

BILL ANALYSIS

Senate Research Center

S.B. 441
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Criminal Justice
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The misuse of AI to create nonconsensual intimate visual materials, often called "deepfakes," has grown exponentially, with reports indicating that 96% of deepfake videos online are pornographic, targeting women disproportionately. In 2023, cybersecurity researchers found that searches for "deepfake pornography" increased by 900% within two years. Victims face severe emotional and reputational harm, compounded by the lack of clear legal remedies.

The issue escalates with platforms hosting nudification applications, which use AI to digitally undress photos without consent. Current laws fail to address these AI-specific harms adequately. S.B. 441 builds on prior initiatives, which criminalizes nonconsensual disclosure of intimate images but does not account for AI-generated content. This bill closes that gap by addressing the unique challenges of AI misuse in creating and distributing intimate visual materials.

S.B. 441 addresses the rise of nonconsensual artificial intimate visual material created using AI by expanding civil liability laws. It imposes penalties on individuals, websites, and payment processors involved in producing or distributing such content without consent. The bill prioritizes victim privacy through confidentiality measures and ensures a lengthy statute of limitations for pursuing justice. By modernizing existing laws, S.B. 441 aims to combat the misuse of AI in generating harmful, intimate visual materials.

S.B. 441 amends current law relating to criminal and civil liability related to sexually explicit media and artificial intimate visual material, creates a criminal offense, and increases a criminal penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Section 21.165, Penal Code, to read as follows:

Sec. 21.165. UNLAWFUL PRODUCTION OR DISTRIBUTION OF CERTAIN SEXUALLY EXPLICIT MEDIA.

SECTION 2. Amends Section 21.165(a), Penal Code, by amending Subdivision (1) and adding Subdivision (3), to define "deep fake media" and "visual depiction," and delete existing definition of "deep fake video."

SECTION 3. Amends Section 21.165, Penal Code, 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), as follows:

(b) Provides that 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 deep fake media, rather than a deep fake video, that appears to depict the person 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, rather than with the person's intimate parts exposed or engaged in sexual conduct.

(b-1) Provides that 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) Provides that 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. Requires that the agreement include a general description of the deep fake media and, if applicable, the audiovisual work into which the deep fake media will be incorporated.

(c) Provides that an offense under Subsection (b), rather than Section 21.165 (Unlawful Production or Distribution of Certain Sexually Explicit Videos), 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 the actor has been previously convicted of an offense under this section or the person appearing to be depicted is younger than 18 years of age.

(c-1) Provides that 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 the actor has been previously convicted of an offense under this section or the actor threatened to produce or distribute deep fake media appearing to depict a person younger than 18 years of age.

(c-2) Provides that it is not a defense to prosecution under this section 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.

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

(c-4) Provides that it is an affirmative defense to prosecution under Subsection (b) that the actor is an Internet service provider, cloud service provider, cybersecurity service provider, communication service provider, or telecommunications network that transmits data and acted solely in a technical, automatic, or intermediate nature.

(c-5) Provides that it is an affirmative defense to prosecution under Subsection (b) that the actor 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, 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 took certain affirmative steps to prevent the creation of deep fake media prohibited by this section through technological tools.

(e) Requires the court to 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 4. Amends the heading to Chapter 98B, Civil Practice and Remedies Code, to read as follows:

**CHAPTER 98B. UNLAWFUL PRODUCTION, SOLICITATION, DISCLOSURE, OR
PROMOTION OF INTIMATE VISUAL MATERIAL**

SECTION 5. Amends Section 98B.001, Civil Practice and Remedies Code, by amending Subdivision (1) and adding Subdivisions (1-a), (1-b), (3), and (4) to define "artificial intimate visual material," "consent," "nudification application," and "social media platform."

SECTION 6. Amends Chapter 98B, Civil Practice and Remedies Code, by adding Sections 98B.0021, 98B.0022, 98B.008, and 98B.009, as follows:

Sec. 98B.0021. **LIABILITY FOR UNLAWFUL PRODUCTION, SOLICITATION, DISCLOSURE, OR PROMOTION OF CERTAIN ARTIFICIAL INTIMATE VISUAL MATERIAL.** Provides that a defendant is liable, as provided by Chapter 98B (Unlawful Disclosure or Promotion of Intimate Visual Material), to a person depicted in artificial intimate visual material for damages arising from the production, solicitation, disclosure, or promotion of the material if:

- (1) the defendant produces, solicits, discloses, or promotes the artificial intimate visual material without the effective consent of the depicted person and with the intent to harm that person;
- (2) the production, solicitation, disclosure, or promotion of the artificial intimate visual material causes harm to the depicted person; and
- (3) the production, solicitation, disclosure, or promotion of the artificial intimate visual material reveals the identity of the depicted person in any manner, including through any accompanying or subsequent information or material related to the artificial intimate visual material.

