

## **BILL ANALYSIS**

C.S.H.B. 3694  
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Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The bill author has informed the committee that one danger from the growth in availability of generative artificial intelligence (AI) is the use of generative AI to create fake sexually explicit visual depictions of people without their consent. The bill author further informs the committee that this application of AI has been used to blackmail, harass, and exploit Texans. C.S.H.B. 3694, cited as the Exploitation Protection Act, seeks to address this issue first by providing for a mechanism to identify and remove intimate visual depictions that have been placed on a social media platform without consent and second by refining and increasing criminal penalties related to the offense of unlawful production or distribution of certain sexually explicit videos.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

#### **Unauthorized Intimate Visual Depictions**

##### **Notice and Removal of Unauthorized Intimate Visual Depictions**

C.S.H.B. 3694 amends the Business & Commerce Code to require a covered platform to establish a process by which an identifiable individual, or the individual's authorized representative may notify the covered platform of an intimate visual depiction of the identifiable individual that was published without the consent of the identifiable individual and submit a request for removal of the intimate visual depiction. The bill requires such a notification and request for removal to be in writing and include the following information:

- an identification of, and information reasonably sufficient for the covered platform to locate, the intimate visual depiction of the identifiable individual;
- a brief statement that the identifiable individual has a good faith belief that the individual did not consent to the publication of the intimate visual depiction; and
- information sufficient to enable the covered platform to contact the identifiable individual or the individual's authorized representative.

C.S.H.B. 3694 requires the covered platform to provide a clear and conspicuous disclosure, on the platform, of the notice and removal process that is in plain language, contains the covered

platform's responsibilities relating to the removal of unauthorized intimate visual depictions, and provides the manner of submission of notifications and requests for removal. The disclosure may be provided through a clear and conspicuous link to another web page. The bill requires the covered platform, on receiving a removal request from an identifiable individual or the individual's authorized representative, to remove the intimate visual depiction and make reasonable efforts to identify and remove any known identical copies of the intimate visual depiction, as soon as practicable but not later than 48 hours after receiving the request.

C.S.H.B. 3694, for purposes of its provisions relating to such unauthorized intimate visual depictions, defines the following terms:

- "covered platform" as a website, online service, online application, or mobile application that is publicly accessible and primarily provides a forum for user-generated content, including messages, videos, images, games, and audio files or is engaged in the business of publishing, curating, hosting, or making available content of intimate visual depictions, but does not include:
  - an Internet service provider, as defined by reference to statutory provisions relating to the unauthorized creation of, access to, or use of zombies or botnets;
  - electronic mail; or
  - an online service, application, or website that consists primarily of content that is not user generated but is preselected by the provider and for which any chat, comments, or interactive functionality is incidental to, directly related to, or dependent on such content;
- "identifiable individual" as an individual who appears in whole or in part in an intimate visual depiction and whose face, likeness, or other distinguishing characteristic is displayed in connection with the intimate visual depiction;
- "intimate area" by reference to Penal Code provisions relating to the invasive visual recording offense;
- "intimate visual depiction" as a depiction of an identifiable individual engaged in sexual conduct or an intimate area of an identifiable individual; and
- "sexual conduct" by reference to Penal Code provisions relating to the unlawful disclosure or promotion of intimate visual material offense.

C.S.H.B. 3694 establishes that a violation of these provisions is a deceptive trade practice under the Deceptive Trade Practices-Consumer Protection Act and is actionable under that act. The bill limits the applicability of the bill's provisions relating to unauthorized intimate visual depictions to an intimate visual depiction of an identifiable individual in a public place, as defined by applicable Penal Code provisions, where the individual did not voluntarily display any intimate areas depicted or consent to the sexual conduct that is the subject of the depiction. The provisions of C.S.H.B. 3694 relating to unauthorized intimate visual depictions take effect September 1, 2026.

### **Unlawful Production or Distribution of Certain Sexually Explicit Media**

C.S.H.B. 3694 amends the Penal Code to revise the conduct that constitutes unlawful production or distribution of certain sexually explicit videos by replacing a person who, without the effective consent of the person appearing to be depicted, knowingly produces or distributes by electronic means a deep fake video that appears to depict the person with the person's intimate parts exposed or engaged in sexual conduct with a person who does so by electronic means deep fake media that appears to depict the person as any of the following:

- with visible computer-generated intimate parts or with the visible intimate parts of another human being as the intimate parts of the person; or
- engaging in sexual conduct in which the person did not engage.

Accordingly, the bill replaces the definition of "deep fake video" with the definition of "deep fake media" to mean a visual depiction created or altered through 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, 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. The bill also defines "visual depiction" as a photograph, motion picture film, videotape, digital image or video, or other visual recording.

C.S.H.B. 3694 establishes that consent 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 a general description of the deep fake media and, if applicable, the audiovisual work into which the deep fake media will be incorporated. The bill increases the penalty for unlawful production or distribution of certain sexually explicit media from a Class A misdemeanor to a third degree felony if it is shown on the trial of the offense that the person appearing to be depicted is younger than 18 years of age or that the actor has been previously convicted of the offense.

C.S.H.B. 3694 establishes that it is not a defense to prosecution for the unlawful production or distribution of certain sexually explicit media that the deep fake media 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 indicates, through a label or otherwise, that the depiction is not authentic. The bill establishes as an affirmative defense to prosecution for the offense that the production or distribution of the deep fake media occurs in the course of the following:

- lawful and common practices of law enforcement or medical treatment;
- reporting unlawful activity; or
- a legal proceeding, if the production or distribution is permitted or required by law.

The bill's provisions relating to the unlawful production or distribution of certain sexually explicit media apply only to an offense committed on or after the bill's effective date. An offense committed before the bill's effective date 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 these purposes, an offense was committed before the bill's effective date if any element of the offense occurred before that date.

### **EFFECTIVE DATE**

Except as otherwise provided, September 1, 2025.

### **COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 3694 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Whereas the introduced increased the penalty for unlawful production or distribution of certain sexually explicit media from a Class A misdemeanor to a state jail felony, the substitute does not.