

CS FOR HOUSE BILL NO. 358(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/8/24

Referred: Rules

Sponsor(s): REPRESENTATIVES CRONK, McCabe

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to defamation claims based on the use of deepfakes; relating to**
2 **generated obscene child sexual abuse material; relating to child pornography; and**
3 **relating to the use of deepfakes in electioneering communications."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 09.65 is amended by adding a new section to read:

6 **Sec. 09.65.360. Civil liability for defamation based on deepfakes.** An action
7 for defamation based on the use of a deepfake is a claim for defamation per se. In this
8 section, "deepfake" has the meaning given in AS 15.80.009(f).

9 * **Sec. 2.** AS 11.61 is amended by adding new sections to read:

10 **Sec. 11.61.121. Distribution of generated obscene child sexual abuse**
11 **material.** (a) A person commits the crime of distribution of generated obscene child
12 sexual abuse material if the person distributes in this state or advertises, promotes,
13 solicits, or offers to distribute in this state any material that is proscribed under
14 AS 11.61.122.

1 (b) The possession of 100 or more films, audio, video, electronic, or
 2 electromagnetic recordings, photographs, negatives, slides, books, newspapers,
 3 magazines, or other materials, including a combination of these items totaling 100 or
 4 more, is prima facie evidence of distribution and intent to distribute under (a) of this
 5 section.

6 (c) In this section, "distribution" includes the following, whether or not for
 7 monetary or other consideration: delivering, selling, renting, leasing, lending, giving,
 8 circulating, exhibiting, presenting, providing, exchanging, placing on a computer
 9 network or computer system, and providing billing collection, or other ancillary
 10 services for or otherwise supporting these activities.

11 (d) Distribution of generated obscene child sexual abuse material is a

12 (1) class B felony; or

13 (2) class A felony if the person has been previously convicted of
 14 distribution of generated obscene child sexual abuse material in this jurisdiction or a
 15 similar crime in this or another jurisdiction.

16 **Sec. 11.61.122. Possession of generated obscene child sexual abuse**
 17 **material.** (a) A person commits the crime of possession of generated obscene child
 18 sexual abuse material if the person knowingly possesses or knowingly accesses on a
 19 computer with intent to view any material that

20 (1) the average person, applying contemporary community standards,
 21 would find, when considered as a whole, appeals to the prurient interest;

22 (2) depicts, in a patently offensive way, a child under 18 years of age
 23 who, by manipulation, creation, or modification, appears to be engaged in conduct
 24 described in AS 11.41.455(a); and

25 (3) when considered as a whole, lacks serious literary, artistic,
 26 political, or scientific value.

27 (b) This section does not apply to an employee of an interactive computer
 28 service, Internet service provider, cloud service provider, or telecommunications
 29 network who, while acting in the scope of employment, possesses or accesses the
 30 material described in (a) of this section solely to prevent, detect, report, or otherwise
 31 respond to the production, generation, manipulation, or modification of the material.

1 In this subsection, "interactive computer service" has the meaning given in
2 AS 15.80.009(f).

3 (c) In this section, "computer" has the meaning given in AS 11.46.990.

4 (d) Possession of generated obscene child sexual abuse material is a class C
5 felony.

6 * **Sec. 3.** AS 11.61.127(a) is amended to read:

7 (a) A person commits the crime of possession of child pornography if the
8 person knowingly possesses or knowingly accesses on a computer with intent to view
9 any material that visually depicts conduct described in AS 11.41.455(a) knowing that
10 the

11 **(1)** production of the material involved the use of a child under 18
12 years of age who engaged in the conduct; or

13 **(2) material depicts** [A DEPICTION OF] a part of an actual child
14 under 18 years of age, **or is a representation that is indistinguishable from an**
15 **identifiable child under 18 years of age,** who, by manipulation, creation, or
16 modification, appears to be engaged in the conduct.

