10 and an unobscured written statement in clearly readable text  
11 appearing at the bottom of the image throughout the duration of the  
12 visual element that identifies the record as containing altered audio  
13 and visual elements, and a concise description of the extent of the  
14 alteration. A record exclusively containing a visual element is to  
15 include an unobscured written statement in clearly readable text  
16 appearing at the bottom of the image throughout the duration of the  
17 visual element that identifies the record as containing altered visual  
18 elements, and a concise description of the extent of the alteration. A  
19 record exclusively containing an audio element is to include, at the  
20 beginning of the record, a clearly articulated verbal statement that  
21 identifies the record as containing altered audio elements and a  
22 concise description of the extent of the alteration, and in the event  
23 the record exceeds two minutes in length, not less than one  
24 additional clearly articulated verbal statement and additional  
25 concise description at some interval during each two-minute period  
26 thereafter.

27 The provisions of the bill are not to apply with respect to any  
28 record:

29 1) containing alternative disclosures regarding the falsity of the  
30 exhibited material activities which a reasonable person would deem  
31 to be more prominent than those required under the bill;

32 2) during the process of producing the record, provided the  
33 ultimately distributed record is in compliance;

34 3) which primarily contains images or sound recordings of  
35 actual persons, such as performing artists, and have not been  
36 substantially digitally modified;

37 4) created in connection with editing a motion picture,  
38 television, music, or similar production or creating a derivative  
39 production thereof, the original content of which was created prior  
40 to the enactment of the bill, in which the person appearing provided  
41 consent to their original appearance; or

42 5) appearing in a context such that a reasonable person would  
43 not mistake the falsified material activity for actual material activity  
44 of the exhibited living person, such as parody shows or  
45 publications, historical reenactments, or fictionalized radio,  
46 television, or motion picture programming.

47 The bill provides that the watermark requirement is not to apply  
48 with respect to any class of record which the Attorney General  
49 determines by regulation should be excluded.

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1       The bill requires the Attorney General, in coordination with any  
2 other State agency the Attorney General deems necessary, to submit  
3 a report to the Governor and the Legislature no later than five years  
4 after the date of enactment of the bill, and five years thereafter,  
5 describing trends related to prosecutions and civil penalties pursued  
6 pursuant to the bill and recommending any updates to the bill  
7 necessitated by the emergence of new technologies.

8       It is to be an unlawful practice and a violation of the consumer  
9 fraud act to violate the provisions of the bill, which includes, but is  
10 not limited to penalties of not more than \$10,000 for the first  
11 offense and not more than \$20,000 for the second and each  
12 subsequent offense. Further, the bill provides that a person is to be  
13 guilty of a crime of the third degree if they knowingly omit or  
14 obscure the disclosure requirements of the bill:

15       1) with the intent to humiliate or otherwise harass the person  
16 falsely exhibited, provided the advanced technological false  
17 personation record contains sexual content of a visual nature and  
18 appears to feature the person engaging in such sexual acts or in a  
19 state of nudity;

20       2) with the intent to cause violence or physical harm, incite  
21 armed or diplomatic conflict, or interfere in an official proceeding,  
22 including an election, provided the advanced technological false  
23 personation record did in fact pose a credible threat of instigating or  
24 advancing these outcomes;

25       3) in the course of criminal conduct related to fraud, including  
26 securities fraud and wire fraud, false personation, or identity theft;  
27 or

28       4) by a foreign power, or an agent thereof, with the intent of  
29 influencing a domestic public policy debate, interfering in a federal,  
30 State, local, or territorial election, or engaging in other acts which  
31 the power may not lawfully undertake.