

AMENDED IN SENATE APRIL 11, 2024

SENATE BILL

No. 970

Introduced by Senator Ashby

January 25, 2024

An act to add Chapter 22.7 (commencing with Section 22650) to Division 8 of the Business and Professions Code, to amend Section 3344 of the Civil Code, to add Article 2.5 (commencing with Section 1425) to Chapter 1 of Division 11 of the Evidence Code, and to add Chapter 9 (commencing with Section 540) to Title 13 of Part 1 of the Penal Code, relating to artificial intelligence technology.

LEGISLATIVE COUNSEL'S DIGEST

SB 970, as amended, Ashby. Artificial intelligence technology.

(1) Existing law prohibits the false impersonation of another person in either their personal or official capacity with the intent to steal or defraud, as specified.

This bill would define various terms related to artificial intelligence and synthetic voice, video, and image recordings produced by artificial intelligence, content, and would clarify that use of such synthetic recordings, content, as specified, is deemed to be a false personation for purposes of these and other criminal provisions.

(2) Existing law creates a civil cause of action against any person who knowingly uses the name, voice, signature, photograph, or likeness of another person, without their consent, for specified purposes.

This bill would clarify that, for purposes of this cause of action, a synthetic voice or likeness that a reasonable person would believe to be a genuine voice or likeness, is deemed to be the voice or likeness of the person depicted.

(3) Existing law governs the admissibility of evidence in court proceedings. Existing law prescribes procedures for the authentication of photographs and audio and video recordings.

~~This bill would require the Judicial Council to develop and implement screening procedures for these types of records that are introduced as evidence, to identify those that are synthetic. The bill would also require the council to develop and promulgate educational materials to assist in the identification of evidence that has been tampered with by means of artificial intelligence.~~

This bill would require the Judicial Council, by no later than January 1, 2026, to review the impact of artificial intelligence on the introduction of evidence in court proceedings and develop any necessary rules of court to assist courts in assessing claims that evidence that is being introduced has been generated by or manipulated by artificial intelligence.

(4) Existing law establishes the Department of Consumer Affairs the within the Business, Consumer Services, and Housing Agency to protect and promote the interests of consumers. Existing law places certain requirements on various specified businesses, including household movers, tanning facilities, video arcades, and tax preparers.

~~This bill would require, by July 1, 2026, any person or entity that sells or provides access to any artificial intelligence technology that is designed to create synthetic images, video, or voice content, as defined, to provide a consumer warning that misuse of the technology may result in civil or criminal liability for the user. The bill would require the Department of Consumer Affairs to specify the form and content of the consumer warning and would impose a civil penalty for violations of the requirement. post it on a publicly accessible page of its internet website by January 1, 2026. The bill would also impose a civil penalty for violations of the requirement.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 22.7 (commencing with Section 22650)
2 is added to Division 8 of the Business and Professions Code, to
3 read:

CHAPTER 22.7. ARTIFICIAL INTELLIGENCE TECHNOLOGY
PROVIDERS

22650. (a) ~~Any~~ *By July 1, 2026, any* person or entity that sells or provides access to any artificial intelligence technology that is designed to create any synthetic-~~media~~ *content* shall provide a consumer warning that misuse of the technology may result in civil or criminal liability for the user.

(b) The department shall determine the acceptable form and content of the consumer warning required by this ~~section~~ *section and post it on a publicly accessible page of its internet website by January 1, 2026.*

(c) Failure to comply with subdivision (a) is punishable by a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each day that the technology is provided to or offered to the public without a consumer warning. The department may enforce this section by bringing a civil action in any court of competent jurisdiction. The civil penalties collected shall be deposited into the General Fund.

(d) As used in this section, “artificial intelligence” and “synthetic ~~media~~” *content*” have the same meaning as in Section 540 of the Penal Code.

SEC. 2. Section 3344 of the Civil Code is amended to read:

3344. (a) Any person who knowingly uses another’s name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods or services, without such person’s prior consent, or, in the case of a minor, the prior consent of their parent or legal guardian, shall be liable for any damages sustained by the person or persons injured as a result thereof. In addition, in any action brought under this section, the person who violated the section shall be liable to the injured party or parties in an amount equal to the greater of seven hundred fifty dollars (\$750) or the actual damages suffered by them as a result of the unauthorized use, and any profits from the unauthorized use that are attributable to the use and are not taken into account in computing the actual damages. In establishing these profits, the injured party or parties are required to present proof only of the gross revenue attributable to the unauthorized use, and the person who violated this section is required to prove

1 their deductible expenses. Punitive damages may also be awarded
2 to the injured party or parties. The prevailing party in any action
3 under this section shall also be entitled to attorney's fees and costs.

4 (b) As used in this section, "photograph" means any photograph
5 or photographic reproduction, still or moving, or any videotape or
6 live television transmission, of any person, such that the person is
7 readily identifiable.

8 (1) A person shall be deemed to be readily identifiable from a
9 photograph when one who views the photograph with the naked
10 eye can reasonably determine that the person depicted in the
11 photograph is the same person who is complaining of its
12 unauthorized use.

13 (2) If the photograph includes more than one person so
14 identifiable, then the person or persons complaining of the use
15 shall be represented as individuals rather than solely as members
16 of a definable group represented in the photograph. A definable
17 group includes, but is not limited to, the following examples: a
18 crowd at any sporting event, a crowd in any street or public
19 building, the audience at any theatrical or stage production, a glee
20 club, or a baseball team.

