Bill No:	SB 1216	**Hearing Date:**	3/29/2022
Author:	Gonzalez, et al.		
Version:	2/17/2022 Introduced		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Felipe Lopez		

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

DIGEST: This bill requires, upon appropriation by the Legislature, the Secretary of the Government Operations Agency (GovOps) to establish the Deepfake Working Group to evaluate, among other things, the impact the proliferation of deepfakes has on government, businesses, and residents of the state, as specified.

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 establish the Deepfake Working Group 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) The impact of digital content forgery technologies and deepfakes on civic engagement, including voters.
d) The legal implications associated with the use of digital content forgery technologies and deepfakes.
e) The best practices for preventing digital content forgery and deepfake technology to benefit the state, California-based businesses, and California residents.

2) Requires the working group to consist of participants from all of the following:

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 the director's 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.

3) Requires the Secretary of GovOps to designate the chairperson of the working group on or before July 1, 2023.

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

5) 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.

6) Requires the 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, as specified.
   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 nondeceptive 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 content provenance.

7) Requires the working group, 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.

8) Requires the working group's report to include recommendations for modifications to the definition of digital content forgery and deepfakes and recommendations for amendments to other code sections that may be impacted by the deployment of digital content forgery technologies and deepfakes.

9) Requires the report submitted by the working group to be submitted in compliance with current requirements.

10) Includes a sunset date of January 1, 2025.

Background

Purpose of the 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."

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

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 (AI) 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 require the Secretary of GovOps to establish and appoint a working group which would be responsible for evaluating 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.

Prior/Related Legislation

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.

AB 730 (Berman, Chapter 493, Statutes of 2019) prohibits 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 1280 (Grayson, 2019) would, among other things, 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 Committee on Public Safety)

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

SUPPORT:

Adobe Inc. (Source)
BSA The Software Alliance
Silicon Valley Leadership Group

OPPOSITION:

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."

DUAL-REFERRAL: Senate Governmental Organization Committee & Senate Judiciary Committee