

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5516

By Delegates Cannon, Kimble, Pinson, Holstein,
Maynor, Burkhammer, Chiarelli, Kelly, Young, W.
Clark, and Akers

[Introduced February 07, 2024; Referred to the
Committee on Artificial Intelligence then the
Judiciary]

1 A BILL to amend and reenact §61-8-28 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §61-8C-1 of said code, all relating to prohibiting the use of deep fake
 3 images for the criminal invasion of privacy or the unlawful depiction of nude or partially
 4 nude minors or minors engaged in sexually explicit conduct; establishing such conduct as
 5 criminal offenses, subject to criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-28. Criminal invasion of privacy; penalties.

1 (a) For the purposes of this section, the words or terms defined in this subsection have the
 2 meanings ascribed to them. These definitions are applicable unless a different meaning clearly
 3 appears from the context:

4 (1) "A person fully or partially nude" means a male or female who is either clothed or
 5 unclothed so that: (A) All or any part of his or her genitals, pubic area or buttocks is visible; or (B) in
 6 the case of a female only, a part of a nipple of her breast is visible and is without a fully opaque
 7 covering;

8 (2) "Deep fake" shall mean a visual depiction of an individual that did not occur in reality
 9 and the production of which was substantially dependent upon technical means, including artificial
 10 intelligence and photoshop software, rather than the ability of another person to physically
 11 impersonate the other person.

12 ~~(2)~~ (3) "To visually portray" a person means to create a reproducible image of that person
 13 by means of:

14 (A) A photograph;

15 (B) A motion picture;

16 (C) A video tape;

17 (D) A digital recording; or

18 (E) A deep fake; or

19 ~~(E)~~ (F) Any other mechanical or electronic recording process or device that can preserve,
20 for later viewing, a visual image of a person; and

21 ~~(3)~~ (4) "Place where a reasonable person would have an expectation of privacy" means a
22 place where a reasonable person would believe that he or she could, in privacy, be fully or partially
23 nude without expecting that the act of exposing his or her body was being visually portrayed by
24 another person.

25 (b) It is unlawful for a person to knowingly visually portray another person without that other
26 person's knowledge, while that other person is fully or partially nude and is in a place where a
27 reasonable person would have an expectation of privacy. A person who violates the provisions of
28 this subsection is guilty of a misdemeanor and, upon conviction, shall be confined in a county or
29 regional jail for not more than one year or fined not more than \$5,000, or both.

30 (c) Any person who displays or distributes visual images of another person with knowledge
31 that said visual images were obtained in violation of subsection (b) of this section is guilty of a
32 misdemeanor and, upon conviction, shall be confined in a county or regional jail for not more than
33 one year or fined not more than \$5,000, or both.

34 (d) A person who is convicted of a second or subsequent violation of subsection (b) or (c)
35 of this section is guilty of a felony and, upon conviction, shall be confined in a state correctional
36 facility for not less than one year nor more than five years or fined not more than \$10,000, or both.

ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF MINORS.

§61-8C-1. Definitions.

1 For the purposes of this article:

2 (a) "Minor" means any child under eighteen years of age.

3 (b) "Knowledge" means knowing or having reasonable cause to know which warrants
4 further inspection or inquiry.

5 (c) "Sexually explicit conduct" includes any of the following, whether actually performed or
6 simulated:

- 7 (1) Genital to genital intercourse;
- 8 (2) Fellatio;
- 9 (3) Cunnilingus;
- 10 (4) Anal intercourse;
- 11 (5) Oral to anal intercourse;
- 12 (6) Bestiality;
- 13 (7) Masturbation;
- 14 (8) Sadomasochistic abuse, including, but not limited to, flagellation, torture or bondage;
- 15 (9) Excretory functions in a sexual context; or
- 16 (10) Exhibition of the genitals, pubic or rectal areas of any person in a sexual context.
- 17 (d) "Person" means an individual, partnership, firm, association, corporation or other legal
- 18 entity- ;or
- 19 (e) "Deep fake" means a visual depiction of an individual that did not occur in reality and the
- 20 production of which was substantially dependent upon technical means, including artificial
- 21 intelligence and photoshop software, rather than the ability of another person to physically
- 22 impersonate the other person.
- 23 (f) "Visual portrayal" means:
- 24 (1) A photograph;
- 25 (2) A motion picture;
- 26 (3) A digital image;
- 27 (4) A digital video recording; or
- 28 (5) A deep fake; or
- 29 (6) Any other mechanical or electronic recording process or device that can preserve, for
- 30 later viewing, a visual image of a person that includes, but is not limited to, computers, cellphones,
- 31 personal digital assistance, and other digital storage or transmitting devices.

NOTE: The purpose of this bill is to prohibit the use of deep fake images for the criminal

invasion of privacy or the unlawful depiction of nude or partially nude minors or minors engaged in sexually explicit conduct; establishing such conduct as criminal offenses, subject to criminal penalties.

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