

HOUSE BILL NO. 697

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Delegate Maldonado)

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.

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. 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.

B. For purposes of this section:

"Artificial intelligence" means 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.

"Generative artificial intelligence" means artificial intelligence based on a foundation model capable of and used to produce synthetic digital content including audio, images, text, and videos.

"Generative artificial intelligence system" means any artificial intelligence system or service that incorporates generative artificial intelligence.

"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

27 generative artificial intelligence systems or other digital technology in a manner to create a realistic but
28 false image, audio, or video.

29 "Words" includes any synthetic media.

30 **§ 8.01-46. Justification and mitigation of damages.**

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

38 **§ 18.2-213.3. Use of synthetic media in furtherance of crimes involving fraud; penalty.**

39 A. For purposes of this section:

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

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

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

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

50 E. Nothing in this section shall be construed to limit or enlarge the protections that 47 U.S.C. §
51 230 confers on an interactive computer service for content provided by another information content
52 provider, as such terms are defined in 47 U.S.C. § 230.

53 **§ 18.2-417. Slander and libel.**

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

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

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

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