

# HOUSE BILL No. 1228

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 3-9-3; IC 34-21.5-2-1; IC 35-31.5-2-161.8; IC 35-45-4-8.

**Synopsis:** Fabricated media. Defines "fabricated media" as recorded audio, a recorded image, or recorded video of an individual's speech, appearance, or conduct: (1) that has been altered without the individual's consent such that: (A) the media conveys a materially inaccurate depiction of the individual's speech, appearance, or conduct as recorded in the unaltered recording; and (B) a reasonable person would be unable to recognize that the recording has been altered; or (2) in which an artificially generated audio or visual imitation of an individual that: (A) has been created without the individual's consent; and (B) is sufficiently lifelike that a reasonable person would be unable to distinguish the speech or appearance of the imitation from the speech or appearance of the individual; is used to convey a fictional depiction of the individual's speech, appearance, or conduct. Provides that: (1) certain political campaign communications that include fabricated media depicting a candidate must include a specified disclaimer; and (2) if the communication does not include the required disclaimer, the candidate depicted may bring a civil action against specified parties in connection with the dissemination of the communication. Provides that fabricated media depicting an intimate image of an identifiable representation of an individual may be the subject of: (1) a civil action for disclosure of nonconsensual pornography; or (2) criminal prosecution for distribution of an intimate image.

**Effective:** July 1, 2024.

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January 9, 2024, read first time and referred to Committee on Courts and Criminal Code.

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Second Regular Session of the 123rd General Assembly (2024)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2023 Regular Session of the General Assembly.

# HOUSE BILL No. 1228



A BILL FOR AN ACT to amend the Indiana Code concerning technology.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 3-9-3-0.3 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2024]: **Sec. 0.3. As used in this chapter, "fabricated media"**  
4 **means either of the following:**  
5 **(1) Media that includes an audio or visual recording of an**  
6 **individual's speech, appearance, or conduct that has been**  
7 **altered without the individual's consent such that:**  
8 **(A) the media conveys a materially inaccurate depiction of**  
9 **the individual's speech, appearance, or conduct as**  
10 **recorded in the unaltered recording; and**  
11 **(B) a reasonable person would be unable to recognize that**  
12 **the recording has been altered.**  
13 **(2) Media in which an artificially generated audio or visual**  
14 **imitation of an individual that:**  
15 **(A) has been created without the individual's consent; and**  
16 **(B) is sufficiently lifelike that a reasonable person would be**  
17 **unable to distinguish the speech or appearance of the**



1           **imitation from the speech or appearance of the individual;**  
 2           **is used to convey a fictional depiction of the individual's**  
 3           **speech, appearance, or conduct.**

4           SECTION 2. IC 3-9-3-0.5 IS ADDED TO THE INDIANA CODE  
 5 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 6 1, 2024]: **Sec. 0.5. As used in this chapter, "media" means:**

- 7           **(1) recorded audio;**  
 8           **(2) a recorded image; or**  
 9           **(3) recorded video.**

10          SECTION 3. IC 3-9-3-2.5, AS AMENDED BY P.L.225-2011,  
 11 SECTION 42, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 12 JULY 1, 2024]: **Sec. 2.5. (a)** This section does not apply to any of the  
 13 following:

- 14           (1) A communication relating to an election to a federal office.  
 15           (2) A communication relating to the outcome of a public question.  
 16           (3) A communication described by this section in a medium  
 17 regulated by federal law to the extent that federal law regulates  
 18 the appearance, content, or placement of the communication in  
 19 the medium.  
 20           (4) Bumper stickers, pins, buttons, pens, and similar small items  
 21 upon which the disclaimer required by this section cannot be  
 22 conveniently printed.  
 23           (5) Skywriting, water towers, wearing apparel, or other means of  
 24 displaying an advertisement on which the inclusion of a  
 25 disclaimer would be impracticable.  
 26           (6) Checks, receipts, and similar items of minimal value that do  
 27 not contain a political message and are used for purely  
 28 administrative purposes.  
 29           (7) A communication by a political action committee organized  
 30 and controlled by a corporation soliciting contributions to the  
 31 political action committee by the stockholders, executives, or  
 32 employees of the corporation and the families of those  
 33 individuals.  
 34           (8) A communication by a political action committee organized  
 35 and controlled by a labor organization soliciting contributions to  
 36 the political action committee by the members or executive  
 37 personnel of the labor organization and the families of those  
 38 individuals.  
 39           (9) A direct mailing of one hundred (100) or less substantially  
 40 similar pieces of mail.

41           **(b)** This section applies whenever a person:

- 42           (1) makes an expenditure for the purpose of financing



1           communications expressly advocating the election or defeat of a  
 2           clearly identified candidate; or  
 3           (2) solicits a contribution;  
 4           through a newspaper, a magazine, an outdoor advertising facility, a  
 5           poster, a yard sign, a direct mailing, or any other type of general public  
 6           political advertising.

7           (c) For purposes of this section, a candidate is clearly identified if  
 8           any of the following apply:

9           (1) The name of the candidate involved appears.

10          (2) A photograph or drawing of the candidate appears.

