



MOTION PICTURE ASSOCIATION

SB 361

Memorandum Seeking Amendments

March 21, 2025

The Motion Picture Association, Inc. (“MPA”) respectfully requests the proposed amendments described herein to SB 361 (the “Bill”) to remove restrictions on First Amendment-protected speech.¹

MPA understands the importance of bills that impose restrictions on certain AI-generated content in election media if such media is intended to deceive voters. Indeed, numerous states have enacted restrictions tailored to such deceptive election communications.² However, as drafted, the Bill is overbroad and threatens to restrict First Amendment-protected speech, including content that is not intended to (and does not) deceive its viewers, such as parody and satire, and content that may not even be published by a political entity or actor.

The Bill classifies it as “fraud,” the mere use of any digital technology to modify an image or audio recording to depict a political candidate. The restriction is thus not just on campaign advertisements or election communications but on a wide range of content—including potentially content created by television and movie studios. Nor is the restriction imposed on deceptive or harmful media—because it applies regardless of whether the synthetic media contains a disclosure that identifies it as generated or edited using digital technology and regardless of whether the depicted individual *consents* to the depiction.

Additionally, the Bill lacks clear exemptions that other states have enacted which protect from liability innocent broadcasters who air content from third-parties (such as paid advertisements).

Accordingly, and contrary to the election-related artificial intelligence laws enacted in many other states, the Bill risks infringing on First Amendment-protected speech, including parodies, satire, and non-deceptive representations.

¹ The MPA is a not-for-profit trade association founded in 1922 to address issues of concern to the motion picture industry. Since that time, MPA has advanced the business and art of storytelling, protecting the creative and artistic freedoms of storytellers, and bringing entertainment and inspiration to audiences worldwide. The MPA’s member companies are: Amazon Studios LLC, Netflix Studios, LLC; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Universal City Studios LLC; Walt Disney Studios Motion Pictures; and Warner Bros. Entertainment, Inc. In addition, several of the MPA’s members have as corporate affiliates major news organizations (including ABC, NBC, and CBS News, and CNN) and dozens of owned-and-operated local television stations with broadcast news operations.

² See, e.g., Haw. Rev. Stat. § 11-A; N.H. Rev. Stat. § 664:14-c; Del. Code tit. 15 § 5145; N.Y. Elec. L. § 14-106(5); New Mex. Stat. § 1-19-26.4

To address this overbreadth, MPA proposes the following amendments:

I. A new definition of “FRAUD”:

(2) “FRAUD” MEANS TO DISTRIBUTE ~~THE USE OF~~ SYNTHETIC MEDIA, WITHOUT THE CONSENT OF THE CANDIDATE DEPICTED, WITHIN 90 DAYS OF AN ELECTION IN WHICH THE CANDIDATE APPEARS ON THE BALLOT, WITH AN INTENT TO HARM THE PROSPECTS OF A CANDIDATE’S ELECTION TO OFFICE, UNLESS THE SYNTHETIC MEDIA IS ACCOMPANIED BY A CLEAR AND CONSPICUOUS DISCLOSURE.

This revision ensures that the Bill applies only to the non-consensual distribution of synthetic media around the time of an election if the media does not contain adequate disclosure.

II. A revision to the definition of “SYNTHETIC MEDIA”:

(4) “SYNTHETIC MEDIA” MEANS AN IMAGE, AN AUDIO RECORDING, OR A VIDEO RECORDING THAT HAS BEEN INTENTIONALLY CREATED OR MANIPULATED WITH THE USE OF GENERATIVE ARTIFICIAL INTELLIGENCE OR OTHER DIGITAL TECHNOLOGY TO CREATE A REALISTIC BUT FALSE IMAGE, AUDIO RECORDING, OR VIDEO RECORDING:

(I) PURPORTING TO DEPICT A REAL, CLEARLY IDENTIFIED CANDIDATE OR THE SPEECH OR CONDUCT OF THE CANDIDATE; ~~OR~~ AND

(II) PRODUCING A FUNDAMENTALLY DIFFERENT UNDERSTANDING OR IMPRESSION OF AN INDIVIDUAL’S APPEARANCE, SPEECH, OR CONDUCT THAN A REASONABLE INDIVIDUAL WOULD HAVE FROM THE UNALTERED, ORIGINAL VERSION OF THE IMAGE, AUDIO RECORDING, OR VIDEO RECORDING.

