

SB0858/453621/1

BY: Judiciary Committee

AMENDMENTS TO SENATE BILL 858
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, strike line 2 in its entirety and substitute “**Deep Fake Representations and Revenge Porn**”; strike beginning with “altering” in line 11 down through “circumstances” in line 13 and substitute “establishing the statute of limitations for a certain prosecution relating to harassment by distribution of a deep fake image to begin at the time the victim knew or reasonably should have known of the violation; establishing that it is harassment for a person to distribute a certain deep fake representation that is indistinguishable from an actual and identifiable human being; establishing that revenge porn does not include certain deep fake representations”; in line 13, strike “a civil action for” and substitute “deep fake representations and”; after line 20, insert:

“BY repealing and reenacting, without amendments,

Article – Courts and Judicial Proceedings

Section 5–106(a)

Annotated Code of Maryland

(2020 Replacement Volume and 2023 Supplement)”;

and in line 18, after “3–505” insert “and 5–106(gg)”.

On page 2, in line 1, after “Section” insert “3–803 and”.

AMENDMENT NO. 2

On page 5, after line 26, insert:

“5-106.

(a) Except as provided by this section, § 1-303 of the Environment Article, and § 8-1815 of the Natural Resources Article, a prosecution for a misdemeanor shall be instituted within 1 year after the offense was committed.

(GG) A PROSECUTION FOR A VIOLATION OF § 3-803(C) OF THE CRIMINAL LAW ARTICLE RELATING TO HARASSMENT BY DISTRIBUTION OF A DEEP FAKE IMAGE SHALL BE INSTITUTED WITHIN 5 YEARS AFTER THE VICTIM IN FACT KNEW OR REASONABLY SHOULD HAVE KNOWN OF THE VIOLATION.”;

and after line 27, insert:

“3-803.

(a) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) “DEEP FAKE REPRESENTATION” MEANS A PHOTOGRAPH, A FILM, A VIDEO, A DIGITAL IMAGE, A PICTURE, OR A COMPUTER OR COMPUTER-GENERATED IMAGE OR PICTURE, WHETHER MADE OR PRODUCED BY ELECTRONIC, MECHANICAL, OR OTHER MEANS THAT IS INDISTINGUISHABLE FROM AN ACTUAL AND IDENTIFIABLE HUMAN BEING.

(II) “DEEP FAKE REPRESENTATION” DOES NOT INCLUDE IMAGES OR ITEMS DEPICTING HUMAN BEINGS THAT ARE:

- 1. DRAWINGS;**
- 2. CARTOONS;**

3. SCULPTURES; OR

4. PAINTINGS.

(3) “DISTRIBUTE” MEANS TO GIVE, SELL, TRANSFER, DISSEMINATE, PUBLISH, UPLOAD, CIRCULATE, BROADCAST, MAKE AVAILABLE, ALLOW ACCESS TO, OR ENGAGE IN ANY OTHER FORM OF TRANSMISSION, ELECTRONIC OR OTHERWISE.

(4) “HARM” MEANS:

(I) PHYSICAL INJURY;

(II) SERIOUS EMOTIONAL DISTRESS; OR

(III) ECONOMIC DAMAGES.

(5) (I) “INDISTINGUISHABLE FROM AN ACTUAL AND IDENTIFIABLE HUMAN BEING” MEANS AN IMAGE THAT AN ORDINARY PERSON WOULD CONCLUDE IS OF AN ACTUAL AND IDENTIFIABLE HUMAN BEING.

(II) “INDISTINGUISHABLE FROM AN ACTUAL AND IDENTIFIABLE HUMAN BEING” INCLUDES AN IMAGE THAT IS COMPUTER GENERATED AND HAS BEEN CREATED, ADAPTED, OR MODIFIED TO APPEAR AS AN ACTUAL AND IDENTIFIABLE HUMAN BEING.

(6) “INTIMATE PARTS” MEANS THE NAKED GENITALS, PUBIC AREA, BUTTOCKS, OR FEMALE NIPPLE.

(Over)

(7) “SEXUAL ACTIVITY” MEANS:

**(I) SEXUAL INTERCOURSE, INCLUDING GENITAL–GENITAL,
ORAL–GENITAL, ANAL–GENITAL, OR ORAL–ANAL;**

(II) MASTURBATION; OR

(III) SADOMASOCHISTIC ABUSE.

