

SECOND REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR

**HOUSE BILL NOS. 1887, 2361, 1913,  
2862 & 2321**

**103RD GENERAL ASSEMBLY**

5399H.03C

JOSEPH ENGLER, 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 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. 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 4 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 is identifiable by virtue of the individual's face, likeness, or other distinguishing

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 **characteristic, such as a unique birthmark or other recognizable feature, or from**  
18 **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) "Information content providers", any person or entity that is responsible, in**  
22 **whole or in part, for the creation or development of information provided through the**  
23 **internet or any other interactive computer service;**

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

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

31 **(a) The uncovered genitals, pubic area, anus, or postpubescent female nipple of**  
32 **the individual;**

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

34 **a. Onto any part of the body of the individual; or**

35 **b. From the body of the individual; or**

36 **(c) The individual engaging in sexually explicit conduct;**

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

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

40 **(b) Bestiality;**

41 **(c) Masturbation;**

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

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

44 **2. Except as provided in subsection 8 or 11 of this section, a depicted individual**  
45 **who is under eighteen years of age and is the subject of a digital depiction or a depicted**  
46 **individual who is the subject of an intimate digital depiction that is disclosed without the**  
47 **consent of the depicted individual where such disclosure was made by a person who**  
48 **knows, or recklessly disregards, that the depicted individual has not consented to such**  
49 **disclosure may bring a civil action against that other person in an appropriate circuit**  
50 **court for relief as set forth in subsections 5 and 6 of this section.**

51 **3. In the case of a depicted individual who is under eighteen years of age or is**  
52 **incompetent, incapacitated, or deceased, the legal guardian of the depicted individual or**  
53 **representative of the depicted individual's estate, another family member, or any person**

54 appointed as suitable by the court may assume the depicted individual's rights under  
55 this section, but in no event shall a defendant be named as such representative or  
56 guardian of the depicted individual.

57 4. For the purposes of an action brought pursuant to subsection 2 or 3 of this  
58 section:

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

62 (2) Consent of disclosure of an intimate digital depiction shall be deemed validly  
63 given only if:

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

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

69 5. In a civil action brought pursuant to this section, a depicted individual may  
70 recover any of the following:

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

73 (2) Either of the following:

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

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

77 (3) Punitive damages; and

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

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

83 7. In ordering relief pursuant to this section, the court may grant injunctive  
84 relief maintaining the confidentiality of a plaintiff by using a pseudonym.

85 8. A depicted individual shall not bring an action for relief under this section if:

86 (1) The disclosure was made in good faith:

87 (a) To or by a law enforcement officer or agency in the course of reporting or  
88 investigating unlawful conduct; or

89 (b) As part of a legal proceeding;

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

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

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

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

98 11. A provider of an interactive computer service shall not be held liable in an  
99 action brought pursuant to this section for:

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

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

104 12. A civil action may be brought against a parent or legal guardian who  
105 discloses an intimate digital depiction of his or her child. As used in this subsection, the  
106 term "child" means a person under eighteen years of age.

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; or**  
35           **(2) An intimate digital depiction:**  
36           **(a) With the intent to harass, annoy, threaten, alarm, or cause substantial harm**  
37 **to the finances or reputation of the depicted individual; or**  
38           **(b) 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 unless**  
42 **the digital depiction is of a depicted individual who is under eighteen years of age in**  
43 **which case it shall be a class D felony.**  
44           **(2) A violation of subsection 2 of this section shall be a class C felony if:**  
45           **(a) The violation is a second or other subsequent violation of subsection 2 of this**  
46 **section; or**  
47           **(b) The violation is such that the digital depiction could be reasonably expected**  
48 **to:**  
49           **a. Affect the conduct of any administrative, legislative, or judicial proceeding of**  
50 **a federal, state, local, or tribal government agency, including the administration of an**  
51 **election or the conduct of foreign relations; or**  
52           **b. Facilitate violence.**  
53           **4. It shall not be a defense to the offense of disclosure of a digital depiction as**  
54 **provided by this section that there is a disclaimer stating that the digital depiction was**  
55 **unauthorized or that the depicted individual did not participate in the creation or**  
56 **development of the digital depiction.**

