ASSEMBLY, No. 3912

STATE OF NEW JERSEY

221st LEGISLATURE

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Sponsored by:
Assemblywoman VICTORIA A. FLYNN
District 13 (Monmouth)

SYNOPSIS

Extends crime of identity theft to include fraudulent impersonation or false depiction by means of artificial intelligence or deepfake technology.

CURRENT VERSION OF TEXT

As introduced.

1   **AN ACT** concerning identity theft by means of artificial intelligence
2   or deepfake technology, and amending N.J.S.2C:21-17 and
3   P.L.2003, c.184.
4
5   **BE IT ENACTED** *by the Senate and General Assembly of the State*
6   *of New Jersey:*
7
8   1. N.J.S.2C:21-17 is amended to read as follows:
9   2C:21-17. a. A person is guilty of a crime if the person engages
10 in one or more of the following actions by any means including, but
11 not limited to, the use of electronic communications<u>, computer</u>
12 <u>software,</u> or an Internet website:
13   (1) Impersonates <u>or falsely depicts</u> another or assumes a false
14 identity and does an act in such assumed character or false identity
15 <u>or using such false depiction</u> for the purpose of obtaining a benefit
16 for himself or another or to injure or defraud another;
17   (2) Pretends to be a representative of some person or
18 organization and does an act in such pretended capacity for the
19 purpose of obtaining a benefit for himself or another or to injure or
20 defraud another;
21   (3) Impersonates <u>or falsely depicts</u> another, assumes a false
22 identity<u>,</u> or makes a false or misleading statement regarding the
23 identity of any person, in an oral or written application for services,
24 for the purpose of obtaining services;
25   (4) Obtains any personal identifying information pertaining to
26 another person and uses that information, or assists another person
27 in using the information, in order to assume the identity of or
28 represent himself as another person, without that person's
29 authorization and with the purpose to fraudulently obtain or attempt
30 to obtain a benefit or services, or avoid the payment of debt or other
31 legal obligation or avoid prosecution for a crime by using the name
32 of the other person; or
33   (5) Impersonates <u>or falsely depicts</u> another, assumes a false
34 identity<u>,</u> or makes a false or misleading statement, in the course of
35 making an oral or written application for services, with the purpose
36 of avoiding payment for prior services. Purpose to avoid payment
37 for prior services may be presumed upon proof that the person has
38 not made full payment for prior services and has impersonated <u>or</u>
39 <u>falsely depicted</u> another, assumed a false identity<u>,</u> or made a false or
40 misleading statement regarding the identity of any person in the
41 course of making oral or written application for services.
42   **[**As used in this section:
43   "Benefit" means, but is not limited to, any property, any
44 pecuniary amount, any services, any pecuniary amount sought to be

