

SENATE, No. 2322

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED APRIL 9, 2020

Sponsored by:
Senator VIN GOPAL
District 11 (Monmouth)

SYNOPSIS

Prohibits deceptive audio or visual media content of candidate for elective public office within 60 days of election.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning deceptive media content about a candidate for
2 elective public office and supplementing chapter 34 of Title 19
3 of the Revised Statutes.

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

7
8 1. a. Except as provided in subsection b. of this section, a
9 person shall not, within 60 days of an election at which a candidate,
10 as defined in section 3 of P.L.1973, c.83 (C.19:44A-3), will appear
11 on the ballot, distribute, with actual malice, materially deceptive
12 audio or visual media content of the candidate with the intent to
13 injure the candidate's reputation or to deceive a voter into voting
14 for or against the candidate.

15 As used in this section, "materially deceptive audio or visual
16 media content" means an image or an audio or video recording of a
17 candidate's appearance, speech, or conduct that has been
18 intentionally manipulated in a manner such that the image or audio
19 or video recording would falsely appear to a reasonable person to be
20 authentic and would cause a reasonable person to have a
21 fundamentally different understanding or impression of the
22 expressive content of the image or audio or video recording than
23 that person would have if the person were hearing or seeing the
24 unaltered, original version of the image or audio or video recording.
25 "Person" shall have the meaning prescribed for that term under
26 R.S.1:1-2.

27 b. Subsection a. of this section shall not apply if the audio or
28 visual media content includes a disclosure stating: "This content has
29 been manipulated." The disclosure shall specify whether the
30 content that has been manipulated is in the form of an image, video,
31 or audio.

32 For visual media content, the text of the disclosure shall appear
33 in a size and typeface that is easily readable by the average viewer.
34 If the visual media content includes other text, the size of the text of
35 the disclosure shall be no smaller than the largest font size of other
36 text appearing in the visual media content.

37 For visual media content that is video, the disclosure shall appear
38 for the duration of the video.

39 If the content consists of audio only, the disclosure shall be read
40 clearly and in a pitch that can be easily heard by the average
41 listener, at the beginning of the audio recording, at the end of the
42 audio recording, and, if the audio recording is greater than two
43 minutes in length, interspersed within the audio recording at
44 intervals of not greater than two minutes each.

45 c. A candidate whose voice or likeness appears in materially
46 deceptive audio or visual media content distributed in violation of
47 this section may seek injunctive or other equitable relief prohibiting
48 the distribution of audio or visual media content in violation of this
49 section, bring an action for general or special damages against the

1 person or other entity that distributed the materially deceptive audio
2 or visual media content, or both. In any civil action alleging a
3 violation of this section, the plaintiff shall bear the burden of
4 establishing the violation through clear and convincing evidence.

5 The court may award a prevailing party reasonable attorney's
6 fees and costs.

7 This subsection shall not be construed to limit or preclude a
8 plaintiff from securing or recovering any other available remedy.

9 d. This section shall not apply to:

10 (1) a radio or television broadcasting station, including a cable
11 or satellite television operator, programmer, or producer, that
12 broadcasts materially deceptive audio or visual media content
13 prohibited by this section as part of a bona fide newscast, news
14 interview, news documentary, or on-the-spot coverage of bona fide
15 news events, if the broadcast clearly acknowledges through content
16 or a disclosure, in a manner that can be easily heard or read by the
17 average listener or viewer, that there are questions about the
18 authenticity of the materially deceptive audio or visual media
19 content;

20 (2) a radio or television broadcasting station, including a cable
21 or satellite television operator, programmer, or producer, when it is
22 paid to broadcast materially deceptive audio or visual media
23 content;

24 (3) an internet website, or a regularly published newspaper,
25 magazine, or other periodical of general circulation, including an
26 internet or electronic publication, that routinely carries news and
27 commentary of general interest, and that publishes materially
28 deceptive audio or visual media content prohibited by this section,
29 if the publication clearly states that the materially deceptive audio
30 or visual media content does not accurately represent the speech or
31 conduct of the candidate; or

32 (4) materially deceptive audio or visual media content that
33 constitutes satire or parody.

34 e. This section shall not be construed to alter or negate any
35 rights, obligations, or immunities of an interactive service provider
36 under Section 230 of Title 47 of the United States Code (47 U.S.C.
37 s.230).

38
39 2. This act shall take effect and shall expire on January 1,
40 2022.

41 42 43 STATEMENT 44

45 This bill would prohibit a person or other entity, within 60 days
46 of any election at which a candidate for elective public office will
47 appear on the ballot, from distributing with actual malice materially
48 deceptive audio or visual media content of the candidate with the
49 intent to injure the candidate's reputation or to deceive a voter into

1 voting for or against the candidate, unless the content includes a
2 disclosure stating that the content has been manipulated. The bill
3 would expire on January 1, 2022.

4 The bill defines “materially deceptive audio or visual media
5 content” to mean an image or audio or video recording of a
6 candidate’s appearance, speech, or conduct that has been
7 intentionally manipulated in a manner such that the image or audio
8 or video recording would falsely appear to a reasonable person to be
9 authentic
10 and would cause a reasonable person to have a fundamentally
11 different understanding or impression of the expressive content of
12 the image or audio or video recording than that person would have
13 if the person were hearing or seeing the unaltered, original version
14 of the image or audio or video recording.

15 The bill would authorize, until January 1, 2022, a candidate for
16 elective public office whose voice or likeness appears in audio or
17 visual media content distributed in violation of the bill to seek
18 injunctive or other equitable relief prohibiting the distribution of the
19 deceptive audio or visual media content. It would also authorize a
20 candidate whose voice or likeness appears in the deceptive audio or
21 visual media to bring an action for general or special damages
22 against the person or other entity that distributed the content, and
23 would authorize the court to award a prevailing party reasonable
24 attorney’s fees and costs.

25 The bill would provide exemptions for all of the following:

26 (1) a radio or television broadcasting station, including a cable
27 or satellite television operator, programmer, or producer, when it is
28 paid to broadcast materially deceptive audio or visual media
29 content;

30 (2) materially deceptive audio or visual media content that
31 constitutes satire or parody,

32 (3) a radio or television broadcasting station, including a cable
33 or satellite television operator, programmer, or producer, that
34 broadcasts materially deceptive audio or visual media content as
35 part of a bona fide newscast, news interview, news documentary, or
36 on-the-spot coverage of bona fide news events, if the broadcast
37 clearly acknowledges through content or a disclosure that there are
38 questions about the authenticity of the materially deceptive audio or
39 visual media content; and

40 (4) an internet website, or a regularly published newspaper,
41 magazine, or other periodical of general circulation, including an
42 internet or electronic publication, that routinely carries news and
43 commentary of general interest, and that publishes the materially
44 deceptive audio or visual media content, if the publication clearly
45 states that the materially deceptive audio or visual media content
46 does not accurately represent the speech or conduct of the
47 candidate.