57           **5. (1) No later than December 31, 2026, an information content provider shall**  
58 **establish a process whereby a depicted individual or an authorized person acting on**  
59 **behalf of such individual may:**

60           **(a) Notify the information content provider of a published digital depiction or**  
61 **intimate digital depiction that includes a depiction of the depicted individual and such**  
62 **depiction was published without the consent of the depicted individual; and**

63           **(b) Submit a request for the information content provider to remove such digital**  
64 **depiction or intimate digital depiction.**

65           **(2) A notification and request for removal of a digital depiction or intimate**  
66 **digital depiction submitted under subdivision (1) of this subsection shall include, in**  
67 **writing:**

68           **(a) A physical or electronic signature of the depicted individual or authorized**  
69 **person;**

70           **(b) An identification of, and information reasonably sufficient for the**  
71 **information content provider to locate, the digital depiction or intimate digital**  
72 **depiction of the depicted individual;**

73           **(c) A brief statement that the depicted individual has a good faith belief that any**  
74 **digital depiction or intimate digital depiction identified under paragraph (b) of this**  
75 **subdivision is not consensual, including any relevant information for the information**  
76 **content provider to determine the digital depiction or intimate digital depiction was**  
77 **published without the consent of the depicted individual; and**

78           **(d) Information sufficient to enable the information content provider to contact**  
79 **the depicted individual or authorized person.**

80           **(3) An information content provider shall provide on the platform a clear and**  
81 **conspicuous notice, which may be provided through a clear and conspicuous link to**  
82 **another web page or disclosure, of the notification and removal process established**  
83 **under subdivision (1) of this subsection that:**

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

85           **(b) Provides information regarding the responsibilities of the information**  
86 **content provider under this subsection, including a description of how an individual can**  
87 **submit a notification and request for removal.**

88           **(4) Upon receiving a valid removal request from a depicted individual or an**  
89 **authorized person using the process described in subdivision (1) of this subsection, an**  
90 **information content provider shall, as soon as practicable, but not later than forty-eight**  
91 **hours after receiving such request:**

92           **(a) Remove the digital depiction or intimate digital depiction; and**

93 (b) Make reasonable efforts to identify and remove any known identical copies  
94 of such digital depiction or intimate digital depiction.

95 (5) An information content provider shall not be liable for any claim based on  
96 the information content provider's good faith disabling of access to, or removal of,  
97 material claimed to be a nonconsensual digital depiction or intimate digital depiction  
98 based on facts or circumstances from which the unlawful publishing of a digital  
99 depiction or intimate digital depiction is apparent, regardless of whether the digital  
100 depiction or intimate digital depiction is ultimately determined to be unlawful.

101 (6) A failure to reasonably comply with the notice and removal obligations under  
102 this subsection shall be treated as an unfair practice under section 407.020, and the  
103 person or entity responsible shall be subject to the penalties provided in section 407.020.

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

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

108 (b) Email;

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

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

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

116 6. The criminal penalties provided in subsection 3 of this section shall apply to  
117 any parent or legal guardian who discloses an intimate digital depiction of his or her  
118 child. As used in this subsection, the term "child" means a person under eighteen years  
119 of age.

120 7. The criminal penalties provided in this section shall not apply to:

121 (1) A provider of an interactive computer service as defined in 47 U.S.C. Section  
122 230(f)(2), of an information service as defined in 47 U.S.C. Section 153, or of a  
123 communications service that provides the transmission, storage, or caching of electronic  
124 communications or messages of others; another related telecommunications or  
125 commercial mobile radio service; or content provided by another person;

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

129 (3) A person reporting unlawful activity; or

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

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