Date of Hearing: June 29, 2022

ASSEMBLY COMMITTEE ON ACCOUNTABILITY AND ADMINISTRATIVE REVIEW
Cottie Petrie-Norris, Chair
SB 1216 (Gonzalez) – As Amended June 15, 2022

SENATE VOTE: 39-0

SUBJECT: Secretary of the Government Operations Agency: working group: deepfakes

SUMMARY: Requires the Secretary of the Government Operations Agency (GovOps) to establish, upon appropriation by the Legislature, the Deepfake Working Group (working group) to evaluate, among other things, the impact the proliferation of deepfakes has on government, businesses, and residents of the state, as specified. Specifically, **this bill**:

1) Creates, upon appropriation by the Legislature, the Deepfake Working Group to evaluate the following:

    a) The impact of the proliferation of deepfakes on state government, California-based businesses, and residents of the state.

    b) The risks, including privacy risks, associated with the deployment of digital content forgery technologies and deepfakes on state and local governments, California-based businesses, and residents of the state.

    c) Potential privacy impacts of technologies allowing public verification of digital content provenance.

    d) The impact of digital content forgery technologies and deepfakes on civic engagement, including voters.

    e) The legal implications associated with the use of digital content forgery technologies, deepfakes, and technologies allowing public verification of digital content provenance.

    f) The best practices for preventing digital content forgery and deepfake technology to benefit the state, California-based businesses, and California residents.

2) Mandates the Deepfake Working Group to develop a coordinated plan to accomplish all of the following:

    a) Reduce the proliferation and impact of digital content forgeries and deepfakes, including by exploring whether and how the adoption of a digital content provenance standard could assist with reducing the proliferation of digital content forgeries and deepfakes.

    b) Investigate the feasibility of, and obstacles to, developing standards and technologies for state departments for determining digital content provenance.

    c) Increase the ability of internet companies, journalists, watchdog organizations, other relevant entities, and members of the public to meaningfully scrutinize and identify digital content forgeries and relay trust and information about digital content provenance to content consumers.

d) Develop or identify mechanisms for content creators to cryptographically certify authenticity of original media and non-deceptive manipulations.

e) Develop or identify mechanisms for content creators to enable the public to validate the authenticity of original media and non-deceptive manipulations to establish digital content provenance without materially compromising personal privacy or civil liberties.

3) Requires the working group to report, as specified, to the Legislature on the potential uses and risks of deepfake technology to the state government and California-based businesses on or before July 1, 2024.

   a) Mandates the report to include recommendations for modifications to the definitions of digital content forgery and deepfakes and recommendations for appropriate or necessary legislation related to digital content forgery technologies and deepfakes.

4) Requires the working group to include all the following participants:

   a) Three appointees from the technology industry, with technical focus that includes digital content, media manipulation, or related subjects.

   b) Three appointees from nontechnology-related industries.

   c) Three appointees with a background in law chosen in consultation with the Judicial Council.

   d) Two appointees representing privacy organizations.

   e) Two appointees representing consumer organizations.

   f) The State Chief Information Officer, or the officer's designee.

   g) The Director of Finance or their designee.

   h) The chief information officers of three other state agencies departments, or commissions, or their designees.

   i) One member of the Senate, appointed by the Senate Committee on Rules.

   j) One member of the Assembly, appointed by the Speaker of the Assembly.

5) Specifies the Secretary of Gov-Ops shall designate the chairperson of the working group on or before July 1, 2023.

6) Requires the working group to take input from a broad range of stakeholders with a diverse range of interests affected by state policies governing emerging technologies, privacy, business, the courts, the legal community, and state government.

7) Specifies the members of the working group shall serve without compensation, but reimbursed for all necessary expenses actually incurred in the performance of their duties.

8) Sunsets the provisions of this bill on January 1, 2025.

9) Defines "deepfake" to mean audio or visual content that has been generated or manipulated by artificial intelligence which would falsely appear to be authentic or truthful, and which features depictions of people appearing to say or do things they did not say or do without their consent.

10) Defines "digital content provenance" to mean the verifiable chronology of the original piece of digital content, such as an image, video, audio recording, or electronic document.

11) Defines "digital content forgery" to mean the use of technologies, including artificial intelligence and machine learning techniques, to fabricate and manipulate audio, visual, or text content with the intent to mislead.

