

# 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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