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SENATE BILL NO. 571

Offered January 10, 2024

Prefiled January 10, 2024

A BILL to amend and reenact §§ 8.01-45, 8.01-46, and 18.2-417 of the Code of Virginia to amend the Code of Virginia by adding in Article 7 of Chapter 6 of Title 18.2 a section numbered 18.2-213.3, relating to synthetic media; penalty.

Patrons—Ebbin and Boysko

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-45, 8.01-46, and 18.2-417 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 7 of Chapter 6 of Title 18.2 a section numbered 18.2-213.3 as follows:

§ 8.01-45. Action for insulting words.

All words shall be actionable which from their usual construction and common acceptance are construed as insults and tend to violence and breach of the peace.

For purposes of this section:

"Synthetic media" means any image, audio recording, or video recording of an individual's appearance, speech, or conduct that has been created or intentionally manipulated with the use of generative adversarial network techniques or other digital technology in a manner to create a realistic but false image, audio, or video.

"Words" includes any synthetic media.

§ 8.01-46. Justification and mitigation of damages.

In any action for defamation, the defendant may justify by alleging and proving that the words spoken or, written, or otherwise represented were true, and, after notice in writing of his intention to do so, given to the plaintiff at the time of, or for, pleading to such action, may give in evidence, in mitigation of damages, that he made or offered an apology to the plaintiff for such defamation before the commencement of the action, or as soon afterwards as he had an opportunity of doing so in case the action shall have been commenced before there was an opportunity of making or offering such apology. For purposes of this section, "words" means the same as that term is defined in § 8.01-45.

§ 18.2-417. Slander and libel.

Any person who shall falsely utter and speak, or falsely write and publish, of and concerning any person of chaste character, any words derogatory of such person's character for virtue and chastity, or imputing to such person acts not virtuous and chaste, or who shall falsely utter and speak, or falsely write and publish, of and concerning another person, any words which from their usual construction and common acceptance are construed as insults and tend to violence and breach of the peace or who shall use grossly insulting language to any person of good character or reputation is guilty of a Class 3 misdemeanor. For purposes of this section, "words" means the same as that term is defined in § 8.01-45.

The defendant shall be entitled to prove upon trial in mitigation of the punishment, the provocation which induced the libelous or slanderous words, or any other fact or circumstance tending to disprove malice, or lessen the criminality of the offense.

§ 18.2-213.3. Use of deceptive audio or visual media in furtherance of crimes involving fraud; penalty.

A. For purposes of this section:

"Deceptive audio or visual media" means any synthetic media that appears to authentically depict any speech or conduct of a person who did not in fact engage in the speech or conduct.

"Synthetic media" means the same as that term is defined in § 8.01-45.

B. It is unlawful for any person to generate, create, or use or cause to be generated, created, or used any deceptive audio or visual media for the purpose of committing any criminal offense prohibited pursuant to this chapter. There shall be a rebuttable presumption that such deceptive audio or visual media was generated or created for the purpose of committing such criminal offense if the deceptive audio or visual media is subsequently used as part of a plan or course of conduct to commit such criminal offense.

C. Violation of this section shall constitute a separate and distinct offense, and any person found guilty thereof is guilty of a Class 1 misdemeanor. Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary criminal offense.

D. Any person who violates this section shall be liable to the individual depicted in the deceptive audio or visual media, who may bring a civil action in district court. The court may award actual damages, reasonable attorney fees, and such other relief as the court determines to be appropriate.

59 2. That the Attorney General shall convene a work group to study and make recommendations on the
60 current enforcement of laws related to the use of deceptive audio or visual media, as defined in § 18.2-
61 213.3 of the Code of Virginia, as created by this act, including deepfakes, and any further action
62 needed to address the issue of such use in fraudulent acts. Such work group shall consist of a
63 representative of the Office of the Attorney General, one member of the Senate and one member of the
64 House of Delegates who are members of the Joint Commission on Technology and Science and who
65 shall be selected by the Chair of the Joint Commission on Technology and Science, the Chief
66 Information Officer of the Commonwealth or his designee, and any other relevant stakeholders,
67 including technology industry representatives. The work group shall complete its meetings by
68 November 1, 2024, and report its findings and recommendations to the Chairs of the House Committee
69 on Communications, Technology and Innovation, the Senate Committee on General Laws and
70 Technology, and the Joint Commission on Technology and Science no later than the first day of the
71 2025 Regular Session of the General Assembly.