11          (3) The identity of the candidate is apparent by unambiguous  
 12          reference.

13          (d) A communication described in subsection (b) must contain a  
 14          disclaimer that appears and is presented in a clear and conspicuous  
 15          manner to give the reader or observer adequate notice of the identity of  
 16          persons who paid for and, when required, who authorized the  
 17          communication. A disclaimer does not comply with this section if the  
 18          disclaimer is difficult to read or if the placement of the disclaimer is  
 19          easily overlooked.

20          (e) In addition to meeting the requirements of subsection (d), a  
 21          disclaimer that appears on a printed communication described in  
 22          subsection (b) must comply with the following:

23          (1) The disclaimer must be of sufficient type size to be clearly  
 24          readable by the recipient of the communication. A disclaimer in  
 25          12 point type size satisfies the size requirement of this subdivision  
 26          when the disclaimer is used for a yard sign, a poster, a flyer, a  
 27          newspaper, a magazine, or a direct mailing.

28          (2) The disclaimer must be printed with a reasonable degree of  
 29          color contrast between the background and the printed statement.  
 30          A disclaimer satisfies the color contrast requirement of this  
 31          subdivision if:

32               (A) the disclaimer is printed in black text on a white  
 33               background; or

34               (B) the degree of color contrast between the background and  
 35               the text of the disclaimer is not less than the color contrast  
 36               between the background and the largest text used in the  
 37               communication.

38          Notwithstanding subdivisions (1) and (2), a disclaimer satisfies the  
 39          requirements of this subsection if the minimum type size of the  
 40          disclaimer is 7 point and the type color of the disclaimer contrasts with  
 41          the background color.

42          (f) A communication that would require a disclaimer **under**



1 **subsection (d) or (j)** if distributed separately must contain the required  
2 disclaimer if included in a package of materials.

3 (g) This subsection does not apply to a communication, such as a  
4 billboard, that contains only a front face. The disclaimer need not  
5 appear on the front or cover page of the communication if the  
6 disclaimer appears within the communication.

7 (h) Except as provided in subsection (i), a communication described  
8 in subsection (b) must satisfy one (1) of the following:

9 (1) If the communication is paid for and authorized by:

10 (A) a candidate;

11 (B) an authorized political committee of a candidate; or

12 (C) the committee's agents;

13 the communication must clearly state that the communication has  
14 been paid for by the authorized political committee.

15 (2) If the communication is paid for by other persons but  
16 authorized by:

17 (A) a candidate;

18 (B) an authorized political committee of a candidate; or

19 (C) the committee's agents;

20 the communication must clearly state that the communication is  
21 paid for by the other persons and authorized by the authorized  
22 political committee.

23 (3) If the communication is not authorized by:

24 (A) a candidate;

25 (B) an authorized political committee of a candidate; or

26 (C) the committee's agents;

27 the communication must clearly state the name of the person who  
28 paid for the communication and state that the communication is  
29 not authorized by any candidate or candidate's committee.

30 (4) If the communication is a solicitation directed to the general  
31 public on behalf of a political committee that is not a candidate's  
32 committee, the solicitation must clearly state the full name of the  
33 person who paid for the communication.

34 (i) A communication by a regular party committee consisting of:

35 (1) a printed slate card, a sample ballot, or other printed listing of  
36 three (3) or more candidates for public office at an election;

37 (2) campaign materials such as handbills, brochures, posters,  
38 party tabloids or newsletters, and yard signs distributed by  
39 volunteers and used by the regular party committee in connection  
40 with volunteer activities on behalf of any nominee of the party; or

41 (3) materials distributed by volunteers as part of the regular  
42 party's voter registration or get-out-the-vote efforts;



1 must clearly state the name of the person who paid for the  
 2 communication but is not required to state that the communication is  
 3 authorized by any candidate or committee.

4 **(j) If a communication described in subsection (b) includes**  
 5 **fabricated media depicting a candidate, the communication must**  
 6 **include a disclaimer, separate from the disclaimer required under**  
 7 **subsection (d), that meets the following requirements:**

8 **(1) The disclaimer must state: "Media depicting the candidate**  
 9 **has been altered or artificially generated."**

10 **(2) If the communication is a printed communication, the**  
 11 **disclaimer must be printed in a manner that complies with**  
 12 **subsection (e).**

13 **(3) If the communication is an audio communication, the**  
 14 **disclaimer must be read:**

15 **(A) in each language used in the communication;**

16 **(B) at a speed and pitch at which the disclaimer is**  
 17 **reasonably understandable; and**

18 **(C) at a volume that is not lower than the loudest audio**  
 19 **included in the communication;**

20 **at the beginning of the communication, at the end of the**  
 21 **communication, and, if the communication is more than two**  
 22 **(2) minutes in length, at intervals of two (2) minutes for the**  
 23 **duration of the communication.**

24 **(4) If the communication is a video communication, the**  
 25 **disclaimer must be:**

26 **(A) printed in a manner that complies with subsection (e);**  
 27 **and**

28 **(B) displayed continuously for the duration of the**  
 29 **communication.**

