

SECOND REGULAR SESSION

# HOUSE BILL NO. 2573

102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE SCHWADRON.

5402H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To amend chapters 537 and 573, RSMo, by adding thereto two new sections relating to the disclosure of intimate digital depictions, with penalty provisions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapters 537 and 573, RSMo, are amended by adding thereto two new sections, to be known as sections 537.043 and 573.570, to read as follows:

**537.043. 1. This section and section 573.570 shall be known and may be cited as "The Taylor Swift Act".**

**2. As used in this section, the following terms shall mean:**

**(1) "Consent", consent or lack of consent may be expressed or implied. Assent does not constitute consent if:**

**(a) It is given by a person who lacks the mental capacity to authorize the conduct charged to constitute the offense and such mental incapacity is manifest or known to the actor;**

**(b) It is given by a person who by reason of youth, mental disease or defect, intoxication, a drug-induced state, or any other reason is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or**

**(c) It is induced by force, duress, or deception;**

**(2) "Depicted individual", an individual who, as a result of digitization or by means of digital manipulation, appears in whole or in part in an intimate digital depiction and who is identifiable by virtue of the individual's face, likeness, or other**

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 **distinguishing characteristic, such as a unique birthmark or other recognizable feature,**  
18 **or from information displayed in connection with the digital depiction;**

19 **(3) "Digital depiction", a realistic visual depiction of an individual that has been**  
20 **created or altered using digital manipulation;**

21 **(4) "Intimate digital depiction", a digital depiction of an individual that has been**  
22 **created or altered using digital manipulation and that depicts:**

23 **(a) The uncovered genitals, pubic area, anus, or postpubescent female nipple of**  
24 **an identifiable individual;**

25 **(b) The display or transfer of bodily sexual fluids:**

26 **a. Onto any part of the body of an identifiable individual; or**

27 **b. From the body of an identifiable individual; or**

28 **(c) An identifiable individual engaging in sexually explicit conduct;**

29 **(5) "Sexually explicit conduct", actual or simulated:**

30 **(a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or**  
31 **oral-anal, whether between persons of the same or opposite sex;**

32 **(b) Bestiality;**

33 **(c) Masturbation;**

34 **(d) Sadistic or masochistic abuse; or**

35 **(e) Lascivious exhibition of the genitals or pubic area of any person.**

36 **3. Except as provided in subsection 9 of this section, an individual who is the**  
37 **subject of an intimate digital depiction that is disclosed without the consent of the**  
38 **individual where such disclosure was made by a person who knows that or recklessly**  
39 **disregards whether the individual has not consented to such disclosure may bring a civil**  
40 **action against that other person in an appropriate circuit court for relief as set forth in**  
41 **subsections 6 and 7 of this section.**

42 **4. In the case of an individual who is under eighteen years of age or is**  
43 **incompetent, incapacitated, or deceased, the legal guardian of the individual or**  
44 **representative of the individual's estate, another family member, or any person**  
45 **appointed as suitable by the court may assume the individual's rights under this section,**  
46 **but in no event shall the defendant be named as such representative or guardian.**

47 **5. For the purposes of an action under subsection 3 or 4 of this section:**

48 **(1) An individual's consent to the creation of the intimate digital depiction shall**  
49 **not establish that the individual consented to its disclosure;**

50 **(2) Consent shall be deemed validly given only if:**

51 **(a) It is set forth in an agreement written in plain language signed knowingly and**  
52 **voluntarily by the depicted individual; and**

53           (b) The written agreement includes a general description of the intimate digital  
54 depiction and, if applicable, the audiovisual work into which the depiction will be  
55 incorporated.

56           6. In a civil action filed under this section, an individual may recover any of the  
57 following:

58           (1) An amount equal to the monetary gain made by the defendant from the  
59 creation, development, or disclosure of the intimate digital depiction;

60           (2) Either of the following:

61           (a) The actual damages sustained by the individual as a result of the intimate  
62 digital depiction, including damages for emotional distress; or

63           (b) Liquidated damages in the amount of one hundred fifty thousand dollars;

64           (3) Punitive damages; and

65           (4) The cost of the action, including reasonable attorney's fees and other  
66 litigation costs reasonably incurred.

67           7. In a civil action filed under this section, a court may, in addition to any other  
68 relief available at law, order equitable relief including a temporary restraining order, a  
69 preliminary injunction, or a permanent injunction ordering the defendant to cease  
70 display or disclosure of the intimate digital depiction.

71           8. In ordering relief under this section, the court may grant injunctive relief  
72 maintaining the confidentiality of a plaintiff by using a pseudonym.

