

SECOND REGULAR SESSION

HOUSE BILL NO. 1887

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HAUSMAN.

5399H.01I

JOSEPH ENGLER, Chief Clerk

AN ACT

To amend chapters 537 and 573, RSMo, by adding thereto two new sections relating to the disclosure of 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. 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 mean:

(1) "Consent", a freely given agreement to the disclosure of an intimate digital depiction as provided by subsection 5 of this section. Assent does not constitute consent if:

(a) It is given by a depicted individual who lacks the mental capacity to authorize the disclosure of an intimate digital depiction and such mental incapacity is manifest or known to a person who discloses the intimate digital depiction;

(b) It is given by a depicted individual 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 person who discloses an intimate digital depiction to be unable, to make a reasonable judgment as to the nature or harmfulness of the disclosure of an intimate digital depiction; 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 a digital depiction and who

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

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

23 (4) "Information content providers", any person or entity that is responsible, in
24 whole or in part, for the creation or development of information provided through the
25 internet or any other interactive computer service;

26 (5) "Interactive computer service", any information service, system or access
27 software provider that provides or enables computer access by multiple users to a
28 computer server, including specifically a service or system that provides access to the
29 internet and such systems operated or services offered by libraries or educational
30 institutions;

31 (6) "Intimate digital depiction", a digital depiction of an individual that has been
32 created or altered using digital manipulation and that depicts:

33 (a) The uncovered genitals, pubic area, anus, or postpubescent female nipple of
34 the individual;

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

36 a. Onto any part of the body of the individual; or

37 b. From the body of the individual; or

38 (c) The individual engaging in sexually explicit conduct;

39 (7) "Sexually explicit conduct", actual or simulated:

40 (a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or
41 oral-anal, whether between individuals of the same or opposite sex;

42 (b) Bestiality;

43 (c) Masturbation;

44 (d) Sadistic or masochistic abuse; or

45 (e) Lascivious exhibition of the genitals or pubic area of any individual.

46 3. Except as provided in subsection 9 or 12 of this section, a depicted individual
47 who is under eighteen years of age and is the subject of a digital depiction or a depicted
48 individual who is the subject of an intimate digital depiction that is disclosed without the
49 consent of the depicted individual where such disclosure was made by a person who
50 knows, or recklessly disregards, that the depicted individual has not consented to such
51 disclosure may bring a civil action against that other person in an appropriate circuit
52 court for relief as set forth in subsections 6 and 7 of this section.

53 4. In the case of a depicted individual who is under eighteen years of age or is
54 incompetent, incapacitated, or deceased, the legal guardian of the depicted individual or

55 representative of the depicted individual's estate, another family member, or any person
56 appointed as suitable by the court may assume the depicted individual's rights under
57 this section, but in no event shall a defendant be named as such representative or
58 guardian of the depicted individual.

59 **5. For the purposes of an action brought pursuant to subsection 3 or 4 of this**
60 **section:**

61 **(1) A depicted individual's consent to the creation of the digital depiction shall**
62 **not establish that the depicted individual consented to the disclosure of the digital**
63 **depiction;**

64 **(2) Consent of disclosure of an intimate digital depiction shall be deemed validly**
65 **given only if:**

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

68 **(b) The written agreement includes a general description of the intimate digital**
69 **depiction and, if applicable, the audiovisual work into which the intimate digital**
70 **depiction will be incorporated.**

71 **6. In a civil action brought pursuant to this section, a depicted individual may**
72 **recover any of the following:**

73 **(1) An amount equal to the monetary gain made by the defendant from the**
74 **creation, development, or disclosure of the digital depiction;**

75 **(2) Either of the following:**

76 **(a) The actual damages sustained by the depicted individual as a result of the**
77 **digital depiction, including damages for emotional distress; or**

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

79 **(3) Punitive damages; and**

80 **(4) The cost of the action, including reasonable attorney's fees and court costs.**

81 **7. In a civil action brought pursuant to this section, the court may, in addition to**
82 **any other relief available at law, order equitable relief, including a temporary**
83 **restraining order, a preliminary injunction, or a permanent injunction ordering the**
84 **defendant to cease the display or disclosure of the digital depiction.**

