

SECOND REGULAR SESSION

HOUSE BILL NO. 2361

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SCHMIDT.

4792H.01I

JOSEPH ENGLER, Chief Clerk

AN ACT

To amend chapter 537, RSMo, by adding thereto one new section relating to altered sexual depictions, with penalty provisions.

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

Section A. Chapter 537, RSMo, is amended by adding thereto one new section, to be known as section 537.585, to read as follows:

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

(1) "Altered sexual depiction", any visual depiction that, as a result of any type of digital, electronic, mechanical, or other modification, alteration, or adaptation, depicts a realistic version of an identifiable person:

(a) With the nude body parts of another person as the nude body parts of the identifiable person;

(b) With computer-generated nude body parts as the nude body parts of the identifiable person; or

(c) Engaging in sexual conduct in which the identifiable person did not engage;

(2) "Communication services", the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing for which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred

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.

18 to as voice over internet protocol services or is classified by the Federal
19 Communications Commission as enhanced or value-added. The term shall not include:

- 20 (a) Information services;
- 21 (b) Installation or maintenance of wiring or equipment on a customer's
22 premises;
- 23 (c) The sale or rental of tangible personal property;
- 24 (d) The sale of advertising including, but not limited to, directory advertising;
- 25 (e) Bad check charges;
- 26 (f) Late payment charges;
- 27 (g) Billing and collection services; or
- 28 (h) Internet access service, email service, electronic bulletin board service, or
29 similar online computer services;
- 30 (3) "Covered platform", a website, online service, online application, or mobile
31 application that serves the public and:
 - 32 (a) That primarily provides a forum for user-generated content, including
33 messages, videos, images, games, and audio files; or
 - 34 (b) For which it is in the regular course of trade or business of the website, online
35 service, online application, or mobile application to publish, curate, host, or make
36 available content of nonconsensual altered sexual depictions;
- 37 (4) "Generate", to create, alter, adapt, or modify any image by electronic,
38 mechanical, or other computer-generated means to portray an identifiable person or to
39 offer or agree to do the same;
- 40 (5) "Identifiable person", a person who is recognizable as an actual person by
41 the person's face, likeness, or other distinguishing characteristic, such as a unique
42 birthmark, or other recognizable feature;
- 43 (6) "Nude body parts", the human male or female genitals, pubic area, or
44 buttocks with less than fully opaque covering; or the female breast with less than a fully
45 opaque covering of any portion thereof below the top of the nipple; or the depiction of
46 covered male genitals in a discernibly turgid state. The term does not include a breast-
47 feeding mother;
- 48 (7) "Promote", to issue, sell, give, provide, lend, mail, deliver, transfer, transmit,
49 transmute, publish, distribute, circulate, disseminate, present, exhibit, send, post, share,
50 or advertise or to offer or agree to do the same;
- 51 (8) "Visual depiction", includes, but is not limited to, a photograph, picture,
52 image, motion picture, film, video, or other visual representation.

53 2. A person commits the offense of generating, soliciting, or promoting or
54 possessing with the intent to promote an altered sexual depiction of an identifiable
55 person if the person:

56 (1) Generates any altered sexual depiction of an identifiable person without the
57 consent of the identifiable person;

58 (2) Solicits any altered sexual depiction of an identifiable person without the
59 consent of the identifiable person and knows or reasonably should know that such visual
60 depiction is an altered sexual depiction; or

61 (3) Willfully and maliciously promotes, or possesses with the intent to
62 maliciously promote, any altered sexual depiction of an identifiable person without
63 the consent of the identifiable person and knows or reasonably should know that such
64 visual depiction is an altered sexual depiction.

65 3. The offense of generating, soliciting, or promoting or possessing with the
66 intent to promote an altered sexual depiction of an identifiable person is a class C felony.

67 4. Every act, thing, or transaction prohibited by this section constitutes a
68 separate offense and is punishable as such.

69 5. The presence of a disclaimer within an altered sexual depiction that notifies a
70 viewer that the person or persons depicted did not consent to or participate in the
71 generation or promotion of the material, or that the person or persons depicted did not
72 actually perform the actions portrayed, is not a defense and does not relieve a person of
73 criminal liability under this section.

74 6. An aggrieved person may initiate a civil action against a person who violates
75 subdivision (1) or (3) of subsection 2 of this section to obtain appropriate relief in order
76 to prevent or remedy such violation, including all of the following:

77 (1) Injunctive relief;

78 (2) Monetary damages to include ten thousand dollars or actual damages
79 incurred as a result of a violation of subdivision (1) or (3) of subsection 2 of this section,
80 whichever is greater; and

81 (3) Reasonable attorney's fees and costs.