17 * **Sec. 4.** AS 11.61.127(b) is amended to read:

18 (b) This section does not apply to

19 **(1)** persons providing plethysmograph assessments in the course of a
20 sex offender treatment program that meets the minimum standards under
21 AS 33.30.011(a)(5); or

22 **(2) an employee of an interactive computer service, Internet**
23 **service provider, cloud service provider, or telecommunications network who,**
24 **while acting in the scope of employment, possesses or accesses the material**
25 **described in (a) of this section solely to prevent, detect, report, or otherwise**
26 **respond to the production, generation, manipulation, or modification of the**
27 **material; in this paragraph, "interactive computer service" has the meaning**
28 **given in AS 15.80.009(f).**

29 * **Sec. 5.** AS 11.61.127(f) is amended to read:

30 (f) In this section,

31 **(1)** "computer" has the meaning given in AS 11.46.990;

1 **(2) "identifiable child" means an individual who is recognizable as**
 2 **an actual child by the child's face, likeness, or other distinguishing**
 3 **characteristics, regardless of whether the individual depicted is no longer under**
 4 **18 years of age.**

5 * **Sec. 6.** AS 11.61.129(a) is amended to read:

6 (a) Property used to aid a violation of **AS 11.61.121 - 11.61.128**
 7 [AS 11.61.123 - 11.61.128] or to aid the solicitation of, attempt to commit, or
 8 conspiracy to commit a violation of **AS 11.61.121 - 11.61.128** [AS 11.61.123 -
 9 11.61.128] may be forfeited to the state upon the conviction of the offender.

10 * **Sec. 7.** AS 12.55.125(i) is amended to read:

11 (i) A defendant convicted of

12 (1) sexual assault in the first degree under AS 11.41.410(a)(1)(A), (2),
 13 (3), or (4), sexual abuse of a minor in the first degree, unlawful exploitation of a minor
 14 under AS 11.41.455(c)(2), or sex trafficking in the first degree under
 15 AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not more
 16 than 99 years and shall be sentenced to a definite term within the following
 17 presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

18 (A) if the offense is a first felony conviction, the offense does
 19 not involve circumstances described in (B) of this paragraph, and the victim
 20 was

21 (i) less than 13 years of age, 25 to 35 years;

22 (ii) 13 years of age or older, 20 to 30 years;

23 (B) if the offense is a first felony conviction and the defendant
 24 possessed a firearm, used a dangerous instrument, or caused serious physical
 25 injury during the commission of the offense, 25 to 35 years;

26 (C) if the offense is a second felony conviction and does not
 27 involve circumstances described in (D) of this paragraph, 30 to 40 years;

28 (D) if the offense is a second felony conviction and the
 29 defendant has a prior conviction for a sexual felony, 35 to 45 years;

30 (E) if the offense is a third felony conviction and the defendant
 31 is not subject to sentencing under (F) of this paragraph or (I) of this section, 40

1 to 60 years;

2 (F) if the offense is a third felony conviction, the defendant is
3 not subject to sentencing under (I) of this section, and the defendant has two
4 prior convictions for sexual felonies, 99 years;

5 (2) sexual assault in the first degree under AS 11.41.410(a)(1)(B),
6 unlawful exploitation of a minor under AS 11.41.455(c)(1), enticement of a minor
7 under AS 11.41.452(e), or attempt, conspiracy, or solicitation to commit sexual assault
8 in the first degree under AS 11.41.410(a)(1)(A), (2), (3), or (4), sexual abuse of a
9 minor in the first degree, or sex trafficking in the first degree under
10 AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not more
11 than 99 years and shall be sentenced to a definite term within the following
12 presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

13 (A) if the offense is a first felony conviction, the offense does
14 not involve circumstances described in (B) of this paragraph, and the victim
15 was

16 (i) under 13 years of age, 20 to 30 years;

17 (ii) 13 years of age or older, 15 to 30 years;

18 (B) if the offense is a first felony conviction and the defendant
19 possessed a firearm, used a dangerous instrument, or caused serious physical
20 injury during the commission of the offense, 25 to 35 years;

21 (C) if the offense is a second felony conviction and does not
22 involve circumstances described in (D) of this paragraph, 25 to 35 years;

23 (D) if the offense is a second felony conviction and the
24 defendant has a prior conviction for a sexual felony, 30 to 40 years;

25 (E) if the offense is a third felony conviction, the offense does
26 not involve circumstances described in (F) of this paragraph, and the defendant
27 is not subject to sentencing under (I) of this section, 35 to 50 years;

