

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 720

By Senators Chapman and Woodrum

[Introduced February 8, 2024; referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §61-3D-1, §61-3D-2, §61-3D-3, §61-3D-4, §61-3D-5, and §61-3D-6, all
 3 relating to creating the Stop Non-Consensual Distribution of Intimate Deep Fake Media
 4 Act; providing for definitions; explaining manner of violation; providing for construction,
 5 safe harbor, and severability; providing for a penalty; and allowing injunctive relief.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 3D. STOP NON-CONSENSUAL DISTRIBUTION OF INTIMATE DEEP FAKE
 MEDIA ACT.**

§61-3D-1. Definitions.

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

2 (b) "Deep fake" means any visual media created, altered, or otherwise manipulated in a
 3 manner that would falsely appear to a reasonable observer to be an authentic record of a natural
 4 person's speech, conduct, or likeness;

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

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

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

11 (d) "Distribute" means to publish or disseminate, including but not limited to: advertising,
 12 exhibiting, exchanging, promoting, or selling deep fake material.

13 (e) "Natural person" means a human being with legal personality as distinguished from a
 14 person created by digital means or by operation of law.

15 (f) "Non-consensual" means without the voluntary agreement of the natural person whose
 16 face is involved.

17 (g) "Sexual conduct" means actual or simulated sexual intercourse, outercourse,
18 masturbation, bestiality, or sexual sadism.

§61-3D-2. Prohibitions.

1 (a) A person commits the unlawful dissemination or sale of images of another if the
2 person:

3 (1) Intentionally or knowingly distributes a deep fake with the face of a natural person.

4 (A) Depicting that person engaging in sexual conduct that the actual person did not
5 actually engage in;

6 (B) With intent to coerce, harass, or intimidate, or to damage the reputation of the natural
7 person depicted; and

8 (C) Where the distributor knows or has reason to know that the distribution was not
9 consented to by the natural person whose face is depicted in the deep fake.

10 (b) Nothing in this article shall be construed to impose liability on an interactive computer
11 service, as defined in 47 U.S.C. § 230(f), for information provided by another information content
12 provider.

13 (c) The provisions of this article shall not preclude prosecution under any other statute.

§61-3D-3. Construction; safe harbor.

1 (a) "Deep fake" shall not be interpreted to include any constitutionally protected speech,
2 including works of political, artistic, or newsworthy value, including commentary, criticism, satire,
3 or parody.

4 (b) It shall not be a violation of this article to publish digitally manipulated media that
5 includes a clear disclosure that would cause a reasonable person to understand that the visual
6 media is not a record of a real event.

§61-3D-4. Severability.

2 If any provision of this article or the application thereof to any person or circumstance is
3 held unconstitutional or otherwise invalid, the remaining provisions of this article and the
4 application of such provisions to other persons or circumstances shall not be affected thereby.

§61-3D-5. Penalty.

1 A person convicted of violating §61-3D-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.

§61-3D-6. 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 natural person who is injured or likely to be injured by dissemination.

NOTE: The purpose of this bill is to create the Stop Non-Consensual Distribution of Intimate Deep Fake Media Act.

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