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HOUSE BILL NO. 2124

Offered January 8, 2025

Prefiled January 7, 2025

A BILL to amend and reenact §§ 8.01-45, 8.01-46, and 18.2-417 of the Code of Virginia and 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 digital content; penalty; work group.

Patron—Maldonado

Committee Referral Pending

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.

A. For purposes of this section:

"Synthetic digital content" means any digital content, including any audio, image, text, or video, that realistically but falsely depicts an individual's appearance, speech, or conduct and is produced by any system or service that (i) incorporates technology that uses data to train statistical models for the purpose of enabling a computer system or service to autonomously perform any task that is normally associated with human intelligence or perception, including visual perception, natural language processing, and speech recognition and (ii) is based on a foundation model.

"Words" includes any synthetic digital content.

B. 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.

§ 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.

§ 18.2-213.3. Use of synthetic digital content in furtherance of crimes involving fraud; penalty.

A. For purposes of this section, "synthetic digital content" means the same as that term is defined in § 8.01-45.

B. It is unlawful for any person to use any synthetic digital content for the purpose of committing any criminal offense prohibited pursuant to this chapter.

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 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 synthetic digital content, 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.

E. Nothing in this section shall be construed to limit or enlarge the protections that 47 U.S.C. § 230 confers on an interactive computer service for content provided by another information content provider, as such terms are defined in 47 U.S.C. § 230.

§ 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.

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 synthetic digital content, as defined in § 8.01-45 of the
61 Code of Virginia, as amended by this act, including deepfakes, and any further action needed to
62 address the issue of such use in fraudulent acts. Such work group shall consist of a representative of the
63 Office of the Attorney General, one member of the Senate and one member of the House of Delegates
64 who are members of the Joint Commission on Technology and Science and who shall be selected by the
65 Chair of the Joint Commission on Technology and Science, the Chief Information Officer of the
66 Commonwealth or his designee, the Superintendent of State Police or his designee, and any other
67 relevant stakeholders, including technology industry representatives. The work group shall complete
68 its meetings by November 1, 2025, and report its findings and recommendations to the Chairs of the
69 House Committee on Communications, Technology and Innovation, the Senate Committee on General
70 Laws and Technology, and the Joint Commission on Technology and Science no later than the first day
71 of the 2026 Regular Session of the General Assembly.