

FIRST REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 362

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WILLIAMS.

1251H.02P

JOSEPH ENGLER, Chief Clerk

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.

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. 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 creator;

(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 creator 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) "Creator", any person who utilizes or deploys artificial intelligence or other digital technology to generate synthetic media. "Creator" shall not include the provider or developer of any technology used in the creation of synthetic media;

(3) "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

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 depiction and who is identifiable by virtue of the individual's face, likeness, or other
18 distinguishing characteristic, such as a unique birthmark or other recognizable feature,
19 or from information displayed in connection with the digital depiction;

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

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

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

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

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

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

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

30 (6) "Sexually explicit conduct", actual or simulated:

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

33 (b) Bestiality;

34 (c) Masturbation;

35 (d) Sadistic or masochistic abuse; or

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

37 2. Except as provided in subsection 8 of this section, an individual who is the
38 subject of an intimate digital depiction that is disclosed without the consent of the
39 individual where such disclosure was made by a creator who knows that or recklessly
40 disregards whether the individual has not consented to such disclosure may bring a civil
41 action against that other person in an appropriate circuit court for relief as set forth in
42 subsections 5 and 6 of this section.

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

48 4. For the purposes of an action under subsection 2 or 3 of this section:

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

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

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

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

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

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

61 (2) Either of the following:

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

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

65 (3) Punitive damages; and

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

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

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

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

76 (1) A disclosure made in good faith:

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

79 (b) As part of a legal proceeding;

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

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

84 9. A court may authorize an in camera proceeding under this section.

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

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

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

93 (2) Content provided by another person; or

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

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

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

7 (2) "Digital depiction", a realistic visual depiction of an individual that has been
8 created or altered using digital manipulation;

9 (3) "Intimate digital depiction", a digital depiction of an individual that has been
10 created or altered using digital manipulation and that depicts:

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

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

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

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

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

17 (4) "Sexually explicit conduct", actual or simulated:

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

20 (b) Bestiality;

21 (c) Masturbation;

22 (d) Sadistic or masochistic abuse; or

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

24 2. A person commits the offense of disclosure of an intimate digital depiction if
25 the person discloses or threatens to disclose an intimate digital depiction:

26 (1) With the intent to harass, annoy, threaten, alarm, or cause substantial harm
27 to the finances or reputation of the depicted individual; or

28 (2) With the actual knowledge that, or reckless disregard for whether, such
29 disclosure or threatened disclosure will cause physical, emotional, reputational, or
30 economic harm to the depicted individual.

31 3. (1) A violation of subsection 2 of this section shall be a class E felony.

32 **(2) A violation of subsection 2 of this section shall be a class C felony if:**

33 **(a) The violation is a second or other subsequent violation of subsection 2 of this**
34 **section; or**

35 **(b) The violation is such that the digital depiction could be reasonably expected**
36 **to:**

37 **a. Affect the conduct of any administrative, legislative, or judicial proceeding of**
38 **a federal, state, local, or tribal government agency, including the administration of an**
39 **election or the conduct of foreign relations; or**

40 **b. Facilitate violence.**

41 **4. It shall not be a defense to an action under this section that there is a**
42 **disclaimer stating that the intimate digital depiction of the depicted individual was**
43 **unauthorized or that the depicted individual did not participate in the creation or**
44 **development of the material.**

45 **5. Nothing in this section shall be construed to impose liability upon the**
46 **following entities:**

47 **(1) An interactive computer service, as defined in 47 U.S.C. Section 230(f)(2);**

48 **(2) A provider of public mobile services or private mobile radio services, as those**
49 **terms are defined under section 573.110; and**

50 **(3) A telecommunications network or broadband provider.**

✓