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# A BILL FOR AN ACT

RELATING TO PRIVACY.

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

1           SECTION 1. Chapter 711, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§711-    Nonconsensual disclosure of an intimate image.

5           (1) A person commits the offense of nonconsensual disclosure of  
6 an intimate image if the person:

7           (a) Knowingly discloses an intimate image of another  
8 person and:

9           (i) The disclosure of the intimate image reveals the  
10 identity of the depicted person, including  
11 through any accompanying or subsequent  
12 information or material related to the visual  
13 material;

14           (ii) The person disclosing the intimate image fails to  
15 obtain affirmative consent from the person  
16 depicted in the intimate image; and



1           (iii) The image was obtained or created under  
2           circumstances in which the person disclosing the  
3           image knew or reasonably should have known the  
4           person depicted in the intimate image had a  
5           reasonable expectation of privacy; or

6           (b) Knowingly disclosing any digitally forged intimate  
7           image of another person and:

8           (i) The disclosure of the intimate image reveals the  
9           identity of the depicted person, including  
10           through any accompanying or subsequent  
11           information or material related to the image; and

12           (ii) The person disclosing the intimate image fails to  
13           obtain affirmative consent from the person  
14           depicted to disclose the intimate image.

15           (2) The fact that the identifiable individual:

16           (a) Provided consent for the creation of the intimate  
17           image; or

18           (b) Disclosed the intimate image to another individual,  
19           shall not establish that the identifiable individual provided  
20           consent for the disclosure of the intimate image.



1       (3) Absent affirmative consent to disclose, intimate  
2 content creators shall have a reasonable expectation that  
3 individuals who view their content shall not record or disclose  
4 it.

5       (4) This section shall not apply to:

6       (a) A law enforcement officer if the intimate image was  
7 created by the law enforcement officer pursuant to a  
8 lawful criminal investigation;

9       (b) An interactive computer service, as defined in title  
10 47 United States Code section 230(f)(2), an  
11 information service for telecommunications service, as  
12 defined in title 47 United States Code section 153,  
13 for content provided by another person; and

14       (c) The disclosure or publication of an intimate image  
15 that involves a matter of public interest or is  
16 newsworthy.

17       (5) Notwithstanding section 701-108, a prosecution for  
18 nonconsensual disclosure of an intimate image shall be subject  
19 to the following periods of limitation:

20       (a) For a misdemeanor, the later of the following:



1           (i) Within five years of the commission of the  
2           offense; or

3           (ii) Within three years of the date the victim  
4           discovers the offense or, by the exercise of due  
5           diligence, reasonably should have discovered the  
6           offense; or

7           (b) For a felony, the later of the following:

8           (i) Within seven years of the commission of the  
9           offense; or

10          (ii) Within three years of the date the victim  
11          discovers the offense or, by the exercise of due  
12          diligence, reasonably should have discovered the  
13          offense.

14          (6) Nonconsensual disclosure of an intimate image is:

15          (a) A misdemeanor for the first offense and a class C  
16          felony for the second or subsequent offense; or

17          (b) If the person committed the offense with the intent to  
18          cause physical, mental, economic, or reputational harm  
19          to the individual portrayed in the intimate image for  
20          the purpose of profit or pecuniary gain, nonconsensual  
21          disclosure of an intimate image is a class C felony



1           for the first offense and a class B felony for the  
2           second or subsequent offense.

3           (7) For the purposes of this section:

4           "Digitally forged intimate image" means any intimate image  
5 of an identifiable individual that:

6           (a) Appears to a reasonable person to be indistinguishable  
7           from an authentic visual depiction of the individual;  
8           and

9           (b) Is generated or substantially modified using machine-  
10           learning techniques or any other computer-generated or  
11           machine-generated means to falsely depict an  
12           individual's appearance or conduct, regardless of  
13           whether the visual depiction indicates, through a  
14           label or some other form of information published with  
15           the visual depiction, that the visual depiction is not  
16           authentic.

17           "Intimate image" means any still or videographic image that  
18 depicts:

19           (a) Wholly or partially uncovered genitals, pubic area,  
20           anus, or post-pubescent female nipple or areola of an  
21           individual;



1        (b) The display or transfer of semen or vaginal secretion;  
2                or

3        (c) Sexually explicit conduct.

4        "Remote computing service" has the same meaning as defined  
5 in section 803-41."

6        SECTION 2. Section 711-1100, Hawaii Revised Statutes, is  
7 amended by adding a new definition to be appropriately inserted  
8 and to read as follows:

9        "Electronic communication service" has the same meaning as  
10 defined in section 803-41."

11        SECTION 3. This Act does not affect rights and duties that  
12 matured, penalties that were incurred, and proceedings that were  
13 begun before its effective date.

14        SECTION 4. New statutory material is underscored.

15        SECTION 5. This Act shall take effect on January 1, 2077.



S.B. NO. 2135  
S.D. 2

**Report Title:**

Intimate Image; Nonconsensual Disclosure; Criminal Offense

**Description:**

Establishes the offense of nonconsensual disclosure of an intimate image. Effective 1/1/2077. (SD2)

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

