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H.B. No. 3694

Substitute the following for H.B. No. 3694:

By: Moody

C.S.H.B. No. 3694

A BILL TO BE ENTITLED

AN ACT

relating to the unlawful production or distribution of certain sexually explicit media and to the removal of certain intimate visual depictions published on online platforms without the consent of the person depicted; increasing criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This Act may be cited as the Exploitation Protection Act.

SECTION 2. Subtitle C, Title 5, Business & Commerce Code, is amended by adding Chapter 121 to read as follows:

CHAPTER 121. UNAUTHORIZED INTIMATE VISUAL DEPICTIONS

Sec. 121.001. DEFINITIONS. In this chapter:

(1) "Covered platform":

(A) means an Internet website, online service, online application, or mobile application that:

(i) is publicly accessible and primarily provides a forum for user-generated content, including messages, videos, images, games, and audio files; or

(ii) is engaged in the business of publishing, curating, hosting, or making available content of intimate visual depictions; and

(B) does not include:

(i) an Internet service provider as defined by Section 324.055;

1 (ii) electronic mail; or
2 (iii) an online service, application, or
3 website:

4 (a) that consists primarily of
5 content that is not user generated but is preselected by the
6 provider; and

7 (b) for which any chat, comments, or
8 interactive functionality is incidental to, directly related to, or
9 dependent on the provision described by Sub-subparagraph (a).

10 (2) "Identifiable individual" means an individual:

11 (A) who appears in whole or in part in an intimate
12 visual depiction; and

13 (B) whose face, likeness, or other
14 distinguishing characteristic is displayed in connection with the
15 intimate visual depiction.

16 (3) "Intimate area" has the meaning assigned by
17 Section 21.15, Penal Code.

18 (4) "Intimate visual depiction" means a depiction of:

19 (A) an identifiable individual engaged in sexual
20 conduct; or

21 (B) an intimate area of an identifiable
22 individual.

23 (5) "Sexual conduct" has the meaning assigned by
24 Section 21.16, Penal Code.

25 Sec. 121.002. APPLICABILITY TO INTIMATE VISUAL DEPICTIONS
26 IN PUBLIC PLACE. This chapter applies to an intimate visual
27 depiction of an identifiable individual in a public place, as

1 defined by Section 1.07, Penal Code, only if the individual did not:

2 (1) voluntarily display any intimate areas depicted;

3 or

4 (2) consent to the sexual conduct that is the subject
5 of the depiction.

6 Sec. 121.003. NOTICE AND REMOVAL OF UNAUTHORIZED INTIMATE
7 VISUAL DEPICTIONS. (a) A covered platform shall establish a
8 process by which an identifiable individual, or the individual's
9 authorized representative, may:

10 (1) notify the covered platform of an intimate visual
11 depiction of the identifiable individual that was published without
12 the consent of the identifiable individual; and

13 (2) submit a request for removal of the intimate
14 visual depiction.

15 (b) A notification and request for removal under Subsection
16 (a) must be in writing and must also include:

17 (1) an identification of, and information reasonably
18 sufficient for the covered platform to locate, the intimate visual
19 depiction of the identifiable individual;

20 (2) a brief statement that the identifiable individual
21 has a good faith belief that the individual did not consent to the
22 publication of the intimate visual depiction; and

23 (3) information sufficient to enable the covered
24 platform to contact the identifiable individual or the individual's
25 authorized representative.

26 (c) A covered platform shall provide a clear and conspicuous
27 disclosure, on the platform, of the notice and removal process

established under Subsection (a). The disclosure:

(1) must be in plain language;

(2) must contain the responsibilities of the covered platform under Subsection (d);

(3) must provide the manner of submission of notifications and requests for removal; and

(4) may be provided through a clear and conspicuous link to another web page.

(d) On receiving a removal request in accordance with this section from an identifiable individual, or the individual's authorized representative, a covered platform shall, as soon as practicable, but not later than 48 hours after receiving the request:

(1) remove the intimate visual depiction; and

(2) make reasonable efforts to identify and remove any known identical copies of the intimate visual depiction.

Sec. 121.004. DECEPTIVE TRADE PRACTICE. A violation of this chapter is a deceptive trade practice under Subchapter E, Chapter 17, and is actionable under that subchapter.

SECTION 3. 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 4. 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

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

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

12 SECTION 5. Section 21.165, Penal Code, is amended by
13 amending Subsections (b) and (c) and adding Subsections (b-1),
14 (c-1), and (c-2) to read as follows:

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

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

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

25 (b-1) Consent required by Subsection (b) is valid only if
26 the person appearing to be depicted knowingly and voluntarily
27 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 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 person appearing to be depicted is younger than 18 years of age; or

(2) the actor has been previously convicted of an offense under this section.

(c-1) 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-2) 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 or medical treatment;

(2) reporting unlawful activity; or

(3) a legal proceeding, if the production or distribution is permitted or required by law.

1 SECTION 6. The changes in law made by this Act to Section
2 21.165, Penal Code, apply only to an offense committed on or after
3 the effective date of this Act. An offense committed before the
4 effective date of this Act is governed by the law in effect on the
5 date the offense was committed, and the former law is continued in
6 effect for that purpose. For purposes of this section, an offense
7 was committed before the effective date of this Act if any element
8 of the offense occurred before that date.

9 SECTION 7. (a) Except as provided by Subsection (b) of this
10 section, this Act takes effect September 1, 2025.

11 (b) Chapter 121, Business & Commerce Code, as added by this
12 Act, takes effect September 1, 2026.