1 avoided or any injury or harm perpetrated on another where there is
2 no pecuniary value.**]**
3   b.   (Deleted by amendment, P.L.2005, c.224).
4   c.   A person who violates subsection a. of this section is guilty
5 of a crime as follows:
6   (1) If the actor obtains a benefit or deprives another of a benefit
7 in an amount less than $500 and the offense involves the identity of
8 one victim, or if the actor injures or defrauds one victim by means
9 of impersonation, false depiction, or otherwise, whether or not for
10 pecuniary gain, the actor shall be guilty of a crime of the fourth
11 degree except that a second or subsequent conviction for such an
12 offense constitutes a crime of the third degree; or
13   (2) If the actor obtains a benefit or deprives another of a benefit
14 in an amount of at least $500 but less than $75,000, or the offense
15 involves the identity of at least two but less than five victims, or if
16 the actor injures or defrauds at least two but less than five victims
17 by means of impersonation, false depiction, or otherwise, whether
18 or not for pecuniary gain, the actor shall be guilty of a crime of the
19 third degree; or
20   (3) If the actor obtains a benefit or deprives another of a benefit
21 in the amount of $75,000 or more, or the offense involves the
22 identity of five or more victims, or if the actor injures or defrauds
23 five or more victims by means of impersonation, false depiction, or
24 otherwise, whether or not for pecuniary gain, the actor shall be
25 guilty of a crime of the second degree.
26   d.   A violation of N.J.S.2C:28-7, constituting a disorderly
27 persons offense, section 1 of P.L.1979, c.264 (C.2C:33-15), section
28 64 of P.L.2021, c.16 (C.2C:35-10d), R.S.33:1-81 or section 6 of
29 P.L.1968, c.313 (C.33:1-81.7) in a case where the person uses the
30 personal identifying information of another to illegally purchase an
31 alcoholic beverage or for using the personal identifying information
32 of another to misrepresent the person's age for the purpose of
33 obtaining tobacco, any cannabis item, or other consumer product
34 denied to persons under 21 years of age shall not constitute an
35 offense under this section if the actor received only that benefit or
36 service and did not perpetrate or attempt to perpetrate any
37 additional injury or fraud on another.
38   e.   The sentencing court shall issue such orders as are necessary
39 to correct any public record or government document that contains
40 false information as a result of a theft of identity, including, but not
41 limited to, ordering a public retraction of any false depiction or any
42 statement falsely attributed to the victim, and the destruction of the
43 false personation record, at the defendant's expense.   The
44 sentencing court may provide restitution to the victim in accordance
45 with the provisions of section 4 of P.L.2002, c.85 (C.2C:21-17.1).
46   f.   As used in this section:

1 "Benefit" means, but is not limited to, any property, any
2 pecuniary amount, any services, or any pecuniary amount sought to
3 be avoided.
4 "False personation record" or "record" means any audio or visual
5 media that was entirely generated by or substantially manipulated
6 using computer technology, or any artificially generated speech,
7 transcription of speech, or text, that:
8 (1) a reasonable person, having considered the visual or audio
9 qualities of the record, the context of the speech or text, and the
10 nature of the distribution channel in which the record appears,
11 would believe accurately exhibits the activity of a person but which
12 the person did not undertake and which was produced without the
13 consent of the person, and
14 (2) the exhibition of which is substantially likely to cause
15 perceptible individual or societal harm, including, but not limited
16 to, misrepresentation, reputational damage, embarrassment,
17 harassment, financial loss, the incitement of violence, the alteration
18 of a public policy debate or election, improper interference in an
19 official proceeding, or the furtherance of any unlawful act.
20 "Falsely depict" or "false depiction" means, but is not limited to,
21 the use or distribution of a false personation record with knowledge
22 of the falsity of the record and with the intent of misrepresenting
23 the authenticity or provenance of the record.
24 (cf: P.L.2021, c.25, s.14)
25
26 2. Section 7 of P.L.2003, c.184 (C.2C:21-17.4) is amended to
27 read as follows:
28 7. a. Any person who suffers any ascertainable loss of moneys
29 or property, real or personal, as a result of the use of that person's
30 personal identifying information, in violation of N.J.S.2C:21-1,
31 section 1 of P.L.1983, c.565 (2C:21-2.1), N.J.S.2C:21-17, section 5
32 of P.L.2003, c.184 (C.2C:21-17.2) or section 6 of P.L.2003, c.184
33 (C.2C:21-17.3), may bring an action in any court of competent
34 jurisdiction. In any action under this section the court shall, in
35 addition to any other appropriate legal or equitable relief, award
36 damages in an amount three times the value of all costs incurred by
37 the victim as a result of the person's criminal activity. These costs
38 may include, but are not limited to, those incurred by the victim in
39 clearing his credit history or credit rating, or those incurred in
40 connection with any civil or administrative proceeding to satisfy
41 any debt, lien, or other obligation of the victim arising as a result of
42 the actions of the defendant. The victim may also recover those
43 costs incurred for attorneys' fees, court costs and any out-of-pocket
44 losses. A financial institution, insurance company, bonding
45 association or business that suffers direct financial loss as a result
46 of the offense shall also be entitled to damages, but damages to
47 natural persons shall be fully satisfied prior to any payment to a

