

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 4963

By Delegates Holstein, Linville, Young, Chiarelli, Willis
and Hillenbrand

[Introduced January 22, 2024; Referred to the
Committee on Technology and Infrastructure then the
Judiciary

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

Be it enacted by the Legislature of West Virginia:

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

§61-3D-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.

§61-3D-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 §61-3D-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.

§61-3D-3. 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-4. 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.