
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, H.D. 1, S.D. 1, Regular Session of 2019,
3 (H.C.R. No. 225) established the twenty-first century privacy
4 law 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. H.C.R.
7 No. 225 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 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; [~~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
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 and the depicted person suffers harm as a result of
 9 the realistic photographic image or video.

10 ~~(i)~~ (2) ~~This~~ Other than as provided in
 11 paragraph (1)(c), this section shall not apply to realistic
 12 photographic images or videos of the depicted person made:

13 ~~(A)~~ (a) When the person was voluntarily nude in public
 14 or voluntarily engaging in sexual conduct in public;

15 ~~or~~

16 ~~(B)~~ (b) Pursuant to a voluntary commercial transaction;

17 ~~and~~ or

18 (c) In connection with:

19 (i) A matter of legitimate public concern;

20 (ii) A work of political or newsworthy value or

21 similar work; provided that for the purposes of



1 this subparagraph, sexually explicit material is
2 not of newsworthy value solely because the
3 depicted individual is a public figure; or
4 (iii) Commentary, criticism, or disclosure that is
5 otherwise protected by the First Amendment of the
6 United States Constitution or article 1,
7 section 4, of the state constitution.

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

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

18 [~~+(3)~~] (5) Any recording or image made or disclosed in
19 violation of this section and not destroyed pursuant to
20 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:

Right of Privacy; Disclosure of Images or Video; Deep Fakes;
Violation of Privacy in the First Degree

Description:

Adds the intentional disclosure or threat of disclosure of certain types of realistic deep fake images or video to the offense of violation of privacy in the first degree. Requires the depicted person to suffer harm from the image or video. Exempts images and videos that are a matter of public concern; works of political or newsworthy value; or are commentary, criticism, or any other disclosure protected by the United States Constitution or state constitution. Effective 12/1/2050.
(HD1)

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