

UNOFFICIAL COPY OF SENATE BILL 858

SENATE BILL 858

D3

4r1886
CF 4r3459

By: Senators Hester, Elfreth, Ellis, Feldman, Gile, James, Lam, Muse, Salling,
Waldstreicher, West, and Zucker

Introduced and read first time: February 2, 2024

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Revenge Porn - Civil Action and Reporting Requirement**

3 FOR the purpose of authorizing a person to bring ~~a civil action for the nonconsensual~~
4 ~~distribution of a visual representation of the person with the person's intimate parts~~
5 ~~exposed or while the person is engaged in sexual activity under certain~~
6 ~~circumstances; authorizing the Attorney General to bring a civil action under this~~
7 ~~Act; prohibiting visual representations in court documents under this Act from being~~
8 ~~made available for public inspection; requiring the Administrative Office of the~~
9 ~~Courts to report each year to the General Assembly on the number of civil actions~~
10 ~~brought under this Act; and maintain a civil action for defamation under certain circumstances;~~
altering the prohibition against revenge porn to prohibit a person from knowingly distributing a certain
computer-generated visual representation of another under certain circumstances; and generally
relating to a civil action for revenge porn.

11 BY adding to

12 Article - Courts and Judicial Proceedings

13 Section ~~3-2301 through 3-2305 to be under the new subtitle "Subtitle 23.~~

14 ~~Nonconsensual Distribution of Sexual Imagery"~~ 3-505

15 Annotated Code of Maryland

16 (2020 Replacement Volume and 2023 Supplement)

BY repealing and reenacting, with amendments,

Article - Criminal Law

Section 3-809

Annotated Code of Maryland

(2021 Replacement Volume and 2023 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

18 That the Laws of Maryland read as follows:

19 **Article - Courts and Judicial Proceedings**

20 **SUBTITLE 23. NONCONSENSUAL DISTRIBUTION OF SEXUAL IMAGERY.**

21 ~~3-2301.~~

22 ~~(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS~~

23 ~~INDICATED.~~

2

UNOFFICIAL COPY OF SENATE BILL 858

1 ~~(b) "DEEP FAKE" MEANS A PHOTOGRAPH, A FILM, A VIDEO, A DIGITAL~~
 2 ~~IMAGE, OR A PICTURE THAT IS CREATED OR ALTERED USING ARTIFICIAL~~
 3 ~~INTELLIGENCE OR DIGITAL SOFTWARE TO MAKE IT APPEAR THAT AN INDIVIDUAL~~
 4 ~~DEPICTED IS ENGAGED IN ACTIVITY THAT THE INDIVIDUAL DID NOT ENGAGE IN.~~

5 ~~(c) "DISTRIBUTE" MEANS TO GIVE, SELL, TRANSFER, DISSEMINATE,~~
 6 ~~PUBLISH, UPLOAD, CIRCULATE, BROADCAST, MAKE AVAILABLE, ALLOW ACCESS TO,~~
 7 ~~OR ENGAGE IN ANY OTHER FORM OF TRANSMISSION, ELECTRONIC OR OTHERWISE.~~

8 ~~(d) "HARM" MEANS:~~

9 ~~(1) PHYSICAL INJURY;~~

10 ~~(2) SERIOUS EMOTIONAL DISTRESS; OR~~

11 ~~(3) ECONOMIC DAMAGES.~~

12 ~~(e) "INTIMATE PARTS" MEANS THE NAKED GENITALS, PUBIC AREA,~~
 13 ~~BUTTOCKS, OR FEMALE NIPPLE.~~

14 ~~(f) "SEXUAL ACTIVITY" MEANS:~~

15 ~~(1) SEXUAL INTERCOURSE, INCLUDING GENITAL-GENITAL,~~
 16 ~~ORAL-GENITAL, ANAL-GENITAL, OR ORAL-ANAL;~~

17 ~~(2) MASTURBATION; OR~~

18 ~~(3) SADOMASOCHISTIC ABUSE.~~

19 ~~(g) "VISUAL REPRESENTATION" INCLUDES A DEEP FAKE.~~

20 ~~§ 2302.~~

21 ~~(A) THIS SUBTITLE DOES NOT APPLY TO:~~

22 ~~(1) LAWFUL AND COMMON PRACTICES OF LAW ENFORCEMENT, THE~~
 23 ~~REPORTING OF UNLAWFUL CONDUCT, OR LEGAL PROCEEDINGS; OR~~

24 ~~(2) SITUATIONS INVOLVING VOLUNTARY EXPOSURE IN PUBLIC OR~~
 25 ~~COMMERCIAL SETTINGS.~~

26 ~~(b) AN INTERACTIVE COMPUTER SERVICE, AS DEFINED IN 47 U.S.C. §~~

3

UNOFFICIAL COPY OF SENATE BILL 858

1 ~~230(F)(2), IS NOT LIABLE UNDER THIS SUBTITLE FOR CONTENT PROVIDED BY~~
2 ~~ANOTHER PERSON.~~

3 ~~3-2303.~~

4 ~~(A) A PERSON MAY NOT KNOWINGLY DISTRIBUTE A VISUAL~~
5 ~~REPRESENTATION OF ANOTHER IDENTIFIABLE PERSON THAT DISPLAYS THE OTHER~~
6 ~~PERSON WITH THE OTHER PERSON'S INTIMATE PARTS EXPOSED OR WHILE ENGAGED~~
7 ~~IN SEXUAL ACTIVITY;~~