This revision ensures that digitally altered media is only restricted by this Bill if the editing creates a deceptive result.

III. An exemption for satire, parody, and distribution by third parties

(C) THIS SECTION SHALL NOT APPLY TO:

- 1. ANY RADIO OR TELEVISION BROADCASTING STATION OR NETWORK, NEWSPAPER, MAGAZINE, OR OTHER PERIODICAL, CABLE OR SATELLITE RADIO OR TELEVISION OR STREAMING SERVICE OPERATOR, PROGRAMMER, OR PRODUCER, INTERNET WEBSITE,**

MOBILE APPLICATION, OR OTHER ONLINE PLATFORM, THAT PUBLISHES, DISTRIBUTES OR BROADCASTS SYNTHETIC MEDIA AS PART OF A BONA FIDE NEWS REPORT, NEWSCAST, NEWS STORY, NEWS DOCUMENTARY OR SIMILAR UNDERTAKING IN WHICH THE SYNTHETIC MEDIA IS A SUBJECT OF THE REPORT; PROVIDED THAT, IF SUCH ENTITY HAS ACTUAL KNOWLEDGE OF THE USE OF SYNTHETIC MEDIA THEN SUCH PUBLICATION, DISTRIBUTION OR BROADCAST SHALL CONTAIN A CLEAR ACKNOWLEDGMENT, IN A MANNER THAT CAN BE EASILY HEARD OR READ, THAT THERE ARE QUESTIONS ABOUT THE AUTHENTICITY OF THE MATERIALS WHICH ARE THE SUBJECT OF THE REPORT.

- 2. ANY RADIO OR TELEVISION BROADCASTING STATION OR NETWORK, NEWSPAPER, MAGAZINE, CABLE OR SATELLITE RADIO OR TELEVISION OR STREAMING SERVICE OPERATOR, PROGRAMMER, OR PRODUCER, INTERNET WEBSITE OR ONLINE PLATFORM, OR OTHER PERIODICAL (“BROADCASTING STATION”) THAT DISTRIBUTES AN ADVERTISEMENT WHEN PAID TO DISTRIBUTE THE ADVERTISEMENT IF (A) THE BROADCASTING STATION CAN SHOW IT HAS A POLICY REQUIRING CLEAR AND CONSPICUOUS DISCLOSURES OF SYNTHETIC MEDIA AND THAT IT MADE THAT POLICY AVAILABLE TO EACH PERSON OR ENTITY THAT PURCHASED THE ADVERTISEMENT OR (B) FEDERAL LAW REQUIRES BROADCASTING STATIONS TO BROADCAST THE ADVERTISEMENT OF A LEGALLY QUALIFIED CANDIDATE OR THEIR AUTHORIZED COMMITTEE.**

3. SYNTHETIC MEDIA THAT CONSTITUTES PARODY OR SATIRE.

This language, similar to exemptions enacted in multiple states (*see supra* footnote 2), provides that synthetic media can be incorporated into legitimate news broadcasts, provided the digitally altered nature of the media is acknowledged. In addition, this provision provides that broadcasters and others who distribute content created by third parties are not liable for the deceptive content created by others. Finally, it clarifies that this statute does not prohibit satirical and parodic representations, such as those that might appear on television or in movies, and are firmly protected by the First Amendment.

The MPA welcomes the opportunity to answer questions and provide additional input on the Bill. Legislators and their staff seeking additional information may contact the MPA’s consultants in Annapolis, Nick Manis, and John Favazza, at nmanis@maniscanning.com and jfavazza@maniscanning.com.

Sincerely,

Renata Colbert

Renata Colbert

Senior Manager
State Government Affairs, Motion Picture Association