
SENATE COMMITTEE ON PUBLIC SAFETY
SENATOR AISHA WAHAB, CHAIR
2023 - 2024 REGULAR

Bill No: SB 970 **Hearing Date:** April 23, 2024
Author: Ashby
Version: April 11, 2024
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Artificial intelligence technology*

HISTORY

Source: Author

Prior Legislation: AB 1576 (Calderon), held in Sen. Approps. Comm., 2019
SB 1411 (Simitian), Ch. 335, Stats. 2010

Support: PERK Advocacy

Opposition: None known

PURPOSE

The purpose of this bill is to clarify that the use of synthetic content, as defined, is deemed to be a false personation for purposes of criminal offenses where false personation of another is an element of the offense and to require Judicial Council to review the impact of artificial intelligence (AI) on 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 AI.

Existing law 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 not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. (Pen. Code § 528.5, subd. (a) and (d).)

Existing law states that impersonation is credible if another person would reasonably believe, or did reasonably believe, that the defendant was or is the person who was impersonated. (Pen. Code § 528.5, subd. (b).)

Existing law provides that every person who falsely personates another in either their private or official capacity, and in that assumed character carries out specified actions, is punishable by a fine not exceeding \$10,000 and/or imprisonment in a county jail not exceeding one year, or imprisonment in a county jail for 16 months, 2 or 3 years and/or a fine. (Pen. Code § 529.)

Existing law provides that every person who falsely personates 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 states that for the purpose of any provision of existing law in which the false personation of another is a required element, the use of synthetic content with the intent to impersonate another is deemed to be false personation.

This bill provides that the 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.

This bill defines the following terms for purposes of false personation offenses:

- “AI” 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.
- “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.

This bill requires, by no later than January 1, 2026, the Judicial Council to review the impact of AI 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 AI.

Existing law 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, subd. (a).)

Existing law 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, subd. (a).)

This bill states that for purposes of California’s right of publicity law, voice or photograph that is synthetic content, as defined in Section 540 of the Penal Code, 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.

This bill requires, by July 1, 2026, any person or entity that sells or provides access to any AI technology that is designed to create any synthetic content to provide a consumer warning that misuse of the technology may result in civil or criminal liability for the user.

This bill requires the Department of Consumer Affairs (DCA) to determine the acceptable form and content of the consumer warning required above and post it on a publicly accessible page of its internet website by January 1, 2026.

This bill 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.

COMMENTS

1. Need for This Bill

According to the author of this bill:

The rise of artificial intelligence presents an opportunity for continued innovation across many different industries and sectors. At its core, artificial intelligence is about problem solving. However, it is clear that with technology advancing rapidly, guardrails are needed to ensure consumers are aware of and protected from abuse via artificial intelligence.

In response to the evolving capabilities of artificial intelligence in replicating human identity markers, SB 970 focuses on balancing innovation with the imperative to protect individual privacy and prevent abuse and misinformation through the following:

- Establishing Penal Code violations
- Legal recourse for victims
- Prevention of AI-generated evidence tampering
- Mandatory consumer warnings on AI cloning software

SB 970, with its focus on the responsible regulation of advanced AI technologies in identity protection, seeks to provide a balanced and forward-looking legislative framework in order to protect Californians and consumers from abuse and misinformation caused by artificial intelligence.

2. Background on AI-Generated Content

According to the Brookings Institution:

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.

(Siddarth Srinivasan, *Detecting AI fingerprints: A guide to watermarking and beyond* (January 4, 2024) Brookings Institution [as of Apr. 15, 2024].) There are various methods for deciphering AI-generated or altered content, although none are foolproof and all require updates as technology advances:

There are several approaches that have been proposed for detecting AI-generated content. The four most prominent approaches are watermarking (in its various forms), which is the embedding of an identifiable pattern in a piece of content to track its origin; content provenance, which securely embeds and maintains information about the origin of the content in its metadata; retrieval-based detectors, where all AI-generated content is stored in a database that can be queried to check the origin of content; and post-hoc detectors, which rely on machine learning models to identify subtle but systematic patterns in AI-generated content that distinguish it from human-authored content.

(*Ibid.*) This year several bills relating to AI have been introduced in the California Legislature: SB 942 (Becker, 2024) establishes the California AI Transparency Act, which, among other things, requires a covered provider, as defined, to create an AI detection tool by which a person can query the covered provider as to the extent to which text, image, video, audio, or multimedia content was created, in whole or in part, by a generative AI system, as defined, provided by the covered provider that meets certain criteria. SCR 17 (Dodd, 2023) affirms the California Legislature’s commitment to President Biden’s vision for a safe AI and the principles outlined in the “Blueprint for an AI Bill of Rights” and expresses the Legislature’s commitment to examining and implementing those principles in its legislation and policies related to the use and deployment of automated systems.

AB 2930 (Bauer-Kahan, 2024) requires, among other things, a deployer and a developer of an automated decision tool to, on or before January 1, 2026, and annually thereafter, perform an impact assessment for any automated decision tool the deployer uses that includes, among other things, a statement of the purpose of the automated decision tool and its intended benefits, uses, and deployment contexts. The assessments must be provided to the Civil Rights Department within 7 days of a request. AB 3211 (Wicks, 2024) establishes the California Provenance, Authenticity and Watermarking Standards Act, which requires a generative AI system provider, as defined, to take certain actions to assist in the disclosure of provenance data to mitigate harms caused by inauthentic content, including placing imperceptible and maximally indelible watermarks containing provenance data into content created by an AI system that the generative AI system provider makes available.

3. Impact of This Legislation

This bill seeks to ensure that existing laws are equipped to handle the implications of the explosion of AI-generated content. The provisions relevant to this committee’s jurisdiction

include clarifying existing crimes to include the use of such content for unlawful means and to address the growing concern that AI-generated or altered media will be introduced as authentic evidence in criminal actions.

“AI” is defined in the bill to mean “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.” “Synthetic content” is defined to mean “information, such as text, audio, videos, or images, that has been significantly modified or generated by algorithms, including by AI . . . and includes content commonly known as deepfakes.”

This bill clarifies for purposes of criminal offenses where false personation of another is an element of the offense, the use of synthetic content with the intent to impersonate another is deemed to be false personation. The bill provides that the 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.

The bill also requires Judicial Council, by no later than January 1, 2026, to review the impact of AI 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. Double-Referral

This bill was double-referred with the Senate Committee on Judiciary where the bill was heard on April 9. All provisions in the bill that affect civil matters are more fully analyzed in the committee’s analysis.

5. Argument in Support

According to PERK Advocacy:

Protection of the Educational Rights of Kids - Advocacy (PERK), I am writing to express our support for your Senate Bill 970 (SB 970). PERK is a non-profit organization with over 30,000 volunteers, members, and supporters. PERK empowers a coalition of advocates to impact policy that promotes the protection of educational rights for our children and stands together to defend and protect essential parental rights.

PERK supports SB 970 because it would require any person or entity that sells or provides access to any artificial intelligence technology that is designed to create synthetic images, video, or voice 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 determine the form and content of the consumer warning and would impose a civil penalty for violations of the requirement. We believe that these regulations are necessary to protect innocent consumers.