**(B) A person may not follow another in or about a public place or maliciously
engage in a course of conduct that alarms or seriously annoys the other:**

(1) with the intent to harass, alarm, or annoy the other;

**(2) after receiving a reasonable warning or request to stop by or on
behalf of the other; and**

(3) without a legal purpose.

(C) (1) (I) THIS SUBSECTION DOES NOT APPLY TO:

**1. LAWFUL AND COMMON PRACTICES OF LAW
ENFORCEMENT, THE REPORTING OF UNLAWFUL CONDUCT, OR LEGAL
PROCEEDINGS; OR**

**2. SITUATIONS INVOLVING VOLUNTARY EXPOSURE IN
PUBLIC OR COMMERCIAL SETTINGS.**

(II) AN INTERACTIVE COMPUTER SERVICE, AS DEFINED IN 47 U.S.C. § 230(F)(2), IS NOT LIABLE UNDER THIS SECTION FOR CONTENT PROVIDED BY ANOTHER PERSON.

(2) A PERSON MAY NOT KNOWINGLY DISTRIBUTE A DEEP FAKE REPRESENTATION OF ANOTHER IDENTIFIABLE PERSON THAT DISPLAYS THE OTHER PERSON WITH INTIMATE PARTS EXPOSED OR WHILE ENGAGED IN AN ACT OF SEXUAL ACTIVITY:

(I) WITH THE INTENT TO HARM, HARASS, INTIMIDATE, THREATEN, OR COERCE THE OTHER PERSON; AND

(II) 1. UNDER CIRCUMSTANCES IN WHICH THE PERSON KNEW THAT THE OTHER PERSON DID NOT CONSENT TO THE DISTRIBUTION; OR

2. WITH RECKLESS DISREGARD AS TO WHETHER THE PERSON CONSENTED TO THE DISTRIBUTION.

(3) A DEEP FAKE REPRESENTATION OF A VICTIM THAT IS PART OF A COURT RECORD FOR A CASE ARISING FROM A PROSECUTION UNDER THIS SUBSECTION:

(I) SUBJECT TO ITEM (II) OF THIS PARAGRAPH, MAY NOT BE MADE AVAILABLE FOR PUBLIC INSPECTION; AND

(II) EXCEPT AS OTHERWISE ORDERED BY THE COURT, MAY ONLY BE MADE AVAILABLE FOR INSPECTION IN RELATION TO A CRIMINAL CHARGE UNDER THIS SECTION TO:

1. COURT PERSONNEL;

(Over)

- SECTION;
2. A JURY IN A CRIMINAL CASE BROUGHT UNDER THIS
3. THE STATE’S ATTORNEY OR THE STATE’S
ATTORNEY’S DESIGNEE;
4. THE ATTORNEY GENERAL OR THE ATTORNEY
GENERAL’S DESIGNEE;
5. A LAW ENFORCEMENT OFFICER;
6. THE DEFENDANT OR THE DEFENDANT’S
ATTORNEY; OR
7. THE VICTIM OR THE VICTIM’S ATTORNEY.

[(b)] (D) This section does not apply to a peaceable activity intended to express a political view or provide information to others.

[(c)] (E) A person who violates this section is guilty of a misdemeanor and on conviction is subject to:

(1) for a first offense, imprisonment not exceeding 90 days or a fine not exceeding \$500 or both; and

(2) for a second or subsequent offense, imprisonment not exceeding 180 days or a fine not exceeding \$1,000 or both.”.

AMENDMENT NO. 3

SB0858/453621/01 Judiciary Committee
Amendments to SB 858
Page 7 of 7

On page 6, strike beginning with “**(1)**” in line 8 down through “**(5)**” in line 22; in line 24, strike the brackets; in the same line, strike “**(6)**”; and after line 28, insert:

“(6) “VISUAL REPRESENTATION” DOES NOT INCLUDE A DEEP FAKE REPRESENTATION, AS DEFINED IN § 3-803 OF THIS SUBTITLE.”

On page 7, strike beginning with the comma in line 8 down through “**PERSON,**” in line 9; strike beginning with “**IF**” in line 18 down through “**PERSON,**” in line 19; and strike beginning with “**AND**” in line 23 down through “**REPRESENTATION**” in line 24.

On page 8, strike in their entirety lines 6 through 11, inclusive; in line 12, strike “3.” and substitute “2.”; and in the same line, strike “July” and substitute “October”.