8 ~~(1) WITH THE INTENT TO HARM, HARASS, INTIMIDATE, THREATEN, OR~~
9 ~~COERCE THE OTHER PERSON;~~

10 ~~(2) (i) UNDER CIRCUMSTANCES IN WHICH THE PERSON KNEW~~
11 ~~THAT THE OTHER PERSON DID NOT CONSENT TO THE DISTRIBUTION; OR~~

12 ~~(ii) WITH RECKLESS DISREGARD AS TO WHETHER THE PERSON~~
13 ~~CONSENTED TO THE DISTRIBUTION; AND~~

14 ~~(3) UNDER CIRCUMSTANCES IN WHICH THE OTHER PERSON HAD A~~
15 ~~REASONABLE EXPECTATION THAT THE IMAGE WOULD REMAIN PRIVATE.~~

16 ~~(B) (1) A PERSON WHO IS A VICTIM OF A VIOLATION OF THIS SECTION MAY~~
17 ~~BRING A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION AGAINST THE~~
18 ~~PERSON OR PERSONS WHO COMMITTED THE VIOLATION.~~

19 ~~(2) THE ATTORNEY GENERAL MAY BRING A CIVIL ACTION FOR A~~
20 ~~VIOLATION OF THIS SUBTITLE AGAINST THE PERSON OR PERSONS WHO COMMITTED~~
21 ~~THE VIOLATION.~~

22 ~~(C) THE COURT MAY:~~

23 ~~(1) ISSUE AN INJUNCTION TO PREVENT OR RESTRAIN AN ACT THAT~~
24 ~~WOULD CONSTITUTE A VIOLATION OF THIS SUBTITLE;~~

25 ~~(2) AWARD ECONOMIC DAMAGES; AND~~

26 ~~(3) AWARD ANY OTHER RELIEF THE COURT DEEMS APPROPRIATE.~~

27 ~~3-2304.~~

28 ~~(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, A VISUAL~~
29 ~~REPRESENTATION OF A VICTIM THAT IS PART OF THE COURT RECORD IN A CIVIL~~

4

UNOFFICIAL COPY OF SENATE BILL 858

~~1 ACTION UNDER THIS SUBTITLE MAY NOT BE MADE AVAILABLE FOR PUBLIC
2 INSPECTION.~~

~~3 (b) EXCEPT AS OTHERWISE ORDERED BY THE COURT, A VISUAL
4 REPRESENTATION OF A VICTIM THAT IS PART OF THE COURT RECORD IN A CIVIL
5 ACTION UNDER THIS SUBTITLE MAY BE MADE AVAILABLE FOR INSPECTION ONLY IN
6 CONNECTION WITH THE CIVIL ACTION BY:~~

~~7 (1) COURT PERSONNEL;~~

~~8 (2) A JURY;~~

~~9 (3) THE ATTORNEY GENERAL OR THE ATTORNEY GENERAL'S
10 DESIGNEE;~~

~~11 (4) THE DEFENDANT OR THE DEFENDANT'S ATTORNEY; OR~~

~~12 (5) THE VICTIM OR THE VICTIM'S ATTORNEY.~~

~~13 3-2305.~~

~~14 ON OR BEFORE DECEMBER 1, 2024, AND EACH DECEMBER 1 THEREAFTER,
15 THE ADMINISTRATIVE OFFICE OF THE COURTS SHALL REPORT TO THE GENERAL
16 ASSEMBLY, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE,
17 ON THE NUMBER OF CIVIL ACTIONS BROUGHT UNDER THIS SUBTITLE IN THE
18 PRECEDING YEAR.~~

3-505.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
MEANINGS INDICATED.

(2) "DISTRIBUTE" HAS THE MEANING STATED IN § 3-809 OF THE
CRIMINAL LAW ARTICLE.

(3) (I) "INDISTINGUISHABLE FROM AN ACTUAL VISUAL
REPRESENTATION OF THE PERSON" MEANS THAT AN ORDINARY PERSON WOULD CONCLUDE
THAT THE VISUAL REPRESENTATION IS AN ACTUAL VISUAL REPRESENTATION OF THE PERSON.

(II) "INDISTINGUISHABLE FROM AN ACTUAL VISUAL
REPRESENTATION OF THE PERSON" INCLUDES A COMPUTER-GENERATED VISUAL
REPRESENTATION THAT HAS BEEN CREATED, ADAPTED, OR MODIFIED TO APPEAR
GENUINE.

