

SENATE BILL NO. 1117

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR FITZWATER.

4960S.031

KRISTINA MARTIN, Secretary

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.

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

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

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

82 (1) A depicted individual's consent to the creation of
83 the digital depiction shall not establish that the depicted
84 individual consented to the disclosure of the digital
85 depiction;

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

88 (a) It is set forth in an agreement written in plain
89 language and signed knowingly and voluntarily by the
90 depicted individual; and

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

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

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

100 (2) Either of the following:

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

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

106 (3) Punitive damages; and

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

109 7. In a civil action brought pursuant to this section,
110 the court may, in addition to any other relief available at
111 law, order equitable relief, including a temporary
112 restraining order, a preliminary injunction, or a permanent

113 injunction ordering the defendant to cease the display or
114 disclosure of the digital depiction.

115 8. In ordering relief pursuant to this section, the
116 court may grant injunctive relief maintaining the
117 confidentiality of a plaintiff by using a pseudonym.

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

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

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

123 (b) As part of a legal proceeding;

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

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

131 10. A court may authorize an in camera proceeding
132 under this section.

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

138 12. A provider of an interactive computer service
139 shall not be held liable in an action brought pursuant to
140 this section for:

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

143 (2) Any action taken to enable or make available to
144 information content providers or other persons the technical
145 means to restrict access to 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 a digital depiction and who
6 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 a
44 digital depiction if the person discloses, or threatens to
45 disclose:

- 46 (1) A digital depiction of a depicted individual who
47 is under the age of eighteen; or
48 (2) An intimate digital depiction:
49 (a) With the intent to harass, annoy, threaten, alarm,
50 or cause substantial harm to the finances or reputation of
51 the depicted individual; or
52 (b) With the actual knowledge that or reckless
53 disregard for whether such disclosure or threatened
54 disclosure will cause physical, emotional, reputational, or
55 economic harm to the depicted individual.

56 3. (1) A violation of subsection 2 of this section
57 shall be a class E felony.

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

- 60 (a) The violation is a second or other subsequent
61 violation of subsection 2 of this section; or

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

64 a. Affect the conduct of any administrative,
65 legislative, or judicial proceeding of a federal, state,
66 local, or tribal government agency, including the
67 administration of an election or the conduct of foreign
68 relations; or

69 b. Facilitate violence.

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

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

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

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

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