SB 11 (Ashby)
Version: December 2, 2024
Hearing Date: April 1, 2025
Fiscal: Yes
Urgency: No
CK

SUBJECT

Artificial intelligence technology

DIGEST

This bill ensures that computer-manipulated or generated content is incorporated into the right of publicity law and criminal false impersonation statutes. The bill requires those selling or providing access to such technology to provide a warning to consumers about liability for misuse. The bill also requires Judicial Council to review the impact of AI on evidence introduced in court proceedings and to adopt rules of court as necessary.

EXECUTIVE SUMMARY

Given the recent explosion in generative AI capabilities and its near ubiquitous use, concerns have been raised that existing law must be updated to account for harms associated with its use. The rapid advancement of AI technology has made it drastically cheaper and easier to produce realistic synthetic content that is virtually impossible to distinguish from authentic content.

This bill makes clear that computer-manipulated or -created content is incorporated into existing laws involving the false impersonation, or use of likeness, of another, namely the right of publicity and false impersonation laws. The bill also tasks Judicial Council with reviewing the impact of AI on the introduction of evidence in court proceedings and developing necessary rules of court. To ensure consumers are on notice of these laws, those selling or providing access to technology designed to create any synthetic content are required to warn consumers that misuse can result in civil or criminal liability. This bill is author-sponsored. It is supported by several groups, including the California District Attorneys Association and the National AI Youth Council. It is opposed by a coalition of industry and advertising associations, including the Network Advertising Initiative and Technet. If passed by this Committee, this bill will then be referred to the Senate Public Safety Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Establishes California's right of publicity law, which provides that 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, shall be liable for any damages sustained by the person or persons injured as a result thereof. (Civ. Code § 3344(a).)

2) Subjects a person in violation to liability to the injured party for the greater of the actual damages suffered or statutory damages of $750, and any profits from the unauthorized use that are attributable to the use and are not taken into account in computing the actual damages. Punitive damages may also be awarded to the injured party or parties. The prevailing party shall also be entitled to attorney's fees and costs. (Civ. Code § 3344(a).)

3) Provides that where a photograph or likeness of an employee of the person using the photograph or likeness appearing in the advertisement or other publication prepared by or on behalf of the user is only incidental, and not essential, to the purpose of the publication in which it appears, there shall arise a rebuttable presumption affecting the burden of producing evidence that the failure to obtain the consent of the employee was not a knowing use of the employee's photograph or likeness. (Civ. Code § 3344(c).)

4) Provides that any person who knowingly and without consent credibly impersonates another actual person through or on a website or by other electronic means for purposes of harming, intimidating, threatening, or defrauding another person is guilty of a public offense punishable by a fine and/or imprisonment. (Pen. Code § 528.5.)

5) Provides that every person who falsely impersonates another in either their private or official capacity, and in that assumed character carries out specified actions, is punishable by a fine and/or imprisonment. (Pen. Code § 529.)

6) Provides that every person who falsely impersonates another, in either their private or official capacity, and in such assumed character receives any money or property, knowing that it is intended to be delivered to the individual so personated, with intent to convert the same to their own use, or to that of another person, or to deprive the true owner thereof, is punishable in the same manner and to the same extent as for larceny of the money or property so received. (Pen. Code § 530.)

This bill:

1) Requires, by December 1, 2026, a person or entity that sells or provides access to any AI technology that is designed to create any synthetic media to provide a consumer warning that misuse of the technology may result in civil or criminal liability for the user.

2) Requires the Department of Consumer Affairs (DCA), by July 1, 2026 to determine the acceptable form and content of the consumer warning required above.

3) Subjects violations to a civil penalty not to exceed $25,000 for each day that the technology is provided to or offered to the public without a consumer warning in a civil action brought by the DCA. The civil penalties collected are to be deposited into the General Fund.

4) Provides, for purposes of the right of publicity law, that a voice or photograph that is synthetic content is deemed to be the voice or photograph of the person depicted, if a reasonable person would believe that the synthetic content is the genuine voice or photograph of that person.

5) Removes the rebuttable presumption from the right of publicity statute.

6) Requires, by no later than January 1, 2027, the Judicial Council 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.

7) Defines the following terms:

   a) "Artificial intelligence" means an engineered or machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs that can influence physical or virtual environments and that may operate with varying levels of autonomy.
   b) "Synthetic content" means information, such as text, audio, videos, or images, that has been significantly modified or generated by algorithms, including by AI. Synthetic content includes content commonly referred to as deepfakes.

