

Amend SB 441 (house committee report) on third reading as follows:

(1) On page 6, line 17, strike "The change in law made by this Act" and substitute "Chapter 98B, Civil Practice and Remedies Code, as amended by this Act,".

(2) Add the following appropriately numbered SECTIONS to the bill and renumber the SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. The heading to Section 21.165, Penal Code, is amended to read as follows:

Sec. 21.165. UNLAWFUL PRODUCTION OR DISTRIBUTION OF CERTAIN SEXUALLY EXPLICIT MEDIA ~~[VIDEOS]~~.

SECTION \_\_\_\_\_. Section 21.165(a), Penal Code, is amended by amending Subdivision (1) and adding Subdivision (3) to read as follows:

(1) "Deep fake media ~~[video]~~" means a visual depiction ~~[a video,]~~ created or altered through ~~[with]~~ the use of software, machine learning, artificial intelligence, or any other computer-generated or technological means, including by adapting, modifying, manipulating, or altering an authentic visual depiction manually or through an automated process ~~[intent to deceive]~~, that appears to a reasonable person to depict a real person, indistinguishable from an authentic visual depiction of the real person, performing an action that did not occur in reality.

(3) "Visual depiction" means a photograph, motion picture film, videotape, digital image or video, or other visual recording.

SECTION \_\_\_\_\_. Section 21.165, Penal Code, is amended by amending Subsections (b) and (c) and adding Subsections (b-1), (b-2), (c-1), (c-2), (c-3), (c-4), (c-5), and (e) to read as follows:

(b) A person commits an offense if, without the effective consent of the person appearing to be depicted, the person knowingly produces or distributes by electronic means ~~[a]~~ deep fake media ~~[video]~~ that appears to depict the person:

(1) with visible computer-generated intimate parts or with the visible intimate parts of another human being as the intimate parts of the person; or

(2) engaging in sexual conduct in which the person did not engage [~~with the person's intimate parts exposed or engaged in sexual conduct~~].

(b-1) A person commits an offense if the person intentionally threatens to produce or distribute deep fake media with the intent to coerce, extort, harass, or intimidate another person.

(b-2) Consent required by Subsection (b) is valid only if the person appearing to be depicted knowingly and voluntarily signed a written agreement that was drafted in plain language. The agreement must include:

(1) a general description of the deep fake media; and

(2) if applicable, the audiovisual work into which the deep fake media will be incorporated.

(c) An offense under Subsection (b) [~~this section~~] is a Class A misdemeanor, except that the offense is a felony of the third degree if it is shown on the trial of the offense that:

(1) the actor has been previously convicted of an offense under this section; or

(2) the person appearing to be depicted is younger than 18 years of age.

(c-1) An offense under Subsection (b-1) is a Class B misdemeanor, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that:

(1) the actor has been previously convicted of an offense under this section; or

(2) the actor threatened to produce or distribute deep fake media appearing to depict a person younger than 18 years of age.

(c-2) It is not a defense to prosecution under this section that the deep fake media:

(1) contains a disclaimer stating that the media was unauthorized or that the person appearing to be depicted did not participate in the creation or development of the deep fake media; or

(2) indicates, through a label or otherwise, that the depiction is not authentic.

(c-3) It is an affirmative defense to prosecution under this section that the production or distribution of the deep fake media occurs in the course of:

- (1) lawful and common practices of law enforcement;
- (2) reporting unlawful activity; or
- (3) a legal proceeding, if the production or distribution is permitted or required by law.

(c-4) It is an affirmative defense to prosecution under Subsection (b) that the actor:

- (1) is an Internet service provider, cloud service provider, cybersecurity service provider, communication service provider, or telecommunications network that transmits data; and
- (2) acted solely in a technical, automatic, or intermediate nature.

(c-5) It is an affirmative defense to prosecution under Subsection (b) that the actor:

- (1) is a provider or developer of a publicly accessible artificial intelligence application or software that was used in the creation of the deep fake media;

- (2) included a prohibition against the creation of deep fake media prohibited by this section in the actor's terms and conditions or user policies that are required to be acknowledged by a user before the user is granted access to the artificial intelligence application or software; and

- (3) took affirmative steps to prevent the creation of deep fake media prohibited by this section through technological tools, such as:

- (A) training the artificial intelligence application or software to identify deep fake media prohibited by this section;

- (B) providing effective reporting tools for deep fake media prohibited by this section;

- (C) filtering deep fake media prohibited by this section created by the artificial intelligence application or software before the media is shown to a user; and

- (D) filtering deep fake media prohibited by this section from the artificial intelligence application or

software data set before the data set is used to train the application or software.

(e) The court shall order a defendant convicted of an offense under this section to make restitution to the victim of the offense for any psychological, financial, or reputational harm incurred by the victim as a result of the offense.

SECTION \_\_\_\_\_. Section 21.165, Penal Code, as amended by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.