

By: Senator(s) Hill

To: Judiciary, Division B

SENATE BILL NO. 2437

1 AN ACT TO ENACT THE "PROHIBITION OF EXPLOITATION BY DEEPFAKES
2 ACT"; TO DEFINE TERMS; TO PROHIBIT THE USE OF INTERACTIVE COMPUTER
3 SERVICES TO KNOWINGLY PUBLISH INTIMATE VISUAL DEPICTIONS OF
4 IDENTIFIABLE INDIVIDUALS IN CERTAIN CIRCUMSTANCES; TO DESCRIBE
5 CERTAIN EXCEPTIONS; TO PROHIBIT USE OF AN INTERACTIVE COMPUTER
6 SERVICE TO PUBLISH A MORPHED IMAGE OF AN IDENTIFIABLE INDIVIDUAL
7 IN CERTAIN CIRCUMSTANCES; TO PROVIDE PENALTIES FOR VIOLATIONS OF
8 THIS ACT; TO STIPULATE THAT CONSENT FOR THE CREATION OF AN
9 INTIMATE VISUAL DEPICTION DOES NOT ESTABLISH CONSENT FOR
10 PUBLICATION OF SUCH IMAGE; TO STIPULATE THAT DISCLOSURE OF AN
11 INTIMATE VISUAL DEPICTION DOES NOT ESTABLISH CONSENT FOR
12 PUBLICATION OF SUCH IMAGE; TO ESTABLISH THAT AN INTENTIONAL THREAT
13 TO VIOLATE THIS ACT FOR THE PURPOSE OF INTIMIDATION, COERCION,
14 EXTORTION, OR MENTAL DISTRESS IS PUNISHABLE; TO STIPULATE THAT
15 FORFEITURE OF ANY MATERIAL WHICH VIOLATES THIS ACT SHALL BE
16 INCLUDED IN ANY OTHER PENALTIES IMPOSED UPON A CONVICTION; TO
17 REQUIRE COVERED PLATFORMS TO ESTABLISH A PROCESS FOR NOTIFICATION
18 OF CERTAIN INTIMATE VISUAL DEPICTIONS PUBLISHED ON THE PLATFORM;
19 TO LIST CERTAIN REQUIREMENTS FOR THE NOTIFICATION; TO REQUIRE
20 COVERED PLATFORMS TO PROVIDE A CLEAR AND CONSPICUOUS NOTICE OF THE
21 NOTIFICATION AND REMOVAL PROCESS; TO REQUIRE THE COVERED PLATFORM
22 TO REMOVE VIOLATIVE MATERIAL UPON NOTIFICATION FROM AN
23 IDENTIFIABLE INDIVIDUAL; TO LIMIT A COVERED PLATFORM'S LIABILITY
24 IN CERTAIN CIRCUMSTANCES; TO GRANT THE ATTORNEY GENERAL AUTHORITY
25 TO ENFORCE CERTAIN SECTIONS; TO PROVIDE THAT A VIOLATION OF THIS
26 ACT IS AN UNFAIR AND DECEPTIVE TRADE PRACTICE THAT IS ENFORCEABLE
27 BY THE OFFICE OF THE ATTORNEY GENERAL; AND FOR RELATED PURPOSES.

28 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

29 **SECTION 1.** This act shall be known and may be cited as the
30 "Prohibition of Exploitation by Deepfakes Act."



31 **SECTION 2.** For the purposes of this act, the following words
32 shall have the meanings ascribed herein unless the context clearly
33 requires otherwise:

34 (a) "Consent" means an affirmative, conscious, and
35 voluntary authorization made by an individual free from force,
36 fraud, duress, misrepresentation, or coercion.

37 (b) "Morphed Image" means any intimate visual depiction
38 of an identifiable individual created through the use of software,
39 machine learning, artificial intelligence, or any other
40 computer-generated, technological, or mechanical means, including
41 by adapting, modifying, manipulating, or altering an authentic
42 visual depiction that, when viewed as a whole by a reasonable
43 person, is indistinguishable from an authentic visual depiction of
44 the individual.

