

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 4963

By Delegates Holstein, Linville, Young, Chiarelli,

Willis, and Hillenbrand

[Originating in the Committee on the Judiciary;

Reported on February 22, 2024]

1 A BILL to amend the Code of West Virginia, 1931, by adding thereto a new article, designated §61-
2 3F-1, §61-3F-2, §61-3F-3, §61-3F-4, and §61-3F-5, all relating to prohibiting certain uses
3 of deep fake technology; prohibiting the use of deep fake technology to influence an
4 election; providing for definitions; explaining manner of violation; providing exceptions and
5 exemptions; providing for a penalty; and allowing injunctive relief.

Be it enacted by the Legislature of West Virginia:

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3F. USE OF DEEP FAKE TECHNOLOGY TO INFLUENCE AN ELECTION.

§61-3F-1. Definitions.

1 (a) As used in this section, the following terms have the meanings given.

2 (b) "Candidate" means an individual who seeks nomination or election to a federal,
3 statewide, legislative, judicial, or local office including boards of education, towns, cities, and
4 counties.

5 (c) "Deep fake" means any video recording, motion-picture film, sound recording,
6 electronic image, or photograph, or any technological representation of speech or conduct
7 substantially derivative thereof:

8 (1) That is so realistic that a reasonable person would believe it depicts speech or conduct
9 of an individual who did not in fact engage in such speech or conduct; and

10 (2) The production of which was substantially dependent upon technical means, rather
11 than the ability of another individual to physically or verbally impersonate such individual.

12 (d) "Depicted individual" means an individual in a deep fake who appears to be engaging
13 in speech or conduct in which the individual did not engage.

§61-3F-2. Use of deep fake technology to influence an election.

1 A person who disseminates a deep fake or enters into a contract or other agreement to
2 disseminate a deep fake is guilty of a crime and may be sentenced as provided in §61-3F-3 of this

3 code if the person knows or reasonably should know that the item being disseminated is a deep
4 fake and dissemination:

5 (a) Takes place within 90 days before an election;

6 (b) Is made without the consent of the depicted individual; and

7 (c) Is made with the intent to injure a candidate or influence the result of an election:

8 Provided, That a media outlet, including but not limited to, a website, social media platform,
9 regularly published newspaper, magazine, or other periodical, including electronic or internet
10 publication of the same, a radio or television station, including a cable or satellite television
11 operator, programmer, or producer, or any streaming service, is not in violation of this section if the
12 entity's only role was to distribute a political advertisement prohibited by this section.

§61-3F-3. Exemptions.

1 This section does not apply to:

2 (a) A website, radio or broadcast television station, including a cable or satellite television
3 operator, programmer, or producer, when it is paid to broadcast materially deceptive audio or
4 visual media;

5 (b) A provider of an interactive computer service as defined in 47 U.S.C. § 230(f); or

6 (c) Content that constitutes satire or parody: Provided, That such content include a
7 disclaimer stating that the image, video, or audio has been manipulated or generated by artificial
8 intelligence.

§61-3F-4. Penalty.

1 A person convicted of violating §61-3F-2 of this code may be sentenced as follows:

2 (a) If the person commits the violation within five years of one or more prior convictions
3 under this section, to imprisonment for not more than five years or to payment of a fine of not more
4 than \$10,000, or both fined and confined;

5 (b) If the person commits the violation with the intent to cause violence or bodily harm, to
6 imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both
7 fined and confined; or

8 (c) In other cases, to imprisonment for not more than 90 days or to payment of a fine of not
9 more than \$1,000, or both fined and confined.

§61-3F-5. Injunctive relief.

1 A cause of action for injunctive relief may be maintained against any person who is
2 reasonably believed to be about to violate or who is in the course of violating this section by:

3 (a) The Attorney General;

4 (b) A county prosecutor;

5 (c) The depicted individual; or

6 (d) A candidate for nomination or election to a public office who is injured or likely to be
7 injured by dissemination.

NOTE: The purpose of this bill is to prohibit the use of deep fake technology to influence an election.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.