Sec. 98B.0022. **LIABILITY OF OWNERS OF INTERNET WEBSITES AND ARTIFICIAL INTELLIGENCE APPLICATIONS AND PAYMENT PROCESSORS.** (a) Provides that a person who owns an Internet website or application, including a social media platform, and who recklessly facilitates the production or disclosure of artificial intimate visual material in exchange for payment, who owns a publicly accessible nudification application from which the material is produced, or who recklessly processes or facilitates payment for the production or disclosure of the material through the website or application, is liable, as provided by this chapter, to a person depicted in the material for damages arising from the production or disclosure of the material if the person knows or recklessly disregards that the depicted person did not consent to the production or disclosure of the material.

(b) Provides that a person who owns an Internet website or application, including a social media platform, on which artificial intimate visual material is disclosed is liable, as provided by this chapter, to the person depicted in the material for damages arising from the disclosure of the material if the person depicted requests the website or application to remove the material and the person who owns the website or application fails to remove the material within 72 hours of receiving the request and make reasonable efforts to identify and remove any known identical copies of such material.

(c) Requires a person who owns an Internet website or application, including a social media platform, to make available on the website or application an easily accessible system that allows a person to submit a request for the removal of artificial intimate visual material.

(d) Requires a person who owns an Internet website or application, including a social media platform, to make available on the website or application a clear and conspicuous notice, which is authorized to be provided through a clear and conspicuous link to another web page or disclosure, of the removal process established under Subsection (c), that is written in plain language that is easy to read and provides information regarding the responsibilities of the person who owns the website or application under this section, including a description of how a person can submit a request for the removal of artificial intimate visual material.

(e) Provides that a violation of Subsection (b), (c), or (d) is a deceptive trade practice actionable under Subchapter E (Deceptive Trade Practices and Consumer Protection), Chapter 17 (Deceptive Trade Practices), Business & Commerce Code.

(f) Authorizes the attorney general to investigate and bring an action for injunctive relief against a person who repeatedly violates Subsection (b), (c), or (d). Authorizes the attorney general, if the attorney general prevails in the action, to recover costs and attorney's fees.

Sec. 98B.008. CONFIDENTIAL IDENTITY IN CERTAIN ACTIONS. (a) Defines "confidential identity."

(b) Requires the court, except as otherwise provided by this section, in a suit brought under this chapter, to make it known to the claimant as early as possible in the proceedings of the suit that the claimant is authorized to use a confidential identity in relation to the suit; allow a claimant to use a confidential identity in all petitions, filings, and other documents presented to the court; use the confidential identity in all of the court's proceedings and records relating to the suit, including any appellate proceedings; and maintain the records relating to the suit in a manner that protects the confidentiality of the claimant.

(c) Provides that, in a suit brought under this chapter, only certain persons are entitled to know the true identifying information about the claimant.

(d) Requires the court to order that a person entitled to know the true identifying information under Subsection (c) is prohibited from divulging that information to anyone without a written order of the court. Requires a court to hold a person who violates the order in contempt.

(e) Prohibits the Supreme Court of Texas, notwithstanding Section 22.004 (Rules of Civil Procedure), Government Code, from amending or adopting rules in conflict with this section.

(f) Provides that a claimant is not required to use a confidential identity as provided by this section.

Sec. 98B.009. STATUTE OF LIMITATIONS. Requires a person to bring suit under this chapter not later than 10 years after the later of the date on which the person depicted in the intimate visual material that is the basis for the suit reasonably discovers the intimate visual material or the person depicted in the intimate visual material that is the basis for the suit turns 18 years of age.

SECTION 7. Makes application of Chapter 98B, Civil Practice and Remedies Code, as amended by this Act, prospective.

SECTION 8. Provides that 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. Provides that 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. Provides that, 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.

SECTION 9. Effective date: September 1, 2025.