45 (c) "Identifiable individual" means an individual:

46 (i) Who appears in whole or in part in an intimate
47 visual depiction; and

48 (ii) Whose face, likeness, or other
49 distinguishable characteristic, including a unique birthmark or
50 other recognizable feature, is displayed in connection with such
51 intimate visual depiction.

52 (d) "Interactive computer service" means any
53 information service, system, or access software provider that
54 provides or enables computer access by multiple users to a
55 computer server, including specifically a service or system that



provides access to the internet and such systems operated or services offered by libraries or educational institutions.

(e) "Intimate visual depiction" means a visual depiction that:

(i) Depicts:

1. The uncovered genitals, pubic area, anus, or post-pubescent female nipple of an identifiable individual; or

2. The display or transfer of bodily sexual fluids:

A. On to any part of the body of an identifiable individual;

B. From the body of an identifiable individual; or

C. An identifiable individual engaging in sexually explicit conduct; and

(ii) Includes any visual depictions described in subparagraph (i) produced while the identifiable individual was in a public place only if the individual did not:

1. Voluntarily display the content depicted; or

2. Consent to the sexual conduct depicted.

(f) "Minor" means any individual under the age of eighteen (18) years.

(g) "Sexually explicit conduct" means actual or simulated:



(i) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(ii) Bestiality;

(iii) Masturbation;

(iv) Sadistic or masochistic abuse;

(v) Lascivious exhibition of the anus, genitals, or pubic area of any person; or

(vi) Fondling or other erotic touching of the genitals, pubic area, buttocks, anus, or breast.

(h) (i) "Covered platform" means a website, online service, online application, or mobile application that serves the public; and

1. That primarily provides a forum for user-generated content, including messages, videos, images, games, and audio files; or

2. For which it is in the regular course of trade or business of the website, online service, online application, or mobile application to publish, curate, host, or make available content of nonconsensual intimate visual depictions.

(ii) The term "covered platform" shall not include the following: a provider of broadband internet access service, electronic mail, and except as provided in subparagraph (h) (i)2, an online service, application, or website:



106 1. That consists primarily of content that is
107 not user generated but is preselected by the provider of such
108 online service, application, or website; and

109 2. For which any chat, comment, or
110 interactive functionality is incidental to, directly related to,
111 or dependent on the provision of the content described in item 1.

112 **SECTION 3.** (1) (a) Except as provided in paragraph (b) of
113 this subsection (1), it shall be unlawful for any person to use an
114 interactive computer service to knowingly publish an intimate
115 visual depiction of an identifiable individual who is not a minor
116 if:

117 (i) The intimate visual depiction was obtained or
118 created under circumstances in which the person knew or reasonably
119 should have known the identifiable individual had a reasonable
120 expectation of privacy;

121 (ii) What is depicted was not voluntarily exposed
122 by the identifiable individual in a public setting;

123 (iii) What is depicted is not a matter of public
124 concern; and

125 (iv) Publication of the intimate visual depiction:

126 1. Is intended to cause harm; or

127 2. Causes harm, including psychological,
128 financial, or reputational harm, to the identifiable individual.

129 (b) Paragraph (a) of this subsection (1) shall not
130 apply to:



(i) A lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the State of Mississippi, or a political subdivision of the state;

(ii) A disclosure made reasonably and in good faith:

1. To a law enforcement officer or agency;

2. As part of a document production or filing associated with a legal proceeding;

3. As part of medical education, diagnosis, or treatment or for a legitimate medical, scientific, or education purpose;

4. In the reporting of unlawful content or unsolicited or unwelcome conduct or in pursuance of a legal, professional, or other lawful obligation; or

5. To seek support or help with respect to the receipt of an unsolicited intimate visual depiction.

(iii) A disclosure reasonably intended to assist the identifiable individual; or

(iv) A person who possesses or publishes an intimate visual depiction of himself or herself engaged in nudity or sexually explicit conduct.

