

A Bill for an Act Relating to Privacy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that House Concurrent Resolution No. 225, S.D. 1, Regular Session of 2019, (H.C.R. No. 225) established the twenty-first century privacy law task force (task force), whose membership consisted of individuals in government and the private sector with an interest or expertise in privacy law in the digital era. H.C.R. No. 225 found that public use of the Internet and related technologies have significantly expanded in recent years, and that a lack of meaningful government regulation has resulted in personal privacy being compromised. Accordingly, the legislature requested that the task force examine and make recommendations regarding existing privacy laws and regulations to protect the privacy interests of the people of Hawaii.

The legislature further finds that the task force considered a spectrum of related privacy issues that have been raised in Hawaii and other states in recent years, including the advancement and spread of deep fake technology. Deep fake technology enables the creation of synthetic media in which a person in an existing image or video is replaced with the likeness of another person.

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

Accordingly, the purpose of this Act is to add the intentional creation, 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.

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

“§711-1110.9 Violation of privacy in the first degree. (1) A person commits the offense of violation of privacy in the first degree if, except in the execution of a public duty or as authorized by law:

- (a) The person intentionally or knowingly installs or uses, or both, in any private place, without consent of the person or persons entitled to privacy therein, any device for observing, recording, amplifying, or broadcasting another person in a stage of undress or sexual activity in that place; ~~[ø]~~
- (b) The person knowingly discloses or threatens to disclose an image or video of another identifiable person either in the nude, as defined in section 712-1210, or engaging in sexual conduct, as defined in section 712-1210, without the consent of the depicted person, with intent to harm substantially the depicted person with respect to that person's health, safety, business, calling, career, education, financial condition, reputation, or personal relationships or as an act of revenge or retribution; ~~[provided that:]~~ or
- (c) The person intentionally creates or discloses or threatens to disclose an image or video of a composite fictitious person depicted in the nude as defined in section 712-1210, or engaged in sexual conduct as defined in section 712-1210, that includes the recognizable physical characteristics of a known person so that the image or video appears to depict the known person and not a composite fictitious

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

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

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

~~[(B)]~~ (b) Pursuant to a voluntary commercial transaction~~[-and]~~.

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

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

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

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

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

(Approved June 23, 2021.)