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## FISCAL IMPACT REPORT

LAST UPDATED \_\_\_\_\_  
ORIGINAL DATE 2/24/2025

SPONSOR Serrato

**BILL**

SHORT TITLE A.I. Synthetic Content Accountability Act NUMBER House Bill 401

ANALYST Lobaugh

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMAG	No fiscal impact	\$0 to \$324.0	\$0 to \$324.0	\$0 to \$648.0	Recurring	General Fund
District Attorney Offices	No fiscal impact	\$0 to \$1,405.3	\$0 to \$1,405.3	\$0 to \$2,810.6	Recurring	General Fund
LOPD	No fiscal impact	\$0 to \$1,375.9	\$0 to \$1,375.9	\$0 to \$2,751.8	Recurring	General Fund
<b>Total</b>	<b>No fiscal impact</b>	<b>\$0 to \$3,105.2</b>	<b>\$0 to \$3,105.2</b>	<b>\$0 to \$6,210.4</b>	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.  
\*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 60, House Bill 215, and House Bill 221.

### Sources of Information

LFC Files

#### Agency Analysis Received From

Administrative Office of the Court (AOC)  
Administrative Office of the District Attorneys (AODA)  
Law Offices of the Public Defender (LOPD)  
Department of Information Technology (DoIT)  
Department of Public Safety (DPS)

#### Agency Analysis was Solicited but Not Received From

New Mexico Attorney General (NMAG)  
Department of Finance and Administration (DFA)

## SUMMARY

### Synopsis of House Bill 401

House Bill 401 (HB401) would create the Artificial Intelligence Synthetic Content Accountability Act in state law. The bill defines “synthetic content” as images, video or audio materials that have been produced or significantly modified from their original form by a generative artificial intelligence (AI) system.

HB401 would allow civil lawsuits or criminal charges to be brought against a person who improperly distributes synthetic content without the consent of a person depicted in synthetic content.

The bill would allow courts to issue orders to protect the privacy of plaintiffs in civil actions filed pursuant to the Artificial Intelligence Synthetic Content Accountability Act. Under HB401, a plaintiff who wins a civil lawsuit related to the nonconsensual dissemination of synthetic content would be allowed to recover attorney's fees, damages of \$10 thousand , or actual damages.

Under HB401, a person is criminally liable for the improper dissemination of synthetic content if they knowingly disseminate synthetic content depicting the likeness of an individual for the purpose of harassing, entrapping, defaming, extorting, or otherwise causing financial or reputational harm to the depicted person. The bill provides the state attorney general and local district attorneys with the jurisdiction to enforce criminal liability for the improper dissemination of synthetic content. HB401 defines the improper dissemination of synthetic content as a fourth-degree felony, which carries a basic sentence of 18 months imprisonment.

HB401 makes exceptions from liability for the dissemination of synthetic content if the synthetic content is disseminated for:

- The lawful sale of goods or services and the depicted person knew that the synthetic content would be created and disseminated commercially;
- Legitimate scientific research or educational purposes;
- Seeking or receiving medical or mental health treatment;
- Public speech constituting criticism, comment, satire, parody, news reporting, teaching, scholarship, or research and a reasonable consumer receiving the content would not believe it to accurately represent the depicted person's speech or conduct;
- Reporting unlawful conduct to the appropriate authorities;
- Use in legal proceedings; or
- The purpose of criminal investigations or prosecutions.

HB401 would require the providers of generative AI systems to ensure that synthetic content can be identified as synthetic content using watermarks or embedded provenance data (data on the history of the content creation). The bill also requires the providers of generative AI systems to use state-of-the-art techniques to prove the security of these watermarks and be transparent about this security testing.

HB401 would require large online platforms to use a reasonable identity verification method to verify a platform user's identity before allowing the user to post content on the platform if the content (1) was classified by the platform as fully synthetic, partially synthetic or possibly synthetic content; and (2) purports to depict reality. The platform would be required to protect any information obtained while performing these actions. They would not be able to use this identification information for any other purpose and would only be able to disclose this information pursuant under a court order.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

## FISCAL IMPLICATIONS

HB401 does not contain an appropriation.

HB401 would have fiscal implications on New Mexico Attorney General’s (NMAG) operating budget starting in FY26 when the NMAG may begin enforcing the provisions of the bill. NMAG has not yet provided an agency analysis on HB401 to date. However, HB401 would likely increase NMAG’s workload, which may necessitate additional personnel. The average compensation for attorney positions at NMAG is \$108 thousand based on data from the State Personnel Office. If NMAG needed 3 additional full-time positions to administer and enforce the Artificial Intelligence Synthetic Content Accountability Act, then the fiscal impact of HB401 would be \$324 thousand per year.

The Administrative Office of District Attorneys (AODA) reports that district attorney offices would need special personnel to carry out HB401, such as technical expert witnesses. The average compensation at district attorney offices is \$100.4 thousand in FY25. If each of New Mexico’s 14 district attorney offices had to hire one additional person at an average salary of \$100.4 thousand as a result of HB401, then the fiscal impact would be \$1.4 million per year.

The Law Offices of the Public Defender (LOPD) notes it is “difficult to predict” the fiscal impact of HB401. However, LOPD reports “any increase in the number of felony prosecutions would bring a concomitant need for an increase indigent defense funding.” The average compensation for LOPD staff is \$98.3 thousand in FY25. If HB401 necessitated LOPD to hire one additional person at an average salary of \$98.3 thousand in each judicial district, then the fiscal impact would be \$1.4 million per year.

The state Department of Information Technology (DoIT) reports that the requirements of HB401 would “greatly increase the cost of contracting for the development and implementation of AI systems by state agencies.” However, DoIT did not provide specific estimates of this cost to state agencies.

## SIGNIFICANT ISSUES

The Administrative Office of the Courts (AOC) notes that the bill does not establish any jurisdiction requirements for the plaintiffs under the civil cause of action established under Section 3 of HB401. AOC reports that it is unclear whether a plaintiff is required to be a resident of New Mexico.

Social media companies and other large online platforms often only require email verification from users, which would likely not meet the definition of a “reasonable identity verification method” in Section 2(P) of HB401.

Section 4(A) of HB401 uses the term “an identifiable person” which LOPD notes is a vague term. LOPD mentions that HB401 does not specify (1) to whom the depicted person should be “identifiable” or (2) whether the term “person” refers to a human being or a legal person (including incorporated entities).

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB401 relates to House Bill 60, which would create an Artificial Intelligence Act in state law, requiring notice of the use of AI, disclosure of algorithmic discrimination risk, risk management policies, and impact assessments.

HB410 relates to House Bill 221, which would create a Voice and Visual Likeness Rights Act in state law. The Voice and Visual Likeness Rights would establish that one’s visual likeness and voice are personal property and delineate methods of protecting one’s visual likeness and voice during life and after death.

HB410 relates to House Bill 215, which would amend the existing Uniform Owner-Resident Relations Act to prohibit the use of AI in setting rent prices.

## **TECHNICAL ISSUES**

Section 3(E)(1) of HB401 provides for a recovery of \$10 thousand in “liquidated damages” for prevailing in a civil suit. The Administrative Office of the Courts (AOC) points out that the term “liquidated damages” typically arises in contract law as a predetermined value of a breach of contract. AOC notes that HB401 could instead simply say “damages” in Sect3(E)(1).

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