

ASSEMBLY, No. 4985

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED NOVEMBER 16, 2020

Sponsored by:

Assemblyman ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

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.



(Sponsorship Updated As Of: 11/16/2020)

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

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

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8 1. a. Except as provided in subsection b. of this section, a person
9 shall not, within 60 days of an election at which a candidate, as
10 defined in section 3 of P.L.1973, c.83 (C.19:44A-3), will appear on
11 the ballot, distribute, with actual malice, materially deceptive audio
12 or visual media content of the candidate with the intent to injure the
13 candidate's reputation or to deceive a voter into voting for or against
14 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 that
23 person would have if the person were hearing or seeing the unaltered,
24 original version of the image or audio or video recording. "Person"
25 shall have the meaning prescribed for that term under R.S.1:1-2.

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

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

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

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

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

1 or visual media content, or both. In any civil action alleging a
2 violation of this section, the plaintiff shall bear the burden of
3 establishing the violation through clear and convincing evidence.

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

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

8 d. This section shall not apply to:

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

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

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

30 (4) materially deceptive audio or visual media content that
31 constitutes satire or parody.

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

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36 2. This act shall take effect and shall expire on January 1, 2022.

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STATEMENT

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41 This bill would prohibit a person or other entity, within 60 days of
42 any election at which a candidate for elective public office will
43 appear on the ballot, from distributing with actual malice materially
44 deceptive audio or visual media content of the candidate with the
45 intent to injure the candidate's reputation or to deceive a voter into
46 voting for or against the candidate, unless the content includes a
47 disclosure stating that the content has been manipulated. The bill
48 would expire on January 1, 2022.

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

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

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

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

26 (2) materially deceptive audio or visual media content that
27 constitutes satire or parody,

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

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