(2) (a) Except as provided in paragraph (b) of this subsection (2), it shall be unlawful for any person to use an



155 interactive computer service to knowingly publish a morphed image
156 of an identifiable individual who is not a minor if:

157 (i) The morphed image was published without the
158 consent of the identifiable individual;

159 (ii) What is depicted was not voluntarily exposed
160 by the identifiable individual in a public or commercial setting;

161 (iii) What is depicted is not a matter of public
162 concern; and

163 (iv) Publication of the morphed image:

164 1. Is intended to cause harm; or

165 2. Causes harm, including psychological,
166 financial, or reputational harm, to the identifiable individual.

167 (b) Paragraph (a) of this subsection (2) shall not
168 apply to:

169 (i) A lawfully authorized investigative,
170 protective, or intelligence activity of a law enforcement agency
171 of the State of Mississippi or a political subdivision of the
172 state;

173 (ii) A disclosure made reasonably and in good
174 faith:

175 1. To a law enforcement officer or agency;

176 2. As part of a document production or filing
177 associated with a legal proceeding;



178 3. As part of medical education, diagnosis,
179 or treatment or for a legitimate medical, scientific, or education
180 purpose;

181 4. In the reporting of unlawful content or
182 unsolicited or unwelcome conduct or in pursuance of a legal,
183 professional, or other lawful obligation; or

184 5. To seek support or help with respect to
185 the receipt of an unsolicited intimate visual depiction.

186 (iii) A disclosure reasonably intended to assist
187 the identifiable individual; or

188 (iv) A person who possesses or publishes a morphed
189 image of himself or herself engaged in nudity or sexually explicit
190 conduct.

191 (3) Any person who violates (1)(a) or (2)(a) of this section
192 shall be fined under Section 97-29-109.

193 (4) For the purposes of subsections (1) and (2):

194 (a) The fact that the identifiable individual provided
195 consent for the creation of the intimate visual depiction shall
196 not establish that the individual provided consent for the
197 publication of the intimate visual depiction; and

198 (b) The fact that the identifiable individual disclosed
199 the intimate visual depiction to another individual shall not
200 establish that the identifiable individual provided consent for
201 the publication of the intimate visual depiction by the person
202 alleged to have violated subsection (1) or (2), respectively.



(5) Any person who intentionally threatens to commit an offense under subsection (1) for the purpose of intimidation, coercion, extortion, or to create mental distress shall be punished as described in subsection (3).

(6) The court, in imposing a sentence on any person convicted of a violation, shall order, in addition to any other sentence imposed and irrespective of any other provision of law, that the person forfeit to the State of Mississippi:

(a) Any material distributed in violation of that paragraph;

(b) The person's interest in property, real or personal, constituting or derived from any gross proceeds of the violation, or any property traceable to such property, obtained or retained directly or indirectly as a result of the violation; and

(c) Any personal property of the person used, or intended to be used, in any manner or part, to commit or to facilitate the commission of the violation.

SECTION 4. (1) (a) Not later than one (1) year after the date of enactment of this act, a covered platform shall establish a process whereby an identifiable individual or an authorized person acting on behalf of such individual may:

(i) Notify the covered platform of an intimate visual depiction published on the covered platform that:

1. Includes a depiction of the identifiable individual; and



228 2. Was published without the consent of
229 the identifiable individual; and

230 (ii) Submit a request for the covered
231 platform to remove such intimate visual depiction.

232 (b) A notification and request for removal of an
233 intimate visual depiction submitted under the process established
234 under paragraph (a) shall include, in writing:

235 (i) A physical or electronic signature of the
236 identifiable individual or an authorized person acting on behalf
237 of such individual;

238 (ii) An identification of, and information
239 reasonably sufficient for the covered platform to locate, the
240 intimate visual depiction of the identifiable individual;

241 (iii) A brief statement that the identifiable
242 individual has a good faith belief that any intimate visual
243 depiction identified under subparagraph (ii) is not consensual,
244 including any relevant information for the covered platform to
245 determine the intimate visual depiction was published without the
246 consent of the identifiable individual; and

247 (iv) Information sufficient to enable the covered
248 platform to contact the identifiable individual or an authorized
249 person acting on behalf of such individual.

