

---

# 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, (H.C.R.  
3 No. 225) established the twenty-first century privacy law task  
4 force (task force), whose membership consisted of individuals in  
5 government and the private sector with an interest or expertise  
6 in privacy law in the digital era. H.C.R. No. 225 found that  
7 public use of the Internet and related technologies have  
8 significantly expanded in recent years, and that a lack of  
9 meaningful government regulation has resulted in personal  
10 privacy being compromised. Accordingly, the legislature  
11 requested that the task force examine and make recommendations  
12 regarding existing privacy laws and regulations to protect the  
13 privacy interests of the people of Hawaii.

14       The legislature further finds that the task force  
15 considered a spectrum of related privacy issues that have been  
16 raised in Hawaii 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 for the State to  
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 creation, disclosure, or threat of disclosure of  
11 certain types of realistic deep fake images or video to the  
12 offense of violation of 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; [øx]

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  
7 section 712-1210, or engaging in sexual conduct, as  
8 defined in section 712-1210, without the consent of  
9 the depicted person, with intent to harm substantially  
10 the depicted person with respect to that person's  
11 health, safety, business, calling, career, education,  
12 financial condition, reputation, or personal  
13 relationships or as an act of revenge or retribution;  
14 ~~[provided that:]~~ or

15 (c) The person intentionally creates or discloses or  
16 threatens to disclose a realistic photographic image  
17 or video of a composite fictitious person depicted in  
18 the nude as defined in section 712-1210, or engaged in  
19 sexual conduct as defined in section 712-1210, that  
20 includes the recognizable physical characteristics of  
21 a known person so that a reasonable person would



1 believe the realistic photographic image or video  
2 appears to depict the known person and not a composite  
3 fictitious person, with intent to substantially harm  
4 the depicted person with respect to that person's  
5 health, safety, business, calling, career, education,  
6 financial condition, reputation, or personal  
7 relationships, or as an act of revenge or retribution.

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

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

13 ~~(B)]~~ (b) Pursuant to a voluntary commercial transaction;  
14 ~~[and]~~ or

15 (c) In connection with:

16 (i) A matter of legitimate public concern;

17 (ii) A work of political or newsworthy value or  
18 similar work; provided that for the purposes of  
19 this subparagraph, sexually explicit material is  
20 not of newsworthy value solely because the  
21 depicted individual is a public figure; or



1            (iii) Commentary, criticism, or disclosure that is  
2            otherwise protected by the First Amendment of the  
3            United States Constitution or article I,  
4            section 4, of the state constitution.

5            ~~[(+ii)]~~ (3) Nothing in this ~~[paragraph]~~ section shall be  
6 construed to impose liability on a provider of "electronic  
7 communication service" or "remote computing service" as those  
8 terms are defined in section 803-41, for an image or video  
9 disclosed through the electronic communication service or remote  
10 computing service by another person.

11           ~~[(+2)]~~ (4) Violation of privacy in the first degree is a  
12 class C felony. In addition to any penalties the court may  
13 impose, the court may order the destruction of any recording  
14 made in violation of this section.

15           ~~[(+3)]~~ (5) Any recording or image made or disclosed in  
16 violation of this section and not destroyed pursuant to  
17 subsection ~~[(+2)]~~ (4) shall be sealed and remain confidential."



1       SECTION 3. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3       SECTION 4. This Act shall take effect on December 1, 2050.



**Report Title:**

Privacy in the First Degree; Deep Fakes

**Description:**

Adds the intentional creation, disclosure, or threat of disclosure of certain types of realistic deep fake images or videos to the offense of violation of privacy in the first degree, subject to specified exemptions. Effective 12/1/2050.  
(HD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

