

JAN 22 2021

A BILL FOR AN ACT

RELATING TO PRIVACY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that House Concurrent
2 Resolution No. 225, S.D. 1, Regular Session of 2019,
3 (resolution) established the twenty-first century privacy law
4 task force (task force), whose membership consisted of
5 individuals in government and the private sector with an
6 interest or expertise in privacy law in the digital era. The
7 resolution found that public use of the internet and related
8 technologies have significantly expanded in recent years, and
9 that a lack of meaningful government regulation has resulted in
10 personal privacy being compromised. Accordingly, the
11 legislature requested that the task force examine and make
12 recommendations regarding existing privacy laws and regulations
13 to protect the privacy interests of the people of Hawai'i.

14 The legislature further finds that the task force
15 considered a spectrum of related privacy issues that have been
16 raised in Hawai'i and other states in recent years, including the
17 advancement and spread of deep fake technology. Deep fake



1 technology enables the creation of synthetic media in which a
2 person in an existing image or video is replaced with the
3 likeness of another person.

4 The legislature additionally finds that one of the
5 recommendations made by the task force was that the State
6 protect the privacy of a person's likeness by adopting laws that
7 prohibit the unauthorized use of deep fake technology, which is
8 advancing rapidly and is easily sharable on social media.

9 Accordingly, the purpose of this Act is to add the
10 intentional disclosure or threat of disclosure of certain types
11 of deep fake images or video to the offense of violation of
12 privacy in the first degree.

13 SECTION 2. Section 711-1110.9, Hawaii Revised Statutes, is
14 amended to read as follows:

15 **"§711-1110.9 Violation of privacy in the first degree.**

16 (1) A person commits the offense of violation of privacy in the
17 first degree if, except in the execution of a public duty or as
18 authorized by law:

19 (a) The person intentionally or knowingly installs or
20 uses, or both, in any private place, without consent
21 of the person or persons entitled to privacy therein,



1 any device for observing, recording, amplifying, or
2 broadcasting another person in a stage of undress or
3 sexual activity in that place; ~~[or]~~

4 (b) The person knowingly discloses or threatens to
5 disclose an image or video of another identifiable
6 person either in the nude, as defined in section
7 712-1210, or engaging in sexual conduct, as defined in
8 section 712-1210, without the consent of the depicted
9 person, with intent to harm substantially the depicted
10 person with respect to that person's health, safety,
11 business, calling, career, education, financial
12 condition, reputation, or personal relationships or as
13 an act of revenge or retribution; ~~[provided that]~~ or

14 (c) The person intentionally creates or discloses, or
15 threatens to disclose, an image or video of a
16 composite fictitious person depicted in the nude as
17 defined in section 712-1210, or engaged in sexual
18 conduct as defined in section 712-1210, that includes
19 the recognizable physical characteristics of a known
20 person so that the image or video appears to depict
21 the known person and not a composite fictitious



1 person, with intent to substantially harm the depicted
2 person with respect to that person's health, safety,
3 business, calling, career, education, financial
4 condition, reputation, or personal relationships, or
5 as an act of revenge or retribution.

6 ~~[(i)]~~ (2) ~~[This]~~ Other than as provided in paragraph
7 (1)(c), this section shall not apply to images or videos of the
8 depicted person made:

9 ~~[(A)]~~ (a) When the person was voluntarily nude
10 in public or voluntarily engaging in sexual conduct in
11 public; or

12 ~~[(B)]~~ (b) Pursuant to a voluntary commercial
13 transaction~~[, and]~~.

14 ~~[(ii)]~~ (3) Nothing in this ~~[paragraph]~~ section shall
15 be construed to impose liability on a provider of "electronic
16 communication service" or "remote computing service" as those
17 terms are defined in section 803-41, for an image or video
18 disclosed through the electronic communication service or remote
19 computing service by another person.

20 ~~[(2)]~~ (4) Violation of privacy in the first degree is a
21 class C felony. In addition to any penalties the court may



1 impose, the court may order the destruction of any recording
2 made in violation of this section.

3 ~~[(3)]~~ (5) Any recording or image made or disclosed in
4 violation of this section and not destroyed pursuant to
5 subsection ~~[(2)]~~ (4) shall be sealed and remain confidential."

6 SECTION 3. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 4. This Act shall take effect upon its approval.

9

INTRODUCED BY:





S.B. NO. 309

Report Title:

Right of Privacy; Disclosure of Images or Video; Deep Fakes

Description:

Adds the intentional disclosure or threat of disclosure of certain types of deep fake images or video to the offense of violation of privacy in the first degree.

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