8) Provides that for the purposes of all Penal Code provisions for which the false impersonation of another is a required element, including, without limitation, Sections 528.5, 529, and 530, the use of synthetic content with the intent to impersonate another is deemed to be a false personation. Intent to impersonate

can be inferred if the synthetic content produced would lead a reasonable person to believe that it is a genuine recording of, or the actual voice of, the person that it is presenting to be.

COMMENTS

1. Blurring reality: AI-generated content

The world has been in awe of the powers of generative AI since the widespread introduction of AI systems such as ChatGPT. However, the capabilities of these advanced systems leads to a blurring between reality and fiction. The rapid advancement of AI technology has created unprecedented challenges in protecting individuals' identities and likenesses. Deepfakes and AI-generated content can now convincingly mimic a person's voice, appearance, and mannerisms, making impersonation easier and more convincing than ever before. The Brookings Institution lays out the issue:

> Over the last year, generative AI tools have made the jump from research prototype to commercial product. Generative AI models like OpenAI's ChatGPT and Google's Gemini can now generate realistic text and images that are often indistinguishable from human-authored content, with generative AI for audio and video not far behind. Given these advances, it's no longer surprising to see AI-generated images of public figures go viral or AI-generated reviews and comments on digital platforms. As such, generative AI models are raising concerns about the credibility of digital content and the ease of producing harmful content going forward.

> Against the backdrop of such technological advances, civil society and policymakers have taken increasing interest in ways to distinguish AI-generated content from human-authored content.[1]

One expert at the Copenhagen Institute for Future Studies estimates that should large generative-AI models run amok, up to 99 percent of the internet's content could be AI-generated by 2025 to 2030.[2]

Recently, a former federal judge urged the federal judiciary's Advisory Committee on Evidence Rules to update evidentiary rules regarding the admissibility of evidence

---

[1] Siddarth Srinivasan, *Detecting AI fingerprints: A guide to watermarking and beyond* (January 4, 2024) Brookings Institution, https://www.brookings.edu/articles/detecting-ai-fingerprints-a-guide-to-watermarking-and-beyond/#:~:text=Google%20also%20recently%20announced%20SynthID,model%20to%20detect%20the%20watermark. All internet citations are current as of March 5, 2025.

[2] Lonnie Lee Hood, *Experts Say That Soon, Almost The Entire Internet Could Be Generated by AI* (March 4, 2022) The Byte, https://futurism.com/the-byte/ai-internet-generation.

believed to be AI generated.[3] But, in addition to concerns about the potential for AI-generated evidence to be admitted is the reverse, false claims that real evidence is synthetic. As more of the population becomes aware of the potential to realistically fake images, video, and text, some will use the skepticism that creates to challenge the authenticity of real content, a phenomena coined the "liar's dividend."[4]

2. Ensuring synthetic content is incorporated into existing legal frameworks

This bill seeks to ensure that existing laws and systems are equipped to handle the implications of the explosion of AI-generated or manipulated content. The bill is significantly similar to SB 970 (Ashby, 2024), which was held in the Senate Appropriations Committee.

First, the bill amends California's right of publicity statute. That law provides that 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 shall be liable for any damages sustained by the person or persons injured as a result thereof.

While initially designed for traditional media, the law's principles have become increasingly relevant in the AI era. The bill adds that a voice or photograph that is synthetic content is deemed to be the voice or photograph of the person depicted, if a reasonable person would believe that the synthetic content is the genuine voice or photograph of that person. The author explains: "This means that if a synthetic voice or image is so realistic that a reasonable person would believe it to be genuine, it is considered the same as the actual voice or image of the person it depicts, offering protection against unauthorized AI-generated content."

 "Synthetic content" means information, such as text, audio, videos, or images, that has been significantly modified or generated by algorithms, including by AI. This includes videos commonly referred to as deepfakes.

The bill also amends the Penal Code to provide that for any provisions therein that have false impersonation as a required element, the use of synthetic content with the intent to impersonate another is deemed to be a false impersonation.

---

[3] Avalon Zoppo, *Threat of AI-Generated 'Deepfake' Evidence Needs Judiciary's Attention, Former Judge Says* (October 27, 2023) The National Law Journal, https://www.law.com/nationallawjournal/2023/10/27/threat-of-ai-generated-deepfake-evidence-needs-judiciarys-attention-former-judge-says/?slreturn=20240303000917.

[4] Bobby Chesney & Danielle Citron, *Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security* (July 14, 2018) 107 California Law Review 1753 (2019), https://ssrn.com/abstract=3213954.

Next, the bill obligates those that sell or provide access to AI technology designed to create synthetic content to provide a warning to consumers about the potential liability that could result from the misuse of that technology. This serves to put consumers on notice that their use of the technology has consequences, hopefully deterring the abuses discussed in detail above.