EXISTING LAW:

1) Establishes GovOps under the direction of an executive officer known as the secretary; and specifies that GovOps shall consist of all of the following: the Office of Administrative Law; the Public Employees' Retirement Systems; the State Teachers' Retirement System; the State Personnel Board; the California Victim Compensation Board; the Department of General Services; the Department of Technology; the Franchise Tax Board; the Department of Human Resources; and the California Department of Tax and Fee Administration.

2) Provides that a depicted individual, as defined, has a cause of action against a person who does either of the following, except as specified, and may recover up to $150,000 in statutory damages, instead of or in addition to other available relief:

    a) Creates and intentionally discloses sexually explicit material and the person knows or reasonably should have known the depicted individual in that material did not consent to its creation or disclosure.

    b) Intentionally discloses sexually explicit material that the person did not create and the person knows the depicted individual in that material did not consent to the creation of the sexually explicit material.

3) Defines "depicted individual" to mean an individual who appears, as a result of digitization, to be giving a performance they did not actually perform or to be performing in an altered depiction.

4) Prohibits a person, committee, or other entity, within 60 days of an election at which a candidate for elective office will appear on the ballot, from distributing with actual malice materially deceptive audio or visual media, as defined, of the candidate with the intent to injure the candidate's reputation or to deceive a voter into voting for or against the candidate, unless a specified disclosure is included with the audio or visual media.

5) Defines "materially deceptive audio or visual media" to mean an image or an audio or video recording of a candidate's appearance, speech, or conduct that has been intentionally manipulated in a manner such that both of the following conditions are met:

    a) The image or audio or video recording would falsely appear to a reasonable person to be authentic.

b) The image or audio or video recording would cause a reasonable person to have a fundamentally different understanding or impression of the expressive content of the image or audio or video recording than that person would have if the person were hearing or seeing the unaltered, original version of the image or audio or video recording.

6) Requires that a report required or requested by law to be submitted to the members of either house of the Legislature generally, instead be submitted as a printed copy to the Secretary of the Senate, as an electronic copy to the Chief Clerk of the Assembly, and as an electronic or printed copy to the Legislative Counsel, as specified.

7) Requires a bill that would require a state agency to submit a report on any subject to either house of the Legislature generally, a committee or office of either house of the Legislature, or the Legislative Counsel Bureau, include a provision that repeals the reporting requirement, or makes the requirement inoperative, no later than a date four years following the date upon which the bill becomes operative, or four years after the due date of any report required every four or more years.

FISCAL EFFECT: According to the Senate Committee on Appropriations, "The Government Operations (GovOps) Agency anticipates total costs ranging from $514,884 to $600,348 for multiple, temporary, full-time positions to implement the program, support the working group, and for other operating expenses such as facilities and equipment."

COMMENTS:

With the proliferation of increasingly sophisticated artificial intelligence (AI) and machine learning (ML) technologies, the ability to manipulate audiovisual media to create realistic representations of fabricated events has grown exponentially. These "deepfakes" can be harmless and entertaining, but they can also have serious social costs if used toward nefarious and deceptive ends. Though the ability to generate synthetic media has been present since at least the 1990s, the realism made possible by these AI/ML-driven techniques, along with the ability to synthesize realistic media to represent nearly any occurrence, make these recent developments potentially dangerous.

A recent report published by the United States Department of Homeland Security outlines several scenarios in which the use of deepfakes could be harmful, including: inciting violence; producing false evidence undermining scientific consensuses such as climate change and vaccine efficacy; falsifying evidence in a criminal case; corporate sabotage; social engineering attacks targeting corporate and financial institutions; stock manipulation; and cyberbullying.[1]

Since 2019, the California Legislature has demonstrated recognition of the risks inherent to deepfake technology by passing AB 730 (Berman, Ch. 493, Stats. 2019) and AB 602 (Berman, Ch. 491, Stats. 2019) to address the sensitive circumstances in which deepfakes can be weaponized to influence elections or to manufacture explicit content that could harm the reputation of those falsely depicted, respectively.

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[1] Department of Homeland Security, "Increasing Threats of Deepfake Identities", https://www.dhs.gov/sites/default/files/publications/increasing_threats_of_deepfake_identities_0.pdf [as of Jun. 12, 2022].

However, as noted by the Assembly Committee on Privacy and Consumer Protection, "regulating the use of deepfakes in all but the most egregious of circumstances is extraordinarily complex. Doing so requires technical literacy with respect to the technology itself, a sociocultural understanding of the media environment in which both problematic and legitimate uses may arise, and an in-depth understanding of the legal constraints surrounding such regulation, including potential impositions on First Amendment rights related to free expression."