250 (2) A covered platform shall provide on the platform a clear
251 and conspicuous notice, which may be provided through a clear and
252 conspicuous link to another web page or disclosure, of the



notification and removal process established under subsection

(1)(a) that:

(a) Is easy to read and in plain language; and

(b) Provides information regarding the responsibilities of the covered platform under this section, including a description of how an individual can submit a notification and request for removal.

(3) Upon receiving a valid removal request from an identifiable individual, or an authorized person acting on behalf of such individual, using the process described in subsection (1)(a)(ii) of this section, a covered platform shall, as soon as possible, but not later than forty-eight (48) hours after receiving such request:

(a) Remove the intimate visual depiction; and

(b) Make reasonable efforts to identify and remove any known identical copies of such depiction.

(4) A covered platform shall not be liable for any claim based on the covered platform's good faith disabling of access to, or removal of, material claimed to be a nonconsensual intimate visual depiction based on facts or circumstances from which the unlawful publishing of an intimate visual depiction is apparent, regardless of whether the intimate visual depiction is ultimately determined to be unlawful or not.

(5) A failure to reasonably comply with the notice and takedown obligations under this section shall be treated as a



violation of a rule defining an unfair or a deceptive act or
practice under Section 75-24-5.

(6) The attorney general shall enforce this section.
Notwithstanding any other provision of law, the attorney general
shall also enforce this section in the same manner with respect to
organizations that are not organized to carry on business for
their own profit or that of their members.

SECTION 5. Section 75-24-5, Mississippi Code of 1972, is
amended as follows:

75-24-5. (1) Unfair methods of competition affecting
commerce and unfair or deceptive trade practices in or affecting
commerce are prohibited. Action may be brought under Section
75-24-5(1) only under the provisions of Section 75-24-9.

(2) Without limiting the scope of subsection (1) of this
section, the following unfair methods of competition and unfair or
deceptive trade practices or acts in the conduct of any trade or
commerce are hereby prohibited:

- (a) Passing off goods or services as those of another;
- (b) Misrepresentation of the source, sponsorship,
approval, or certification of goods or services;
- (c) Misrepresentation of affiliation, connection, or
association with, or certification by another;
- (d) Misrepresentation of designations of geographic
origin in connection with goods or services;



(e) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;

(f) Representing that goods are original or new if they are reconditioned, reclaimed, used, or secondhand;

(g) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(h) Disparaging the goods, services, or business of another by false or misleading representation of fact;

(i) Advertising goods or services with intent not to sell them as advertised;

(j) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

(k) Misrepresentations of fact concerning the reasons for, existence of, or amounts of price reductions;

(l) Advertising by or on behalf of any licensed or regulated health care professional which does not specifically describe the license or qualifications of the licensed or regulated health care professional;

(m) Charging an increased premium for reinstating a motor vehicle insurance policy that was cancelled or suspended by



the insured solely for the reason that he was transferred out of this state while serving in the United States Armed Forces or on active duty in the National Guard or United States Armed Forces Reserve. It is also an unfair practice for an insurer to charge an increased premium for a new motor vehicle insurance policy if the applicant for coverage or his covered dependents were previously insured with a different insurer and canceled that policy solely for the reason that he was transferred out of this state while serving in the United States Armed Forces or on active duty in the National Guard or United States Armed Forces Reserve. For purposes of determining premiums, an insurer shall consider such persons as having maintained continuous coverage. The provisions of this paragraph (m) shall apply only to such instances when the insured does not drive the vehicle during the period of cancellation or suspension of his policy;

(n) Violating the provisions of Section 75-24-8;

(o) Violating the provisions of Section 73-3-38;

(p) Violating any of the provisions of Title 41, Chapter 149, Mississippi Code of 1972; * * *

(q) Violating any of the provisions of Title 45, Chapter 38, Mississippi Code of 1972 * * * ;and

(r) Violating any provisions of Sections 1 through 3 of this act.

SECTION 6. If any provision of this act, or an amendment made by this act, is determined to be unenforceable or invalid,



352 the remaining provisions of this act and the amendments made by
353 this act shall not be affected.

354 **SECTION 7.** This act shall take effect and be in force from
355 and after July 1, 2025.

