
UNFINISHED BUSINESS

Bill No: SB 1216
Author: Gonzalez (D), et al.
Amended: 8/15/22
Vote: 21

SENATE GOVERNMENTAL ORG. COMMITTEE: 14-0, 3/29/22
AYES: Dodd, Nielsen, Allen, Archuleta, Becker, Borgeas, Bradford, Glazer,
Hueso, Jones, Kamlager, Melendez, Rubio, Wilk
NO VOTE RECORDED: Portantino

SENATE JUDICIARY COMMITTEE: 11-0, 4/19/22
AYES: Umberg, Borgeas, Caballero, Durazo, Gonzalez, Hertzberg, Jones, Laird,
Stern, Wieckowski, Wiener

SENATE APPROPRIATIONS COMMITTEE: 7-0, 5/19/22
AYES: Portantino, Bates, Bradford, Jones, Kamlager, Laird, Wieckowski

SENATE FLOOR: 39-0, 5/25/22
AYES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero,
Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hueso,
Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min,
Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern,
Umberg, Wieckowski, Wiener, Wilk
NO VOTE RECORDED: Hertzberg

ASSEMBLY FLOOR: 76-0, 8/18/22 - See last page for vote

SUBJECT: Secretary of Government Operations: deepfakes

SOURCE: Adobe Inc.

DIGEST: This bill requires, upon appropriation by the Legislature, the Secretary of the Government Operations Agency (GovOps) to evaluate, among other things,

the impact the proliferation of deepfakes has on government, businesses, and residents of the state, as specified.

Assembly Amendments delete the requirement that the Secretary of GovOps establish a working group to evaluate, among other things, the impact the proliferation of deepfakes has on government, businesses, and residents of the state.

ANALYSIS:

Existing law:

- 1) Establishes GovOps and makes GovOps responsible for administering state operations including procurement, information technology, and human resources.
- 2) Provides that it is unlawful for a person doing business in California and advertising to consumers in California to make any false or misleading advertising claim.
- 3) Prohibits a person, committee, or other entity from 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.

This bill:

- 1) Requires, upon appropriation by the Legislature, the Secretary of the GovOps to evaluate all of 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 government, 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, as specified.
- 2) Requires the secretary to develop a coordinated plan to accomplish all of the following:
- a) Investigate the feasibility of, and obstacles to, developing standards and technologies for state departments for determining digital content provenance.
 - b) 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.
 - c) Develop or identify mechanisms for content creators to cryptographically certify authenticity of original media and nondeceptive manipulations.
 - d) Develop or identify mechanisms for content creators to enable the public to validate the authenticity of original media and non-deceptive manipulations to establish content provenance without materially compromising personal privacy or civil liberties.
- 3) Requires the secretary, on or before July 1, 2024, to report to the Legislature on the potential uses and risks of deepfake technology to the state government and California-based businesses, as specified.
- 4) Requires the report submitted by the secretary to be submitted in compliance with current requirements.
- 5) Includes a sunset date of January 1, 2025.

Comments

Purpose of this bill. According to the author's office, "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 to mislead the viewer. These digital forgeries will likely 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.”

Deepfakes. The term “deepfake” refers to a specific kind of synthetic media where a person in an image or video is swapped with another person’s likeness. These deceptive life-like videos and recordings can effectively make it appear as though an individual said or did something that never actually took place.

Deepfakes take their name from the fact that they use deep learning technology to create fake videos. Deep learning technology is a kind of machine learning that applies neural net simulation to massive data sets. Artificial intelligence effectively learns what a particular face looks like at various angles in order to transpose the face onto another individual, similar to an extremely high quality mask that automatically adapts as the individual moves.

The author’s office argues that this kind of technology can be entertaining and innocent such as viral TikToks. However, the technology can also be used in nefarious ways. For example, deepfakes have been used as forged sexually explicit material and can be used as videos of influential political leaders that incite political violence.

The use of deepfakes can be far reaching and have created a number of ethical, legal, and policy questions. This bill requires the Secretary of GovOps to evaluate risks, privacy impacts, and legal implications of the proliferation of deepfakes and developing a coordinating plan to utilize the public, industry, and government to joint address these threats.

Related/Prior Legislation

AB 730 (Berman, Chapter 493, Statutes of 2019) prohibited a person, committee, or other entity from 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 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. (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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Assembly Appropriations Committee, costs (General Fund (GF)) of approximately \$600,000 ongoing to GovOps in additional staff and infrastructure, including operating expenses such as facilities and equipment for the DWG to study the implications of deepfakes and report to the Legislature. The proposed DWG is not included in the current budget.

SUPPORT: (Verified 8/17/22)

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

OPPOSITION: (Verified 8/17/22)

None received

ARGUMENTS IN SUPPORT: According to Adobe Inc. “SB 1216 represents an important step toward increasing public and private sector collaboration in combatting the unique threat that digital content forgeries and misinformation campaigns pose to our state and our democracy. As studies have shown, we will continue to consume content digitally and we must find ways to protect against the dangers of falsely manipulated digital content.”

According to BSA - The Software Alliance, “the proliferation of deepfakes and misinformation continue to increase at an alarming rate, and the public policy solutions to protect California residents, businesses, and government institutions

remain unclear. Policy solutions continue to allude policy makers across the globe. SB 1216 is a critical first step in bringing together California's best and brightest minds to discuss this and holistically evaluate this issue area and potential solutions to protect all Californians."

ASSEMBLY FLOOR: 76-0, 8/18/22

AYES: Aguiar-Curry, Alvarez, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Chen, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Mike Fong, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Grayson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, McKinnor, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wilson, Rendon

NO VOTE RECORDED: Arambula, Cervantes, Choi, Wood

Prepared by: Felipe Lopez / G.O. / (916) 651-1530
8/19/22 13:27:16

**** END ****