As such, this bill creates the Deepfake Working Group and seeks to provide the Legislature with recommendations by July 1, 2024 from a panel of experts on the various issues arising from deepfakes and to potentially better inform future policymaking. This bill requires the working group to seek input from outside stakeholders, and to develop a coordinated plan to address the potential uses and risks of deepfakes, as well as determine ways to establish authenticity of media. Lastly, this bill sunsets on January 1, 2025.

This bill is modeled after the Blockchain Working Group, created by AB 2658 (Calderon, Ch**.** 875, Stats. 2018), which tasked the Secretary of GovOps with appointing a Blockchain Working Group to evaluate several facets of blockchain technology and report its findings to the Legislature. On July 1, 2020, the Blockchain Working Group submitted its report, recommendations from which have generated several Legislative proposals.

According to the Author:

"Deepfakes are a type of digital content forgery that use new and emerging technologies like artificial intelligence to create or manipulate audio and video content with the intent of misleading the viewer. These digital forgeries will have implications on national security, First Amendment rights, national elections, and even how journalists and media sources verify the provenance or authenticity of a photo or video.

This new frontier of technology has created a number of ethical, legal, and policy questions that are not easily answered, and will continue to present complex societal and governmental questions about privacy rights, media accuracy, copyright infringement, and numerous other legal and moral issues that can't easily be addressed without thoughtful dialogue amongst informed stakeholders.

SB 1216 takes the first step in addressing these complex issues by creating the Deepfake Working Group under the GovOps Agency and tasks its members to research, discuss, study, and report on these novel issues and how California can confront them in real time. The Deepfake Working Group will evaluate risks, privacy impacts, and legal implications of the proliferation of deepfakes and will develop a coordinated plan to mobilize the public, industry, and government to jointly address these threats."

Arguments in Support:

Supporters cite the potential dangers of deepfakes to the public and the need for the state to work with experts to find policy solutions. To quote the Anti-Defamation League, **"**Deepfakes are an emerging technology that that combines multiple real images/videos/audio with machine learning technology to create a new, synthetic piece of media (e.g. image, audio or video). This technique has been used to create machine-made media of all kinds, including some with the intention of deceiving audiences. Some examples of deceptive deepfakes include videos of

politicians depicted in situations that never happened or fabricated pornographic videos targeting specific individuals. Audio deep fakes could lead to serious forms of fraud and identity theft.

The proliferation of deepfakes and misinformation continue to increase at an alarming rate, and the public policy solutions needed to protect California residents, businesses, and government institutions remain unclear. Policy solutions continue to allude *[sic]* policy makers across the globe. SB 1216 is a foundational first step to address the growing threat of deepfakes, by bringing together key experts and stakeholders to study this emerging issue and to develop potential solutions to protect all Californians."

Arguments in Opposition: None on file.

PRIOR/RELATED LEGISLATION

AB 730 (Berman, Chapter 493, Statutes of 2019) prohibited a person, committee, or other entity form distributing with actual malice materially deceptive audio or visual media of a candidate with the intent to injure the candidate's reputation or to deceive a voter into voting for or against the candidate within 60 days of an election at which a candidate for elective office will appear on the ballot, as specified and unless certain conditions are met.

AB 602 (Berman, Ch. 491, Stats. 2019) created a private right of action for a "depicted individual" against a person who either creates or intentionally discloses sexually explicit material without the consent of the depicted person.

AB 1280 (Grayson, 2019), among other things, would have defined the term "deepfake" to mean "a recording that has been created or altered in a manner that it falsely appears to a reasonable person to be an authentic record of the actual speech or conduct of the individual depicted in the recording," and would have created three new crimes for the creation and distribution of a deepfake video, as specified. This bill failed passage in the Assembly Public Safety Committee.

AB 2658 (Calderon, Chapter 875, Statutes of 2018) required, until January 1 2022, the Secretary of GovOps to appoint a blockchain working group and required that the working group report to the Legislature on the potential uses, risks, and benefits of the use of blockchain technology by state government and California-based businesses, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

Adobe
Anti-Defamation League
BSA The Software Alliance
California Hispanic Chamber of Commerce
California Medical Association
Silicon Valley Leadership Group

Opposition

None on file.

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