For this section, the bill requires that DCA determine the form and content of this warning and post it publicly by July 1, 2026. DCA is authorized to bring a civil action against those in violation for civil penalties of up to $25,000 for each day the technology is provided or offered to the public without the warning. Penalties are to be deposited into the General Fund.

Finally, the bill seeks to address the issue cited above about the growing concern that AI-generated or altered content will be introduced as authentic evidence in court proceedings and that challenges on such grounds, founded or not, will be made. The bill requires the Judicial Council to review the impact of AI in this context and to develop and implement any necessary rules of court to assist courts in assessing relevant challenges.

According to the author:

> Artificial intelligence has pushed the boundaries of how technology makes human lives easier. However, the lack of necessary regulations has led to its abuse. Bad actors are creating and sharing AI deepfake videos, images, and audio recordings that use a person's name, image, or likeness without their consent. An alarming number of these deepfakes depict people engaging in sexual activities. This leaves victims vulnerable to exploitation including identity theft, scams, misinformation, and drastic misrepresentation of character. While some deepfakes target public figures, AI software allows users to create non-consensual content featuring anyone. This issue has disproportionately impacted women and girls, though not exclusively.

> Existing law does not allow victims to pursue private legal action when someone uses their likeness for AI generated material without their consent. SB 11 closes this gap by granting individuals the right to initiate litigation against those who use AI to falsely impersonate them and further requires courts to evaluate evidence generated by AI to ensure authenticity of evidentiary materials presented in our judicial system to a judge or jury. It also requires consumer warnings on AI software, both identifying and discouraging its potential for misuse. This bill strikes a balance between regulating rapidly advancing AI technologies and allowing continued innovation in the AI sector.

3. Stakeholder positions

Transparency Coalition.AI writes in support:

> AI capabilities have shown how detrimental its misuse can be when there is malicious intent. AI manipulated content continues to harm victims across the state, with examples ranging from fake audio of elected officials making false statements, to synthetic material of primarily women engaging in sexual activities. While some deepfakes target public figures, easily accessible AI software now allow users to create non-consensual content featuring anyone. This issue predominately impacts women and girls and has been difficult for victims to address, much less seek justice. SB 11 addresses the continued exploitation of AI technology. It is imperative to establish guardrails that protect consumers from harm and allow existing victims to seek recourse. This bill focuses on balancing innovation and individual privacy to prevent AI abuse.

A coalition of industry groups, including the Association of National Advertisers writes in opposition:

> [A]s drafted, we are unclear if the bill is intended to capture business to business activities, such as companies selling advertising services to other companies wherein the advertisement may include synthetic content. To that end, Proposed Section 22650 should be amended to expressly permit business partners / vendors to use our AI tools to generate content as well as authorize businesses to sell or develop such content for their business partners/vendors. The bill should also be amended to clarify what exactly it means by "misuse" for purposes of this warning.

SUPPORT

California District Attorneys Association
National AI Youth Council
The Center for AI and Digital Policy
Transparency Coalition.AI

OPPOSITION

Association of National Advertisers
California Chamber of Commerce
California Hispanic Chambers of Commerce
Computer and Communications Industry Association
Network Advertising Initiative
Software Information Association

Technet

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 942 (Becker, Ch. 291, Stats. 2024) places obligations on businesses that provide generative AI systems to make accessible tools to detect whether specified content was generated by those systems. These "covered providers" are required to offer visible, and include imperceptible, markings on AI-generated content to identify it as such.

SB 970 (Ashby, 2024) *See* Comment 2. This bill died in the Senate Appropriations Committee.

AB 1836 (Bauer-Kahan, Ch. 258, Stats. 2024) prohibits a person from producing, distributing, or making available the digital replica of a deceased personality's voice or likeness in an expressive audiovisual work or sound recording without prior consent, except as provided.

AB 2602 (Kalra, Ch. 259, Stats. 2024) provides that a provision in an agreement for the performance of personal or professional services that contains a provision allowing for the use of a digital replica of an individual's voice or likeness is unenforceable if it does not include a reasonably specific description of the intended uses and the individual is not represented by legal counsel or by a labor union, as specified.

SB 444 (Umberg, 2019) would have requested the Regents of the University of California (UC) to enact a resolution authorizing the law schools at UC Berkeley and UC Irvine to participate in a pilot project to develop AI or machine-learning solutions to address access to justice issues faced by self-representing litigants in their respective courts. The bill died in the Assembly Higher Education Committee.

****