(III) "INDISTINGUISHABLE FROM AN ACTUAL VISUAL
REPRESENTATION OF THE PERSON" DOES NOT INCLUDE IMAGES OR ITEMS DEPICTING A
PERSON THAT ARE:

1. DRAWINGS;

2. CARTOONS;

3. SCULPTURES; OR

4. PAINTINGS.

(5) "INTIMATE PARTS" HAS THE MEANING STATED IN § 3-809 OF THE
CRIMINAL LAW ARTICLE.

(6) "SEXUAL ACTIVITY" HAS THE MEANING STATED IN § 3-809 OF THE

CRIMINAL LAW ARTICLE.

(B) A PERSON MAY BRING AND MAINTAIN A CIVIL ACTION FOR DEFAMATION AGAINST ANOTHER WHO DISTRIBUTES A COMPUTER-GENERATED VISUAL REPRESENTATION THAT IS INDISTINGUISHABLE FROM AN ACTUAL VISUAL REPRESENTATION OF THE PERSON AND FALSELY DEPICTS THE PERSON WITH HIS OR HER INTIMATE PARTS EXPOSED OR ENGAGED IN SEXUAL ACTIVITY.

Article - Criminal Law

3-809.

(a) (1) In this section the following words have the meanings indicated.

(2) "Distribute" means to give, sell, transfer, disseminate, publish, upload, circulate, broadcast, make available, allow access to, or engage in any other form of transmission, electronic or otherwise.

(3) "Harm" means:

(i) physical injury;

(ii) serious emotional distress; or

(iii) economic damages.

(4) **(I) "INDISTINGUISHABLE FROM ANOTHER ACTUAL AND IDENTIFIABLE PERSON" MEANS THAT AN ORDINARY PERSON WOULD CONCLUDE THAT THE VISUAL REPRESENTATION IS OF AN ACTUAL AND IDENTIFIABLE PERSON.**

(II) "INDISTINGUISHABLE FROM ANOTHER ACTUAL AND IDENTIFIABLE PERSON" INCLUDES A COMPUTER-GENERATED VISUAL REPRESENTATION THAT HAS BEEN CREATED, ADAPTED, OR MODIFIED TO APPEAR AS AN ACTUAL AND IDENTIFIABLE PERSON.

(III) INDISTINGUISHABLE FROM ANOTHER ACTUAL AND IDENTIFIABLE PERSON" DOES NOT INCLUDE VISUAL REPRESENTATIONS OR ITEMS DEPICTING A PERSON THAT ARE:

1. DRAWINGS;

2. CARTOONS;

3. SCULPTURES; OR

4. PAINTINGS.

(5) "Intimate parts" means the naked genitals, pubic area, buttocks, or female nipple.

[5] (6) "Sexual activity" means:

(i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal;

(ii) masturbation; or

(iii) sadomasochistic abuse.

(b) (1) This section does not apply to:

(i) lawful and common practices of law enforcement, the reporting of unlawful conduct, or legal proceedings; or

(ii) situations involving voluntary exposure in public or commercial settings.

(2) An interactive computer service, as defined in 47 U.S.C. § 230(f)(2), is not liable under this section for content provided by another person.

(c) A person may not knowingly distribute a visual representation of another identifiable person, OR A COMPUTER-GENERATED VISUAL REPRESENTATION THAT IS INDISTINGUISHABLE FROM ANOTHER ACTUAL AND IDENTIFIABLE PERSON, that displays the other person with his or her intimate parts exposed or while engaged in an act of sexual activity:

(1) with the intent to harm, harass, intimidate, threaten, or coerce the other person:

(2) (i) under circumstances in which the person knew that the other person did not consent to the distribution; or

(ii) with reckless disregard as to whether the person consented to the distribution; and

(3) IF THE VISUAL REPRESENTATION WAS CREATED OR GENERATED WITH PERMISSION FROM THE OTHER PERSON, under circumstances in which the other person had a reasonable expectation that the image would remain private.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 2 years or a fine not exceeding \$5,000 or both.

(e) A visual representation AND A COMPUTER-GENERATED VISUAL REPRESENTATION of a victim that is part of a court record for a case arising from a prosecution under this section:

(1) subject to item (2) of this subsection, may not be made available for public inspection; and

(2) except as otherwise ordered by the court, may only be made available for inspection in relation to a criminal charge under this section to:

(i) court personnel;

(ii) a jury in a criminal case brought under this section;

(iii) the State's Attorney or the State's Attorney's designee;

(iv) the Attorney General or the Attorney General's designee;

(v) a law enforcement officer;

(vi) the defendant or the defendant's attorney; or

(vii) the victim or the victim's attorney.

19 SECTION 2. AND BE IT FURTHER ENACTED, That, if any provision of this Act or
20 the application of any provision of this Act to any person or circumstance is held invalid for
21 any reason in a court of competent jurisdiction, the invalidity does not affect other
22 provisions or any other application of this Act that can be given effect without the invalid
23 provision or application, and for this purpose the provisions of this Act are declared
24 severable.

25 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
26 1, 2024.