21 (3) A person or persons shall be considered to be represented
22 as members of a definable group if they are represented in the
23 photograph solely as a result of being present at the time the
24 photograph was taken and have not been singled out as individuals
25 in any manner.

26 (c) Where a photograph or likeness of an employee of the person
27 using the photograph or likeness appearing in the advertisement
28 or other publication prepared by or in behalf of the user is only
29 incidental, and not essential, to the purpose of the publication in
30 which it appears, there shall arise a rebuttable presumption
31 affecting the burden of producing evidence that the failure to obtain
32 the consent of the employee was not a knowing use of the
33 employee's photograph or likeness.

34 (d) For purposes of this section, a use of a name, voice,
35 signature, photograph, or likeness in connection with any news,
36 public affairs, or sports broadcast or account, or any political
37 campaign, shall not constitute a use for which consent is required
38 under subdivision (a).

39 (e) The use of a name, voice, signature, photograph, or likeness
40 in a commercial medium shall not constitute a use for which

1 consent is required under subdivision (a) solely because the
2 material containing such use is commercially sponsored or contains
3 paid advertising. Rather it shall be a question of fact whether or
4 not the use of the person's name, voice, signature, photograph, or
5 likeness was so directly connected with the commercial sponsorship
6 or with the paid advertising as to constitute a use for which consent
7 is required under subdivision (a).

8 (f) Nothing in this section shall apply to the owners or
9 employees of any medium used for advertising, including, but not
10 limited to, newspapers, magazines, radio and television networks
11 and stations, cable television systems, billboards, and transit ads,
12 by whom any advertisement or solicitation in violation of this
13 section is published or disseminated, unless it is established that
14 those owners or employees had knowledge of the unauthorized
15 use of the person's name, voice, signature, photograph, or likeness
16 as prohibited by this section.

17 (g) For purposes of this section, a voice or photograph that is
18 ~~synthetic-media, content~~, as defined in Section 540 of the Penal
19 Code, is deemed to be the voice or photograph of the person
20 depicted, if a reasonable person would believe that the synthetic
21 ~~media content~~ is the genuine voice or photograph of that person.

22 (h) The remedies provided for in this section are cumulative
23 and shall be in addition to any others provided for by law.

24 SEC. 3. Article 2.5 (commencing with Section 1425) is added
25 to Chapter 1 of Division 11 of the Evidence Code, to read:

26
27 Article 2.5. Screening of Writings for Synthetic Content
28

29 ~~1425. (a) The Judicial Council shall develop and implement~~
30 ~~screening procedures for writings introduced as evidence to identify~~
31 ~~those writings that are synthetic media.~~

32 ~~(b) The Judicial Council shall develop and make available to~~
33 ~~the public educational materials to assist judges, attorneys, and~~
34 ~~law enforcement officers in understanding and identifying synthetic~~
35 ~~media and evidence that has been tampered with by means of~~
36 ~~artificial intelligence technology.~~

37 *1425. (a) By no later than January 1, 2026, the Judicial*
38 *Council shall review the impact of artificial intelligence on the*
39 *introduction of evidence in court proceedings and develop any*
40 *necessary rules of court to assist courts in assessing claims that*

1 *evidence that is being introduced has been generated by or*
2 *manipulated by artificial intelligence.*

3 (e)

4 (b) As used in this section, “artificial intelligence” and “synthetic
5 media” have *has* the same meaning as in Section 540 of the Penal
6 Code.

7 SEC. 4. Chapter 9 (commencing with Section 540) is added
8 to Title 13 of Part 1 of the Penal Code, to read:

10 CHAPTER 9. OFFENSE INVOLVING THE USE OF ARTIFICIAL
11 INTELLIGENCE TECHNOLOGY

12
13 540. For purposes of the chapter, the following definitions
14 apply:

15 (a) “Artificial intelligence” or “AI” means ~~the simulation of~~
16 ~~human intelligence processes by computer systems or other~~
17 ~~machines.~~ *an engineered or machine-based system that, for explicit*
18 *or implicit objectives, infers, from the input it receives, how to*
19 *generate outputs that can influence physical or virtual*
20 *environments and that may operate with varying levels of*
21 *autonomy.*

22 (b) “Synthetic media” means ~~audio, video, or images that have~~
23 ~~been generated or manipulated by AI technologies to appear to be~~
24 ~~genuine audio or video recordings or photographic images.~~
25 *“Synthetic content” means information, such as text, audio, videos,*
26 *or images, that has been significantly modified or generated by*
27 *algorithms, including by AI. Synthetic-media content includes*
28 *videos content commonly referred to as deepfakes.*

29 (c) “Video cloning technology” means ~~technology that utilizes~~
30 ~~AI, specifically deep learning and generative adversarial networks~~
31 ~~(GANs), to create or modify video content in a manner that appears~~
32 ~~to be an actual recording.~~

33 (d) “Voice cloning technology” means ~~technology that utilizes~~
34 ~~AI to replicate a human voice in a manner that seems to be an~~
35 ~~actual human voice, including the actual voice of a specific~~
36 ~~identifiable person.~~

37 541. For the purposes of any provision of this code in which
38 the false impersonation of another is a required element, including,
39 without limitation, Sections 528.5, 529, and 530, the use of ~~video~~
40 ~~or voice cloning technology~~ *synthetic content* with the intent to

1 impersonate another is deemed to be a false personation. Intent to
2 impersonate can be inferred if the synthetic-media *content* produced
3 would lead a reasonable person to believe that it is a genuine
4 recording of, or the actual voice of, the person that it is presenting
5 to be.

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