

HB 2361 -- ALTERED SEXUAL DEPICTIONS

SPONSOR: Schmidt

This bill enacts provisions relating to altered sexual depictions.

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

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

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

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

This offense is a class C felony, and every act, thing, or transaction prohibited by this provision is a separate offense.

The presence of a disclaimer within an altered sexual depiction notifying a viewer that the depicted person did not consent to or participate in the generation or promotion of the material, or that the person did not actually perform the portrayed actions, is not a defense.

An aggrieved individual can initiate a civil action against a person violating the provisions of this bill to obtain appropriate relief, including injunctive relief, monetary damages, and attorney's fees and costs.

This bill requires covered platforms, as that term is defined in the bill, to establish a process whereby an identifiable person or an authorized person acting on that person's behalf can notify the covered platform of a published altered sexual depiction on the covered platform, and submit a request to remove the altered sexual depiction. The bill specifies what must be included in the request for removal, and requires the covered platform to

post on the platform a clear notice of the notification and removal process.

Upon receipt of a valid removal request, the covered platform must remove the depiction and any known copies of such depiction as soon as practicable, but not later than 48 hours after receiving the request to remove. Failure to reasonably comply with the provisions of notification and removal described in this bill will be treated as an unfair practice under current law.

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

The bill describes certain entities for which the provisions of this bill relating to the notification and removal requirements do not apply, including an information or telecommunications service, email, and certain online services, applications, or websites.

Additionally, the bill describes certain entities for which the criminal and civil penalties do not apply, including a provider of an interactive computer service, a law enforcement officer, a person reporting unlawful activity, and a participant in a hearing, trial, or other legal proceeding.