1   financial institution, insurance company, bonding association or
2   business.
3   b.   The standard of proof in actions brought under this section is
4   a preponderance of the evidence, and the fact that a prosecution for
5   a violation of N.J.S.2C:21-1, section 1 of P.L.1983, c.565 (2C:21-
6   2.1) or N.J.S.2C:21-17 is not instituted or, where instituted,
7   terminates without a conviction shall not preclude an action
8   pursuant to this section. A final judgment rendered in favor of the
9   State in any criminal proceeding shall estop the defendant from
10 denying the same conduct in any civil action brought pursuant to
11 this section.
12   c.   The cause of action authorized by this section shall be in
13 addition to and not in lieu of any forfeiture or any other action,
14 injunctive relief or any other remedy available at law, including, but
15 not limited to, a civil action for common law defamation, libel,
16 slander, invasion of privacy, false light, misappropriation of
17 identity, intrusion of privacy, or public disclosure of private facts.
18 **[**except that where**]** Where the defendant is convicted of a
19 violation of this act, the court in the criminal action, upon the
20 application of the Attorney General or the prosecutor, shall in
21 addition to any other disposition authorized by this Title sentence
22 the defendant to pay restitution in an amount equal to the costs
23 incurred by the victim as a result of the defendant's criminal
24 activity, regardless of whether a civil action has been instituted.
25 These costs may include, but are not limited to those incurred by
26 the victim in clearing his credit history or credit rating; those
27 incurred in connection with any civil or administrative proceeding
28 to satisfy any debt, lien, or other obligation of the victim arising as
29 a result of the actions of the defendant; or those incurred for
30 attorneys' fees, court costs and any out-of-pocket losses. A
31 financial institution, insurance company, bonding association or
32 business that suffers direct financial loss as a result of the offense
33 shall also be entitled to restitution, but restitution to natural persons
34 shall be fully satisfied prior to any payment to a financial
35 institution, insurance company, bonding association or business.
36 (cf: P.L.2005, c.224, s.5)
37
38   3. This act shall take effect immediately.
39
40
41   STATEMENT
42
43   This bill extends the crime of identity theft to include fraudulent
44 impersonation or false depiction by means of artificial intelligence
45 or deepfake technology. A so-called "deepfake" or, as defined
46 under this bill, a "false personation record," includes images, video,
47 sound, speech, or text generated entirely by or substantially
48 manipulated using newer technology such as artificial intelligence

1   with the intent of making it appear, as realistically as possible, that
2   the person being depicted has engaged in activity or speech that did
3   not actually occur. Deepfakes have been used to embarrass or
4   harass a person, cast a person in a false light or misappropriate a
5   person's identity or likeness, and fraudulently misrepresent a
6   person's words and actions to the public, and have been distributed
7   to the public both with and without the intention of pecuniary gain.
8   Falsely depicting a person by means of a deepfake is tantamount to
9   stealing that person's identity.

10 Under the bill, the grading of identity theft into crimes of the
11 fourth, third, and second degree remains unchanged. However,
12 false depiction by means of a deepfake would be graded by the
13 number of victims affected. Thus, false depiction affecting one
14 victim is a crime of the fourth degree except that a second or
15 subsequent conviction for such an offense constitutes a crime of the
16 third degree. False depiction affecting at least two but less than five
17 victims is a crime of the third degree, and false depiction affecting
18 five or more victims is a crime of the second degree.

19 A crime of the fourth degree is punishable by up to 18 months
20 imprisonment, a fine of up to $10,000, or both. A crime of the third
21 degree is punishable by three to five years imprisonment, a fine of
22 up to $15,000, or both. A crime of the second degree is punishable
23 by five to ten years imprisonment, a fine of up to $150,000, or both.

24 To remediate the economic or reputational harm caused by a
25 false depiction, the court may order that the deepfake be destroyed
26 and a public retraction be made at the defendant's expense. In
27 addition, the bill clarifies that any civil action for economic
28 restitution by a victim does not preclude a civil action for non-
29 economic losses such as common law defamation, libel, slander,
30 invasion of privacy, false light, misappropriation of identity,
31 intrusion of privacy, or public disclosure of private facts.