

STATE OF NEW YORK

6775

2023-2024 Regular Sessions

IN ASSEMBLY

May 8, 2023

Introduced by M. of A. VANEL -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to unlawful dissemination or publication of a fabricated photographic, videographic, or audio record

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The penal law is amended by adding a new section 245.20 to
2 read as follows:

3 § 245.20 Unlawful dissemination or publication of a fabricated photo-
4 graphic, videographic, or audio record.

5 1. A person is guilty of unlawful dissemination or publication of a
6 fabricated photographic, videographic, or audio record when, with intent
7 to cause harm to the liberty or emotional, social, financial or physical
8 welfare of an identifiable person or persons, he or she intentionally
9 creates or causes to be created a fabricated record of such person or
10 persons and disseminates or publishes such record of such person or
11 persons without such person or persons' consent.

12 2. For purposes of this section:

13 (a) "Identifiable" shall mean the ability to discern an individual's
14 identity either through the fabricated record itself or from information
15 displayed in connection with the fabricated record;

16 (b) "Fabricated photographic, videographic, or audio record" or
17 "fabricated record" shall mean a still image, video or audio recording
18 that:

19 (i) exhibits a high level of authenticity or convincing appearance
20 that is visually or audibly indistinguishable from reality;

21 (ii) is either manipulated or entirely artificial, including but not
22 limited to, manipulation through means of advanced synthetic media tech-
23 nologies that utilize artificial intelligence, such as deepfakes, gener-
24 ative pre-trained transformers and stable diffusion;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 (iii) depicts a scenario that did not actually occur or that has been
2 altered in a significant way from how it actually occurred; and
3 (c) "Disseminate" and "publish" shall have the same meanings as
4 defined in section 250.40 of this title.

5 3. This section shall not apply to the following:

6 (a) Dissemination or publication of a fabricated record by a person
7 who did not create the fabricated record, whether or not such person is
8 aware of the authenticity of the record;

9 (b) Dissemination or publication of a fabricated record that was
10 created during the lawful and common practices of law enforcement, legal
11 proceedings or medical treatment where the record is not disseminated or
12 published with the intent to misrepresent its authenticity;

13 (c) Dissemination or publication of a fabricated record that was
14 created for the purpose of political or social commentary, parody,
15 satire, or artistic expression that is not disseminated or published
16 with the intent to misrepresent its authenticity;

17 (d) Dissemination or publication of a fabricated record that was
18 created for the purpose of news reporting where the record is not
19 disseminated or published with the intent to misrepresent its authentic-
20 ity;

21 (e) Dissemination or publication of a fabricated record that was
22 created where the person reasonably believes that the dissemination or
23 publication of the record is necessary to protect themselves from seri-
24 ous bodily injury or death;

25 (f) Dissemination or publication of a fabricated record that was
26 created for the purpose of historical reenactment or preservation,
27 digital restoration or preservation of cultural heritage where the
28 record is not disseminated or published with the intent to misrepresent
29 its authenticity;

30 (g) Dissemination or publication of a fabricated record that was
31 created for the purpose of training or education, provided however that
32 such training or education shall not include the training or education
33 of a person or persons to engage in unlawful activities;

34 (h) Dissemination or publication of a fabricated record that was
35 created for the purpose of memorializing a deceased person;

36 (i) Dissemination or publication of a fabricated record that was
37 created for the purpose of lawful scientific, academic, or technological
38 research or development where the record is not disseminated or
39 published with the intent to misrepresent its authenticity; and

40 (j) Initial dissemination or publication of a fabricated record by the
41 platform or service, provided that the fabricated record was not created
42 by an individual who is directly affiliated with the platform or
43 service.

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

48 Unlawful dissemination or publication of a fabricated photographic,
49 videographic, or audio record is a class E felony.

50 § 2. This act shall take effect on the thirtieth day after it shall
51 have become a law.