73           9. An identifiable individual shall not bring an action for relief under this section  
74 relating to:

75           (1) A disclosure made in good faith:

76           (a) To or by a law enforcement officer or agency in the course of reporting or  
77 investigating unlawful activity or unsolicited or unwelcome conduct; or

78           (b) As part of a legal proceeding;

79           (2) A matter of legitimate public concern or public interest, except that it shall  
80 not be considered a matter of legitimate public interest or public concern solely because  
81 the depicted individual is a public figure; or

82           (3) A disclosure reasonably intended to assist the identifiable individual.

83           10. A court may authorize an in camera proceeding under this section.

84           11. It shall not be a defense to an action under this section that there is a  
85 disclaimer stating that the intimate digital depiction of the depicted individual was  
86 unauthorized or that the depicted individual did not participate in the creation or  
87 development of the material.

88           12. For the purposes of this section, a provider of an interactive computer  
89 service shall not be held liable due to:

90 (1) Any action voluntarily taken in good faith to restrict access to or availability  
91 of intimate digital depictions; or

92 (2) Any action taken to enable or make available to information content  
93 providers or other persons the technical means to restrict access to intimate digital  
94 depictions.

573.570. 1. As used in this section, the following terms shall mean:

2 (1) "Consent", consent or lack of consent may be expressed or implied. Assent  
3 does not constitute consent if:

4 (a) It is given by a person who lacks the mental capacity to authorize the conduct  
5 charged to constitute the offense and such mental incapacity is manifest or known to the  
6 actor;

7 (b) It is given by a person who by reason of youth, mental disease or defect,  
8 intoxication, a drug-induced state, or any other reason is manifestly unable or known by  
9 the actor to be unable to make a reasonable judgment as to the nature or harmfulness of  
10 the conduct charged to constitute the offense; or

11 (c) It is induced by force, duress, or deception;

12 (2) "Depicted individual", an individual who, as a result of digitization or by  
13 means of digital manipulation, appears in whole or in part in an intimate digital  
14 depiction and who is identifiable by virtue of the individual's face, likeness, or other  
15 distinguishing characteristic, such as a unique birthmark or other recognizable feature,  
16 or from information displayed in connection with the digital depiction;

17 (3) "Digital depiction", a realistic visual depiction of an individual that has been  
18 created or altered using digital manipulation;

19 (4) "Intimate digital depiction", a digital depiction of an individual that has been  
20 created or altered using digital manipulation and that depicts:

21 (a) The uncovered genitals, pubic area, anus, or postpubescent female nipple of  
22 an identifiable individual;

23 (b) The display or transfer of bodily sexual fluids:

24 a. Onto any part of the body of an identifiable individual; or

25 b. From the body of an identifiable individual; or

26 (c) An identifiable individual engaging in sexually explicit conduct;

27 (5) "Sexually explicit conduct", actual or simulated:

28 (a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or  
29 oral-anal, whether between persons of the same or opposite sex;

30 (b) Bestiality;

31 (c) Masturbation;

32 (d) Sadistic or masochistic abuse; or

- 33 (e) Lascivious exhibition of the genitals or pubic area of any person.
- 34 2. A person commits the offense of disclosure of an intimate digital depiction if
- 35 the person discloses or threatens to disclose an intimate digital depiction:
- 36 (1) With the intent to harass, annoy, threaten, alarm, or cause substantial harm
- 37 to the finances or reputation of the depicted individual; or
- 38 (2) With the actual knowledge that, or reckless disregard for whether, such
- 39 disclosure or threatened disclosure will cause physical, emotional, reputational, or
- 40 economic harm to the depicted individual.
- 41 3. (1) A violation of subsection 2 of this section shall be a class E felony.
- 42 (2) A violation of subsection 2 of this section shall be a class C felony if:
- 43 (a) The violation is a second or other subsequent violation of subsection 2 of this
- 44 section; or
- 45 (b) The violation is such that the digital depiction could be reasonably expected
- 46 to:
  - 47 a. Affect the conduct of any administrative, legislative, or judicial proceeding of
  - 48 a federal, state, local, or tribal government agency, including the administration of an
  - 49 election or the conduct of foreign relations; or
  - 50 b. Facilitate violence.
- 51 4. It shall not be a defense to an action under this section that there is a
- 52 disclaimer stating that the intimate digital depiction of the depicted individual was
- 53 unauthorized or that the depicted individual did not participate in the creation or
- 54 development of the material.
- 55 5. For the purposes of this section a provider of an interactive computer service
- 56 shall not be held liable due to:
  - 57 (1) Any action voluntarily taken in good faith to restrict access to or availability
  - 58 of intimate digital depictions; or
  - 59 (2) Any action taken to enable or make available to information content
  - 60 providers or other persons the technical means to restrict access to intimate digital
  - 61 depictions.

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