28 (F) if the offense is a third felony conviction, the defendant is
29 not subject to sentencing under (I) of this section, and the defendant has two
30 prior convictions for sexual felonies, 99 years;

31 (3) sexual assault in the second degree, sexual abuse of a minor in the

1 second degree, enticement of a minor under AS 11.41.452(d), indecent exposure in the
 2 first degree under AS 11.41.458(b)(2), **distribution of generated obscene child**
 3 **sexual abuse material under AS 11.61.121(d)(2)**, distribution of child pornography
 4 under AS 11.61.125(e)(2), or attempt, conspiracy, or solicitation to commit sexual
 5 assault in the first degree under AS 11.41.410(a)(1)(B) may be sentenced to a definite
 6 term of imprisonment of not more than 99 years and shall be sentenced to a definite
 7 term within the following presumptive ranges, subject to adjustment as provided in
 8 AS 12.55.155 - 12.55.175:

9 (A) if the offense is a first felony conviction, five to 15 years;

10 (B) if the offense is a second felony conviction and does not
 11 involve circumstances described in (C) of this paragraph, 10 to 25 years;

12 (C) if the offense is a second felony conviction and the
 13 defendant has a prior conviction for a sexual felony, 15 to 30 years;

14 (D) if the offense is a third felony conviction and does not
 15 involve circumstances described in (E) of this paragraph, 20 to 35 years;

16 (E) if the offense is a third felony conviction and the defendant
 17 has two prior convictions for sexual felonies, 99 years;

18 (4) sexual assault in the third degree, sexual abuse of a minor in the
 19 third degree under AS 11.41.438(c), incest, indecent exposure in the first degree under
 20 AS 11.41.458(b)(1), **possession of generated obscene child sexual abuse material,**
 21 **distribution of generated obscene child sexual abuse material under**
 22 **AS 11.61.121(d)(1)**, indecent viewing or production of a picture under
 23 AS 11.61.123(f)(1) or (2), possession of child pornography, distribution of child
 24 pornography under AS 11.61.125(e)(1), or attempt, conspiracy, or solicitation to
 25 commit sexual assault in the second degree, sexual abuse of a minor in the second
 26 degree, unlawful exploitation of a minor, **distribution of generated obscene child**
 27 **sexual abuse material**, or distribution of child pornography, may be sentenced to a
 28 definite term of imprisonment of not more than 99 years and shall be sentenced to a
 29 definite term within the following presumptive ranges, subject to adjustment as
 30 provided in AS 12.55.155 - 12.55.175:

31 (A) if the offense is a first felony conviction and does not

1 involve the circumstances described in (B) or (C) of this paragraph, two to 12
2 years;

3 (B) if the offense is a first felony conviction under
4 AS 11.61.121(d)(1) or 11.61.125(e)(1) [AS 11.61.125(e)(1)] and does not
5 involve circumstances described in (C) of this paragraph, four to 12 years;

6 (C) if the offense is a first felony conviction under
7 AS 11.61.121(d)(1) or 11.61.125(e)(1) [AS 11.61.125(e)(1),] and the
8 defendant hosted, created, or helped host or create a mechanism for multi-party
9 sharing or distribution of generated obscene child sexual abuse material or
10 child pornography, or received a financial benefit or had a financial interest in
11 a generated obscene child sexual abuse material or child pornography
12 sharing or distribution mechanism, six to 14 years;

13 (D) if the offense is a second felony conviction and does not
14 involve circumstances described in (E) of this paragraph, eight to 15 years;

15 (E) if the offense is a second felony conviction and the
16 defendant has a prior conviction for a sexual felony, 12 to 20 years;

17 (F) if the offense is a third felony conviction and does not
18 involve circumstances described in (G) of this paragraph, 15 to 25 years;

19 (G) if the offense is a third felony conviction and the defendant
20 has two prior convictions for sexual felonies, 99 years.

