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ASSEMBLY, No. 4985

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SYNOPSIS

Prohibits deceptive audio or visual media content of candidate for elective public office within 60 days of election.

CURRENT VERSION OF TEXT

As reported by the Assembly Science, Innovation and Technology Committee on January 25, 2021, with amendments.



(Sponsorship Updated As Of: 2/22/2021)

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

4

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

7

8 1. a. Except as provided in subsection b. of this section, a
9 person shall not, within 60 days of an election at which a candidate,
10 as defined in section 3 of P.L.1973, c.83 (C.19:44A-3), will appear
11 on the ballot, distribute, with actual malice, ¹**["materially"]**¹
12 deceptive audio or visual media content of the candidate with the
13 intent to injure the candidate's reputation or to deceive a voter into
14 voting for or against the candidate.

15 ¹**["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**
23 **that person would have if the person were hearing or seeing the**
24 **unaltered, original version of the image or audio or video recording.**
25 **"Person" shall have the meaning prescribed for that term under**
26 **R.S.1:1-2.]**¹

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

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

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

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

EXPLANATION – Matter enclosed in bold-faced brackets **["thus"]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AST committee amendments adopted January 25, 2021.

1 c. A candidate whose voice or likeness appears in
2 **¹['materially']¹** deceptive audio or visual media content distributed
3 in violation of this section may seek injunctive or other equitable
4 relief prohibiting the distribution of audio or visual media content
5 in violation of this section, bring an action for general or special
6 damages against the person or other entity that distributed the
7 **¹['materially']¹** deceptive audio or visual media content, or both. In
8 any civil action alleging a violation of this section, the plaintiff
9 shall bear the burden of establishing the violation through clear and
10 convincing evidence.

11 The court may award a prevailing party reasonable attorney's
12 fees and costs.

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

15 d. This section shall not apply to:

16 (1) a radio or television broadcasting station, including a cable
17 or satellite television operator, programmer, or producer, that
18 broadcasts **¹['materially']¹** deceptive audio or visual media content
19 prohibited by this section as part of a bona fide newscast, news
20 interview, news documentary, or on-the-spot coverage of bona fide
21 news events, if the broadcast clearly acknowledges through content
22 or a disclosure, in a manner that can be easily heard or read by the
23 average listener or viewer, that there are questions about the
24 authenticity of the **¹['materially']¹** deceptive audio or visual media
25 content;

26 (2) a radio or television broadcasting station, including a cable
27 or satellite television operator, programmer, or producer, when it is
28 paid to broadcast **¹['materially']¹** deceptive audio or visual media
29 content;

30 (3) an **¹['internet']** Internet¹ website, or a regularly published
31 newspaper, magazine, or other periodical of general circulation,
32 including an **¹['internet']** Internet¹ or electronic publication, that
33 routinely carries news and commentary of general interest, and that
34 publishes **¹['materially']¹** deceptive audio or visual media content
35 prohibited by this section, if the publication clearly states that the
36 **¹['materially']¹** deceptive audio or visual media content does not
37 accurately represent the speech or conduct of the candidate; or

38 (4) **¹['materially']¹** deceptive audio or visual media content that
39 constitutes satire or parody.

40 e. This section shall not be construed to alter or negate any
41 rights, obligations, or immunities of an **¹['interactive service']**
42 information content¹ provider under Section 230 of Title 47 of the
43 United States Code (47 U.S.C. s.230).

44 **¹f.** As used in this section:

45 "Deceptive audio or visual media" means any video recording,
46 motion picture film, sound recording, electronic image, or
47 photograph, or any technological representation of speech or

1 conduct substantially derivative thereof that appears to authentically
2 depict any speech or conduct of a person who did not in fact engage
3 in the speech or conduct and the production of which was
4 substantially dependent upon technical means, rather than the
5 ability of another person to physically or verbally impersonate the
6 person.

7 “Person” shall have the meaning prescribed for that term under
8 R.S.1:1-2.¹

9
10 ¹2. The Attorney General, in coordination with the New Jersey
11 Election Law Enforcement Commission, shall submit a report to the
12 Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
13 19.1), to the Legislature no later than one year after the date of
14 enactment of P.L. , c. (C.) (pending before the Legislature
15 as this bill), reporting on the effectiveness of, and recommending
16 any updates to, P.L. , c. (C.) (pending before the Legislature
17 as this bill).¹

18
19 ¹[2.] 3.¹ This act shall take effect ¹[and shall expire on January

20 1, 2022] immediately¹.