

SENATE BILL NO. 413

INTRODUCED BY L. SMITH, D. HARVEY, B. USHER, D. HAWK, F. MANDEVILLE, K. BOGNER, J. HINKLE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE CRIME OF DISCLOSING EXPLICIT SYNTHETIC MEDIA; PROVIDING DEFINITIONS; REQUIRING CERTAIN ENTITIES TO PROVIDE INFORMATION TO THE DEPARTMENT OF JUSTICE ON REQUEST; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Disclosing explicit synthetic media.** (1) A person commits the offense of disclosing explicit synthetic media when the person knowingly or purposely:

(a) discloses explicit synthetic media and knows or reasonably should know that an identifiable person portrayed in whole or in part in the explicit synthetic media did not consent to the disclosure and that disclosure of the explicit synthetic media would cause the identifiable person substantial emotional distress;

(b) discloses explicit synthetic media with the intent to terrify, intimidate, threaten, harass, or injure an identifiable person portrayed in whole or in part in the explicit synthetic media; or

(c) possesses and threatens to disclose explicit synthetic media with the intent to obtain money or other valuable consideration from an identifiable person portrayed in whole or in part in the explicit synthetic media.

(2) (a) Except as provided in subsections (2)(b) and (2)(c), a person convicted of the offense of disclosing explicit synthetic media shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

(b) On a second or subsequent conviction of the offense of disclosing explicit synthetic media, a person shall be fined an amount not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both.

(c) If the person portrayed in whole or in part in the explicit synthetic media is under 18 years of age at the time of the offense, the offender shall be fined an amount not to exceed \$10,000 or be imprisoned in

1 the state prison for a term not to exceed 10 years, or both.

2 (3) Subsection (1) does not apply when the disclosure is made:

3 (a) for the purpose of reporting unlawful conduct;

4 (b) for legitimate scientific research or educational purposes; or

5 (c) in the normal course of civil or criminal legal proceedings and consistent with common
6 practices or is protected by a court order that prohibits further dissemination.

7 (4) Nothing in this section may be construed to impose liability on an interactive computer service
8 for content provided by another person unless the interactive computer service intentionally aids or abets
9 disclosing explicit synthetic media.

10 (5) (a) If requested by the department of justice related to an investigation into an alleged violation
11 of this section, an interactive computer service or provider or a developer of technology used to create synthetic
12 media shall provide relevant information on the source of explicit synthetic media and any identifying
13 information.

14 (b) A court may order that an interactive computer service or provider or a developer of technology
15 used to create synthetic media that fails to provide the requested information is responsible for any costs
16 incurred by the department of justice to obtain a warrant for the information and any other associated court
17 costs.

18 ~~(5)~~(6) As used in this section, the following definitions apply:

19 (a) "Disclose" means to make available by any means to any person.

20 (b) "Explicit synthetic media" means synthetic media, also known as deepfakes, that depicts or
21 appears to depict:

22 (i) an identifiable individual engaged in sexual conduct;

23 (ii) the genitals, breasts, pubic or rectal area, or other intimate parts of an identifiable individual,
24 including an artificially generated depiction of the genitals, breasts, pubic or rectal area, or other intimate parts
25 of an identifiable individual; or

26 (iii) the display or transfer of sexual bodily fluids onto any part of the body of an identifiable
27 individual or from the body of an identifiable individual.

28 (c) "Identifiable individual" means an individual who is portrayed in whole or in part in synthetic

media and who is recognizable by the individual's face, likeness, or other distinguishing characteristic.

(d) "Sexual conduct" has the same meaning as provided in 45-5-625.

(e) "Synthetic media" means an image or video created or altered using technical means, including artificial intelligence, to realistically misrepresent an identifiable individual as engaging in conduct in which the identifiable individual did not engage.

(f) "Valuable consideration" includes but is not limited to sexually explicit images or video from the identifiable individual portrayed in the synthetic media.

NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, part 6, and the provisions of Title 45, chapter 5, part 6, apply to [section 1].

NEW SECTION. SECTION 3. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

NEW SECTION. Section 4. Applicability. [This act] applies to offenses committed on or after [the effective date of this act].

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