82 7. (1) No later than December 31, 2026, a covered platform shall establish a
83 process whereby an identifiable person or an authorized person acting on behalf of such
84 person may:

85 (a) Notify the covered platform of an altered sexual depiction published on the
86 covered platform that includes a depiction of the identifiable person and was published
87 without the consent of the identifiable person; and

88 (b) Submit a request for the covered platform to remove such altered sexual
89 depiction.

90 (2) A notification and request for removal of an altered sexual depiction
91 submitted under subdivision (1) of this subsection shall include, in writing:

92 (a) A physical or electronic signature of the identifiable person or authorized
93 person;

94 (b) An identification of, and information reasonably sufficient for the covered
95 platform to locate, the altered sexual depiction of the identifiable person;

96 (c) A brief statement that the identifiable person has a good faith belief that any
97 altered sexual depiction identified under paragraph (b) of this subdivision is not
98 consensual, including any relevant information for the covered platform to determine
99 the altered sexual depiction was published without the consent of the identifiable
100 person; and

101 (d) Information sufficient to enable the covered platform to contact the
102 identifiable person or authorized person.

103 (3) A covered platform shall provide on the platform a clear and conspicuous
104 notice, which may be provided through a clear and conspicuous link to another web
105 page or disclosure, of the notification and removal process established under subdivision
106 (1) of this subsection that:

107 (a) Is easy to read and in plain language; and

108 (b) Provides information regarding the responsibilities of the covered platform
109 under this subsection, including a description of how a person can submit a notification
110 and request for removal.

111 (4) Upon receiving a valid removal request from an identifiable person or an
112 authorized person using the process described in subdivision (1) of this subsection, a
113 covered platform shall, as soon as practicable, but not later than forty-eight hours after
114 receiving such request:

115 (a) Remove the altered sexual depiction; and

116 (b) Make reasonable efforts to identify and remove any known identical copies
117 of such altered sexual depiction.

118 (5) A covered platform shall not be liable for any claim based on the covered
119 platform's good faith disabling of access to, or removal of, material claimed to be a
120 nonconsensual altered sexual depiction based on facts or circumstances from which the
121 unlawful publishing of an altered sexual depiction is apparent, regardless of whether the
122 altered sexual depiction is ultimately determined to be unlawful.

123 (6) In addition to the remedies under subsection 6 of this section, a failure to
124 reasonably comply with the notice and removal obligations under this subsection shall
125 be treated as an unfair practice under section 407.020, and the person or entity
126 responsible shall be subject to the penalties provided in section 407.020.

127 **(7) This subsection shall not apply to the following:**

128 **(a) An information service or a telecommunications service, as those terms are**
129 **defined in 47 U.S.C. Section 153, providing services for content provided by another**
130 **person;**

131 **(b) Email;**

132 **(c) Except as provided in paragraph (b) of subdivision (3) of subsection 1 of this**
133 **section, an online service, application, or website:**

134 **a. That consists primarily of content that is not user generated but is preselected**
135 **by the provider of such online service, application, or website; and**

136 **b. For which any chat, comment, or interactive functionality is incidental to,**
137 **directly related to, or dependent on the provision of the content described in**
138 **subparagraph a. of this paragraph.**

139 **8. The criminal and civil penalties provided in this section shall not apply to:**

140 **(1) A provider of an interactive computer service as defined in 47 U.S.C. Section**
141 **230(f)(2), of an information service as defined in 47 U.S.C. Section 153, or of a**
142 **communications service that provides the transmission, storage, or caching of electronic**
143 **communications or messages of others; another related telecommunications or**
144 **commercial mobile radio service; or content provided by another person;**

145 **(2) A law enforcement officer as defined in section 590.502, or any local, state,**
146 **federal, or military law enforcement agency engaged in the performance of his or her**
147 **duties as a law enforcement officer or the duties of the law enforcement agency;**

148 **(3) A person reporting unlawful activity; or**

149 **(4) A person participating in a hearing, trial, or other legal proceeding.**

150 **9. A violation of this section is committed within this state if any conduct that is**
151 **an element of the offense, or any harm to the depicted person resulting from the offense,**
152 **occurs within this state.**

153 **10. Prosecution of a person for an offense under this section shall not preclude**
154 **prosecution of that person in this state for a violation of any other law of this state,**
155 **including a law providing for greater penalties than prescribed in this section or any**
156 **other crime related to child pornography or the sexual performance or the sexual**
157 **exploitation of children.**

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