21 * **Sec. 8.** AS 12.55.185(16) is amended to read:

22 (16) "sexual felony" means sexual assault in the first degree, sexual
23 abuse of a minor in the first degree, sex trafficking in the first degree, sexual assault in
24 the second degree, sexual abuse of a minor in the second degree, sexual abuse of a
25 minor in the third degree under AS 11.41.438(c), unlawful exploitation of a minor,
26 indecent viewing or production of a picture under AS 11.61.123(f)(1) or (2),
27 distribution of child pornography, distribution of generated obscene child sexual
28 abuse material, sexual assault in the third degree, incest, indecent exposure in the
29 first degree, possession of child pornography, possession of generated obscene child
30 sexual abuse material, enticement of a minor, and felony attempt, conspiracy, or
31 solicitation to commit those crimes;

1 * **Sec. 9.** AS 14.20.030(b) is amended to read:

2 (b) The commissioner or the Professional Teaching Practices Commission
3 shall revoke for life the certificate of a person who has been convicted of a crime, or
4 an attempt, solicitation, or conspiracy to commit a crime, involving a minor under
5 AS 11.41.410 - 11.41.460, AS 11.61.121, 11.61.122, 11.61.125 [AS 11.61.125], or
6 11.61.127, or a law or ordinance in another jurisdiction with elements similar to an
7 offense described in this subsection.

8 * **Sec. 10.** AS 15.80 is amended by adding a new section to read:

9 **Sec. 15.80.009. Deepfakes in electioneering communications.** (a) A person
10 may not knowingly use a deepfake in an electioneering communication with the intent
11 to influence an election.

12 (b) An individual who is harmed by an electioneering communication that
13 violates this section may bring an action in the superior court to recover damages, full
14 reasonable attorney fees, and costs from

15 (1) the person who created the electioneering communication or
16 retained the services of another to create the electioneering communication;

17 (2) a person who disseminates an electioneering communication
18 knowing that the electioneering communication includes a deepfake; or

19 (3) a person who removes a disclosure statement described in (d) of
20 this section from an electioneering communication with the intent to influence an
21 election and knowing that the electioneering communication includes a deepfake.

22 (c) An individual who is harmed by an electioneering communication that
23 violates this section may seek injunctive relief in the superior court to prohibit
24 publication of the deepfake.

25 (d) It is a defense to an action under this section that the electioneering
26 communication included the following disclosure statement: "This
27 (image/video/audio) has been manipulated." and

28 (1) for visual media that included other text, the text of the disclosure
29 statement remained visible throughout the entirety of the communication, was easily
30 readable by the average viewer, and was in a font not smaller than the largest font size
31 of any other text that appeared in the visual component;

1 (2) for visual media that did not include any other text, the disclosure
2 statement was in a font size that was easily readable by the average viewer;

3 (3) for a communication that consisted of only audio, the disclosure
4 statement was read

5 (A) at the beginning of the audio, at the end of the audio, and,
6 if the audio was longer than two minutes in duration, at intervals interspersed
7 within the audio that occurred at least once every two minutes; and

8 (B) in a clear manner and in a pitch that was easily heard by the
9 average listener.

10 (e) An interactive computer service, Internet service provider, cloud service
11 provider, telecommunications network, or radio or television broadcaster, including a
12 cable or satellite television operator, programmer, or producer, is not liable under this
13 section for hosting, publishing, or distributing an electioneering communication
14 provided by another person. This subsection does not prevent an individual from
15 bringing an action under (b)(3) of this section for removing a disclosure statement.

16 (f) In this section,

17 (1) "access software provider" means a provider of client, server, or
18 other software or enabling tools that

19 (A) filter, screen, allow, or disallow content;

20 (B) pick, choose, analyze, or digest content; or

21 (C) transmit, receive, display, forward, cache, search, subset,
22 organize, reorganize, or translate content;

23 (2) "artificial intelligence" means a machine-based system that, for
24 explicit or implicit objectives, infers, from the input the system receives, how to
25 generate outputs, including predictions, content, recommendations, and decisions that
26 can influence physical or virtual environments, with different artificial intelligence
27 systems varying in levels of autonomy and adaptiveness after deployment;

28 (3) "deepfake" means any visual or audio media that is created, altered,
29 or otherwise manipulated by artificial intelligence in a manner that

30 (A) to a reasonable observer, appears to be an authentic record
31 of an individual's actual speech, conduct, or likeness; and