85 **8. In ordering relief pursuant to this section, the court may grant injunctive**
86 **relief maintaining the confidentiality of a plaintiff by using a pseudonym.**

87 **9. A depicted individual shall not bring an action for relief under this section if:**

88 **(1) The disclosure was made in good faith:**

89 **(a) To or by a law enforcement officer or agency in the course of reporting or**
90 **investigating unlawful conduct; or**

91 **(b) As part of a legal proceeding;**

92 (2) The disclosure was a matter of legitimate public concern or public interest,
93 except that the disclosure shall not be considered a matter of legitimate public interest
94 or public concern solely because the depicted individual is a public figure; or

95 (3) The disclosure reasonably intended to assist the depicted individual.

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

97 11. It shall not be a defense to an action under this section that there is a
98 disclaimer stating that the digital depiction was unauthorized or that the depicted
99 individual did not participate in the creation or development of the digital depiction.

100 12. A provider of an interactive computer service shall not be held liable in an
101 action brought pursuant to this section for:

102 (1) Any action voluntarily taken in good faith to restrict access to or availability
103 of digital depictions; or

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

573.570. 1. As used in this section, the following terms 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 a digital depiction and who
4 is identifiable by virtue of the individual's face, likeness, or other distinguishing
5 characteristic, such as a unique birthmark or other recognizable feature, or from
6 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) "Information content providers", any person or entity that is responsible, in
10 whole or in part, for the creation or development of information provided through the
11 internet or any other interactive computer service;

12 (4) "Interactive computer service", any information service, system or access
13 software provider that provides or enables computer access by multiple users to a
14 computer server, including specifically a service or system that provides access to the
15 internet and such systems operated or services offered by libraries or educational
16 institutions;

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

19 (a) The uncovered genitals, pubic area, anus, or postpubescent female nipple of
20 the individual;

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

22 a. Onto any part of the body of the individual; or

23 b. From the body of the individual; or

- 24 (c) The individual engaging in sexually explicit conduct;
25 (6) "Sexually explicit conduct", actual or simulated:
26 (a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or
27 oral-anal, whether between persons of the same or opposite sex;
28 (b) Bestiality;
29 (c) Masturbation;
30 (d) Sadistic or masochistic abuse; or
31 (e) Lascivious exhibition of the genitals or pubic area of any individual.
- 32 2. A person commits the offense of disclosure of a digital depiction if the person
33 discloses, or threatens to disclose:
34 (1) A digital depiction of a depicted individual who is under the age of eighteen;
35 or
36 (2) An intimate digital depiction:
37 (a) With the intent to harass, annoy, threaten, alarm, or cause substantial harm
38 to the finances or reputation of the depicted individual; or
39 (b) With the actual knowledge that or reckless disregard for whether such
40 disclosure or threatened disclosure will cause physical, emotional, reputational, or
41 economic harm to the depicted individual.
- 42 3. (1) A violation of subsection 2 of this section shall be a class E felony.
43 (2) A violation of subsection 2 of this section shall be a class C felony if:
44 (a) The violation is a second or other subsequent violation of subsection 2 of this
45 section; or
46 (b) The violation is such that the digital depiction could be reasonably expected
47 to:
48 a. Affect the conduct of any administrative, legislative, or judicial proceeding of
49 a federal, state, local, or tribal government agency, including the administration of an
50 election or the conduct of foreign relations; or
51 b. Facilitate violence.
- 52 4. It shall not be a defense to the offense of disclosure of a digital depiction as
53 provided by this section that there is a disclaimer stating that the digital depiction was
54 unauthorized or that the depicted individual did not participate in the creation or
55 development of the digital depiction.
- 56 5. For the purposes of this section, a provider of an interactive computer service
57 shall not have committed the offense of disclosure of a digital depiction due to:
58 (1) Any action voluntarily taken in good faith to restrict access to or availability
59 of digital depictions; or

60 **(2) Any action taken to enable or make available to information content**
61 **providers or other persons the technical means to restrict access to digital depictions.**

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