

SENATE BILL NO. 1424

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR FITZWATER.

5460S.01I

KRISTINA MARTIN, Secretary

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
2 adding thereto two new sections, to be known as sections 537.043
3 and 573.570, to read as follows:

537.043. 1. This section and section 573.570 shall be
2 known and may be cited as "The Taylor Swift Act".

3 2. As used in this section, the following terms mean:

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

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

13 (b) It is given by a depicted individual who by reason
14 of youth, mental disease or defect, intoxication, a drug-
15 induced state, or any other reason is manifestly unable, or
16 known by the person who discloses an intimate digital
17 depiction to be unable, to make a reasonable judgment as to
18 the nature or harmfulness of the disclosure of an intimate
19 digital depiction; or

20 (c) It is induced by force, duress, or deception;

21 (2) "Depicted individual", an individual who, as a
22 result of digitization or by means of digital manipulation,
23 appears in whole or in part in an intimate digital depiction
24 and who is identifiable by virtue of the individual's face,
25 likeness, or other distinguishing characteristic, such as a
26 unique birthmark or other recognizable feature, or from
27 information displayed in connection with the digital
28 depiction;

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

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

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

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

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

39 b. From the body of the individual; or

40 (c) The individual engaging in sexually explicit
41 conduct;

42 (5) "Sexually explicit conduct", actual or simulated:

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

46 (b) Bestiality;

47 (c) Masturbation;

48 (d) Sadistic or masochistic abuse; or

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

51 3. Except as provided in subsection 9 or 12 of this
52 section, a depicted individual who is the subject of an

53 intimate digital depiction that is disclosed without the
54 consent of the depicted individual where such disclosure was
55 made by a person who knows, or recklessly disregards, that
56 the depicted individual has not consented to such disclosure
57 may bring a civil action against that other person in an
58 appropriate circuit court for relief as set forth in
59 subsections 6 and 7 of this section.

60 4. In the case of a depicted individual who is under
61 eighteen years of age or is incompetent, incapacitated, or
62 deceased, the legal guardian of the depicted individual or
63 representative of the depicted individual's estate, another
64 family member, or any person appointed as suitable by the
65 court may assume the depicted individual's rights under this
66 section, but in no event shall a defendant be named as such
67 representative or guardian of the depicted individual.

68 5. For the purposes of an action brought pursuant to
69 subsection 3 or 4 of this section:

70 (1) A depicted individual's consent to the creation of
71 the intimate digital depiction shall not establish that the
72 depicted individual consented to the disclosure of the
73 intimate digital depiction;

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

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

78 (b) The written agreement includes a general
79 description of the intimate digital depiction and, if
80 applicable, the audiovisual work into which the intimate
81 digital depiction will be incorporated.

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

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

87 (2) Either of the following:

88 (a) The actual damages sustained by the depicted
89 individual as a result of the intimate digital depiction,
90 including damages for emotional distress; or

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

93 (3) Punitive damages; and

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

96 7. In a civil action brought pursuant to this section,
97 the court may, in addition to any other relief available at
98 law, order equitable relief, including a temporary
99 restraining order, a preliminary injunction, or a permanent
100 injunction ordering the defendant to cease the display or
101 disclosure of the intimate digital depiction.

102 8. In ordering relief pursuant to this section, the
103 court may grant injunctive relief maintaining the
104 confidentiality of a plaintiff by using a pseudonym.

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

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

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

110 (b) As part of a legal proceeding;

111 (2) The disclosure was a matter of legitimate public
112 concern or public interest, except that the disclosure shall
113 not be considered a matter of legitimate public interest or
114 public concern solely because the depicted individual is a
115 public figure; or

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

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

120 11. It shall not be a defense to an action under this
121 section that there is a disclaimer stating that the intimate
122 digital depiction was unauthorized or that the depicted
123 individual did not participate in the creation or
124 development of the intimate digital depiction.

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

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

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

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

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

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

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

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

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

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

21 b. From the body of the individual; or

22 (c) The individual engaging in sexually explicit
23 conduct;

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

25 (a) Sexual intercourse, including genital-genital,
26 oral-genital, anal-genital, or oral-anal, whether between
27 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
32 area of any individual.

33 2. A person commits the offense of disclosure of an
34 intimate digital depiction if the person discloses, or
35 threatens to disclose, an intimate digital depiction:

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

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

43 3. (1) A violation of subsection 2 of this section
44 shall be a class E felony.

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

47 (a) The violation is a second or other subsequent
48 violation of subsection 2 of this section; or

49 (b) The violation is such that the digital depiction
50 could be reasonably expected to:

51 a. Affect the conduct of any administrative,
52 legislative, or judicial proceeding of a federal, state,
53 local, or tribal government agency, including the
54 administration of an election or the conduct of foreign
55 relations; or

56 b. Facilitate violence.

57 4. It shall not be a defense to the offense of
58 disclosure of an intimate digital depiction as provided by
59 this section that there is a disclaimer stating that the
60 intimate digital depiction was unauthorized or that the
61 depicted individual did not participate in the creation or
62 development of the intimate digital depiction.

63 5. For the purposes of this section, a provider of an
64 interactive computer service shall not have committed the
65 offense of disclosure of an intimate digital depiction due
66 to:

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

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

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