1 (B) conveys a fundamentally different understanding or
 2 impression of the individual's appearance, action, or speech than a reasonable
 3 person would have from the unaltered, original version of the individual's
 4 appearance, action, or speech;

5 (4) "electioneering communication" means a communication that

6 (A) directly or indirectly identifies a candidate or political
 7 party;

8 (B) is disseminated through a mailing, a newspaper, the
 9 Internet, or broadcast media, including radio, television, cable, or satellite, to
 10 an audience that includes voters who will have the opportunity to vote on a
 11 candidate identified in the communication or on a candidate of a party
 12 identified in the communication; and

13 (C) when read as a whole and with limited reference to outside
 14 events, is susceptible of no other reasonable interpretation but as an
 15 exhortation to vote for or against a specific candidate;

16 (5) "interactive computer service" means an information service,
 17 system, or access software provider that provides or enables computer access by
 18 multiple users to a computer server, including specifically a service or system that
 19 provides access to the Internet and such systems operated or services offered by
 20 libraries or educational institutions.

21 * **Sec. 11.** AS 28.15.046(c) is amended to read:

22 (c) The department may not issue a license under this section to an applicant

23 (1) who has been convicted of any of the following offenses:

24 (A) a violation, or an attempt, solicitation, or conspiracy to
 25 commit a violation, of AS 11.41.100 - 11.41.220, 11.41.260 - 11.41.320,
 26 11.41.360 - 11.41.370, 11.41.410 - 11.41.470, or 11.41.500 - 11.41.530;

27 (B) a felony violation of endangering the welfare of a child in
 28 the first degree under AS 11.51.100;

29 (C) felony indecent viewing or production of a picture under
 30 AS 11.61.123;

31 (D) distribution of child pornography under AS 11.61.125;

1 (E) possession of child pornography under AS 11.61.127;

2 (F) distribution of indecent material to minors under
3 AS 11.61.128;

4 (G) felony prostitution under AS 11.66.100(e);

5 (H) sex trafficking in the first, second, or third degree under
6 AS 11.66.110 - 11.66.130;

7 (I) a felony involving distribution of a controlled substance
8 under AS 11.71 or imitation controlled substance under AS 11.73;

9 (J) a felony violation under AS 28.35.030(n) or 28.35.032(p);

10 **(K) distribution of generated obscene child sexual abuse**
11 **material under AS 11.61.121;**

12 **(L) possession of generated obscene child sexual abuse**
13 **material under AS 11.61.122;** or

14 (2) who has been convicted of any of the following offenses and less
15 than two years have elapsed since the applicant's date of conviction for the offense:

16 (A) assault in the fourth degree under AS 11.41.230;

17 (B) reckless endangerment under AS 11.41.250;

18 (C) contributing to the delinquency of a minor under
19 AS 11.51.130;

20 (D) misdemeanor prostitution under AS 11.66.100(a)(2);

21 (E) a misdemeanor violation of endangering the welfare of a
22 child in the first degree under AS 11.51.100.

23 * **Sec. 12.** AS 44.23.080(a) is amended to read:

24 (a) If there is reasonable cause to believe that an Internet service account has
25 been used in connection with a violation of AS 11.41.452, 11.41.455, **AS 11.61.121,**
26 **11.61.122, or 11.61.125 - 11.61.128** [OR AS 11.61.125 - 11.61.128], and that the
27 identity, address, and other information about the account owner will assist in
28 obtaining evidence that is relevant to the offense, a law enforcement officer may apply
29 to the attorney general or the attorney general's designee for an administrative
30 subpoena to obtain the business records of the Internet service provider located inside
31 or outside of the state.

1 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 **APPLICABILITY.** The following sections apply to offenses committed on or after the
4 effective date of this Act:

- 5 (1) AS 11.61.127(a), as amended by sec. 3 of this Act;
6 (2) AS 11.61.127(f), as amended by sec. 5 of this Act;
7 (3) AS 11.61.129(a), as amended by sec. 6 of this Act;
8 (4) AS 12.55.125(i), as amended by sec. 7 of this Act;
9 (5) AS 12.55.185(16), as amended by sec. 8 of this Act; and
10 (6) AS 14.20.030(b), as amended by sec. 9 of this Act.