

SENATE BILL NO. 411

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR FITZWATER.

1363S.011

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) "Information content providers", any person or
33 entity that is responsible, in whole or in part, for the
34 creation or development of information provided through the
35 internet or any other interactive computer service;

36 (5) "Interactive computer service", any information
37 service, system or access software provider that provides or
38 enables computer access by multiple users to a computer
39 server, including specifically a service or system that
40 provides access to the internet and such systems operated or
41 services offered by libraries or educational institutions;

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

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

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

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

49 b. From the body of the individual; or

50 (c) The individual engaging in sexually explicit
51 conduct;

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

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

56 (b) Bestiality;

57 (c) Masturbation;

58 (d) Sadistic or masochistic abuse; or

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

61 3. Except as provided in subsection 9 or 12 of this
62 section, a depicted individual who is the subject of an
63 intimate digital depiction that is disclosed without the
64 consent of the depicted individual where such disclosure was
65 made by a person who knows, or recklessly disregards, that
66 the depicted individual has not consented to such disclosure
67 may bring a civil action against that other person in an
68 appropriate circuit court for relief as set forth in
69 subsections 6 and 7 of this section.

70 4. In the case of a depicted individual who is under
71 eighteen years of age or is incompetent, incapacitated, or
72 deceased, the legal guardian of the depicted individual or
73 representative of the depicted individual's estate, another
74 family member, or any person appointed as suitable by the
75 court may assume the depicted individual's rights under this
76 section, but in no event shall a defendant be named as such
77 representative or guardian of the depicted individual.

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

80 (1) A depicted individual's consent to the creation of
81 the intimate digital depiction shall not establish that the

82 depicted individual consented to the disclosure of the
83 intimate digital depiction;

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

85 (a) It is set forth in an agreement written in plain
86 language signed knowingly and voluntarily by the depicted
87 individual; and

88 (b) The written agreement includes a general
89 description of the intimate digital depiction and, if
90 applicable, the audiovisual work into which the intimate
91 digital depiction will be incorporated.

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

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

97 (2) Either of the following:

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

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

103 (3) Punitive damages; and

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

106 7. In a civil action brought pursuant to this section,
107 the court may, in addition to any other relief available at
108 law, order equitable relief, including a temporary
109 restraining order, a preliminary injunction, or a permanent
110 injunction ordering the defendant to cease the display or
111 disclosure of the intimate digital depiction.

112 8. In ordering relief pursuant to this section, the
113 court may grant injunctive relief maintaining the
114 confidentiality of a plaintiff by using a pseudonym.

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

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

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

120 (b) As part of a legal proceeding;

121 (2) The disclosure was a matter of legitimate public
122 concern or public interest, except that the disclosure shall
123 not be considered a matter of legitimate public interest or
124 public concern solely because the depicted individual is a
125 public figure; or

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

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

130 11. It shall not be a defense to an action under this
131 section that there is a disclaimer stating that the intimate
132 digital depiction was unauthorized or that the depicted
133 individual did not participate in the creation or
134 development of the intimate digital depiction.

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

138 (1) Any action voluntarily taken in good faith to
139 restrict access to or availability of intimate digital
140 depictions; or

141 (2) Any action taken to enable or make available to
142 information content providers or other persons the technical
143 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) "Information content providers", any person or
15 entity that is responsible, in whole or in part, for the
16 creation or development of information provided through the
17 internet or any other interactive computer service;

18 (4) "Interactive computer service", any information
19 service, system or access software provider that provides or
20 enables computer access by multiple users to a computer
21 server, including specifically a service or system that
22 provides access to the internet and such systems operated or
23 services offered by libraries or educational institutions;

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

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

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

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

31 b. From the body of the individual; or

32 (c) The individual engaging in sexually explicit
33 conduct;

34 (6) "Sexually explicit conduct", actual or simulated:

35 (a) Sexual intercourse, including genital-genital,
36 oral-genital, anal-genital, or oral-anal, whether between
37 persons of the same or opposite sex;

38 (b) Bestiality;

39 (c) Masturbation;

40 (d) Sadistic or masochistic abuse; or

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

43 2. A person commits the offense of disclosure of an
44 intimate digital depiction if the person discloses, or
45 threatens to disclose, an intimate digital depiction:

46 (1) With the intent to harass, annoy, threaten, alarm,
47 or cause substantial harm to the finances or reputation of
48 the depicted individual; or

49 (2) With the actual knowledge that or reckless
50 disregard for whether such disclosure or threatened
51 disclosure will cause physical, emotional, reputational, or
52 economic harm to the depicted individual.

53 3. (1) A violation of subsection 2 of this section
54 shall be a class E felony.

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

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

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

61 a. Affect the conduct of any administrative,
62 legislative, or judicial proceeding of a federal, state,
63 local, or tribal government agency, including the

64 administration of an election or the conduct of foreign
65 relations; or

66 b. Facilitate violence.

67 4. It shall not be a defense to the offense of
68 disclosure of an intimate digital depiction as provided by
69 this section that there is a disclaimer stating that the
70 intimate digital depiction was unauthorized or that the
71 depicted individual did not participate in the creation or
72 development of the intimate digital depiction.

73 5. For the purposes of this section, a provider of an
74 interactive computer service shall not have committed the
75 offense of disclosure of an intimate digital depiction due
76 to:

77 (1) Any action voluntarily taken in good faith to
78 restrict access to or availability of intimate digital
79 depictions; or

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

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