30 SECTION 4. IC 3-9-3-2.6 IS ADDED TO THE INDIANA CODE  
 31 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 32 1, 2024]: Sec. 2.6. (a) A candidate depicted in fabricated media that  
 33 is included in a communication that does not include a disclaimer  
 34 required by section 2.5(j) of this chapter may bring a civil action  
 35 against:

36 **(1) the person that paid for the communication;**

37 **(2) the person that sponsored the communication; and**

38 **(3) a person that disseminates the communication, if:**

39 **(A) the communication included the disclaimer when**  
 40 **provided to the person; and**

41 **(B) the person altered or removed the disclaimer before**  
 42 **disseminating the communication.**



1           **(b) A plaintiff who prevails in an action brought under**  
 2 **subsection (a) is entitled to recover:**

3           **(1) the plaintiff's actual damages;**

4           **(2) injunctive relief; and**

5           **(3) the amount of any court costs and reasonable attorney's**  
 6 **fees incurred by the plaintiff in connection with the action.**

7           **(c) The plaintiff in an action under this section has the burden**  
 8 **of proving by clear and convincing evidence that the plaintiff was**  
 9 **depicted in fabricated media in the communication that is the**  
 10 **subject of the action.**

11           **(d) A court shall expedite the hearing of an action brought**  
 12 **under this section.**

13           SECTION 5. IC 34-21.5-2-1, AS ADDED BY P.L.29-2019,  
 14 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 15 JULY 1, 2024]: Sec. 1. The following definitions apply throughout this  
 16 article:

17           (1) "Disclosure" means display, transfer, publication, or  
 18 distribution to another person.

19           (2) "Distribute" means to transfer to another person in, or by  
 20 means of, any medium, forum, telecommunications device or  
 21 network, or ~~Internet web site.~~ **website.**

22           (3) "Harm" includes:

23           (A) physical harm;

24           (B) economic harm; and

25           (C) emotional distress, whether or not accompanied by  
 26 physical or economic harm.

27           (4) "Identifiable" means recognizable by a person other than the  
 28 depicted individual:

29           (A) from an intimate image itself; or

30           (B) from an intimate image and identifying characteristic  
 31 disclosed in connection with the intimate image.

32           (5) "Intimate image" means a photograph, digital image, or video  
 33 that depicts:

34           (A) an individual engaging in sexual intercourse;

35           (B) an individual engaging in other sexual conduct (as defined  
 36 in IC 35-31.5-2-221.5); or

37           (C) the exhibition of the uncovered buttocks, genitals, or  
 38 female breast of an individual;

39           **including fabricated media (as defined in IC 3-9-3-0.3) that**  
 40 **depicts an identifiable representation of the individual**  
 41 **engaging in conduct described in clause (A) or (B) or depicts**  
 42 **the exhibition of the uncovered buttocks, genitals, or female**



**breast of an identifiable representation of the individual.**

SECTION 6. IC 35-31.5-2-161.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: **Sec. 161.8. "Identifiable", as used in IC 35-45-4, has the meaning set forth in IC 35-45-4-8.**

SECTION 7. IC 35-45-4-8, AS ADDED BY P.L.185-2019, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 8. (a) This section does not apply to a photograph, digital image, or video that is distributed:

- (1) to report a possible criminal act;
- (2) in connection with a criminal investigation;
- (3) under a court order; or
- (4) to a location that is:
  - (A) intended solely for the storage or backup of personal data, including photographs, digital images, and video; and
  - (B) password protected.

(b) As used in this section, "distribute" means to transfer to another person in, or by means of, any medium, forum, telecommunications device or network, or ~~Internet web site~~; **website**, including posting an image on an ~~Internet web site~~ **a website** or an application.

**(c) As used in this section, "identifiable" means recognizable by a person other than the depicted individual:**

- (1) from an intimate image itself; or**
- (2) from an intimate image and an identifying characteristic disclosed in connection with the intimate image.**

~~(e)~~ **(d)** As used in this section, "intimate image" means a photograph, digital image, or video:

- (1) that depicts:
  - (A) sexual intercourse;
  - (B) other sexual conduct (as defined in IC 35-31.5-2-221.5); or
  - (C) exhibition of the uncovered buttocks, genitals, or female breast;

of an individual **or of an identifiable representation of the individual in the form of fabricated media (as defined in IC 3-9-3-0.3); and**

- (2) taken, captured, or recorded by:
  - (A) an individual depicted in the photograph, digital image, or video and given or transmitted directly to the person described in subsection ~~(d)~~; **(e)**; or
  - (B) the person described in subsection ~~(d)~~ **(e)** in the physical presence of an individual depicted in the photograph, digital





1 image, or video.  
2 ~~(d)~~ (e) A person who:  
3 (1) knows or reasonably should know that an individual depicted  
4 in an intimate image does not consent to the distribution of the  
5 intimate image; and  
6 (2) distributes the intimate image;  
7 commits distribution of an intimate image, a Class A misdemeanor.  
8 However, the offense is a Level 6 felony if the person has a prior  
9 unrelated conviction under this section.

