
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
18 technology enables the creation of synthetic media in which a



1 person in an existing image or video is replaced with the
2 likeness of another person.

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

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

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

14 **"§711-1110.9 Violation of privacy in the first degree.**

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

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



1 broadcasting another person in a stage of undress or
2 sexual activity in that place; [e~~x~~]

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

14 (c) The person intentionally creates or discloses or
15 threatens to disclose an image or video of a composite
16 fictitious person depicted in the nude as defined in
17 section 712-1210, or engaged in sexual conduct as
18 defined in section 712-1210, that includes the
19 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 prohibited in
7 paragraph (1)(c), this section shall not apply to images or
8 videos of the depicted person made:

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

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

14 [~~ii~~] (3) Nothing in this [~~paragraph~~] section shall be
15 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.



Report Title:

Privacy in the First Degree; Deep Fakes

Description:

Adds the intentional creation, disclosure, or threat of disclosure of certain types of deep fake images or videos to the offense of violation of privacy in the first degree, subject to specified exemptions. (CD1)

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