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HOUSE BILL

57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO INVASION OF PRIVACY; AMENDING SECTION 30-37A-1 NMSA
1978 (BEING LAWS 2015, CHAPTER 42, SECTION 1) TO PROVIDE THAT
THE CRIME OF UNAUTHORIZED DISTRIBUTION OF SENSITIVE IMAGES
INCLUDES THE DISTRIBUTION OF SENSITIVE DEEPFAKE IMAGES;
DEFINING "SENSITIVE DEEPFAKE IMAGE"; CREATING THE CRIME OF
THREATENING TO DISTRIBUTE SENSITIVE IMAGES AND PROVIDING
PENALTIES; ENACTING A NEW SECTION OF CHAPTER 41 NMSA 1978 TO
PROVIDE THAT A PERSON MAY MAINTAIN A CIVIL ACTION FOR LIBEL,
SLANDER OR INVASION OF PRIVACY BASED ON THE PUBLICATION OF
SENSITIVE DEEPFAKE IMAGES AND LIMITING CERTAIN DEFENSES AND
ALLOWING RECOVERY FOR CERTAIN TYPES OF DAMAGES; PROVIDING FOR
CLAIMS ARISING FROM CRIMES RELATED TO INVASION OF PRIVACY OR
THE DIGITAL EXPLOITATION OF CHILDREN AND ALLOWING RECOVERY FOR
CERTAIN TYPES OF DAMAGES.

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1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

2 SECTION 1. Section 30-37A-1 NMSA 1978 (being Laws 2015,
3 Chapter 42, Section 1) is amended to read:

4 "30-37A-1. UNAUTHORIZED DISTRIBUTION OF SENSITIVE
5 IMAGES--PENALTIES.--

6 A. Unauthorized distribution of sensitive images
7 consists of distributing, publishing or otherwise making
8 available, by an electronic communications device or other
9 means, sensitive images or sensitive deepfake images of a
10 person, with or without information identifying that person,
11 without that person's consent:

- 12 (1) with the intent to:
 - 13 (a) harass, humiliate or intimidate that
 - 14 person;
 - 15 (b) incite another to harass, humiliate
 - 16 or intimidate that person;
 - 17 (c) cause that person to reasonably fear
 - 18 for that person's own or family members' safety;
 - 19 (d) cause that person to suffer unwanted
 - 20 physical contact or injury; or
 - 21 (e) cause that person to suffer
 - 22 substantial emotional distress; and

23 (2) where the conduct is such that it would
24 cause a reasonable person to suffer substantial emotional
25 distress.

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1 B. Threatening to distribute sensitive images
2 consists of maliciously making a threat to a person to
3 distribute, publish or otherwise make available sensitive
4 images or sensitive deepfake images of the person with intent
5 to:

- 6 (1) harass, humiliate or intimidate that
7 person;
- 8 (2) cause that person to reasonably fear for
9 that person's own or family member's safety; or
- 10 (3) cause that person to suffer substantial
11 emotional distress.

12 ~~[B-]~~ C. For the purpose of this section:

13 (1) "electronic communications device" means a
14 computer, an internet web site or page, a video recorder, a
15 digital camera, a fax machine, a telephone, a cellular
16 telephone, a pager or any other device that can produce an
17 electronically generated image, message or signal;

18 (2) "information service" means a service
19 offering the capability of generating, acquiring, storing,
20 transforming, processing, publishing, retrieving, utilizing or
21 making available information;

22 (3) "interactive computer service" means any
23 information service, system or access software provider that
24 provides or enables computer access by multiple users;

25 (4) "intimate act" [~~has the same meaning as~~

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1 ~~"sexual act", as that term is defined in Section 30-9-2 NMSA~~
2 ~~1978]~~ means sexual intercourse, cunnilingus, fellatio,
3 masturbation of another, anal intercourse, the causing of
4 penetration to any extent and with any object of the genital or
5 anal opening of another whether or not there is any emission or
6 the emission or display of bodily sexual fluid;

7 (5) "sensitive images" means images,
8 photographs, videos or other likenesses depicting or simulating
9 an intimate act or depicting any portion of a person's
10 genitals, or of a woman's breast below the top of the areola,
11 that is either uncovered or visible through less-than-fully
12 opaque clothing, which images may reasonably be considered to
13 be private, intimate or inappropriate for distribution or
14 publication without that person's consent; [~~and~~]

15 (6) "sensitive deepfake image" means an image,
16 recording or other digital depiction or digital data capable of
17 conversion to an image, recording or other digital depiction of
18 a person that was created, altered or digitally manipulated to
19 depict a person:

20 (a) with uncovered genitals or, if the
21 person is a woman, a breast below the top of the areola that is
22 uncovered or visible through less-than-fully opaque clothing;
23 or

24 (b) engaging in an intimate act; and

25 [~~(6)~~] (7) "telecommunications provider" has

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1 the same meaning as set forth in Section 63-7-23 NMSA 1978.

2 [G-] D. Whoever commits unauthorized distribution
3 of sensitive images is guilty of a misdemeanor. Upon a second
4 or subsequent conviction, the offender is guilty of a fourth
5 degree felony.

6 E. A person who commits threatening to distribute
7 sensitive images is guilty of a petty misdemeanor. Upon a
8 second or subsequent conviction, the offender is guilty of a
9 misdemeanor.

10 [D-] F. Nothing in this section shall be construed
11 to impose liability on:

12 (1) an interactive computer service, an
13 information service or a telecommunications provider for
14 content provided by another person; or

15 (2) a person who reproduces, distributes,
16 exhibits, publishes, transmits or otherwise disseminates
17 content in furtherance of a legitimate public purpose,
18 including the compilation or dissemination of news by
19 newspapers and licensed broadcasters."

20 SECTION 2. A new section of Chapter 41 NMSA 1978 is
21 enacted to read:

22 "[NEW MATERIAL] CLAIMS ARISING FROM THE PUBLICATION OF
23 SENSITIVE DEEFAKE IMAGES OR THE COMMISSION OF CERTAIN
24 CRIMES.--

25 A. As used in this section, "sensitive deepfake

1 image" means an image, recording or other digital depiction or
2 digital data capable of conversion to an image, recording or
3 other digital depiction of a person that was created, altered
4 or digitally manipulated to depict a person:

5 (1) with uncovered genitals or, if the person
6 is a woman, a breast below the top of the areola that is
7 uncovered or visible through less-than-fully opaque clothing;
8 or

9 (2) engaging in sexual intercourse,
10 cunnilingus, fellatio, masturbation of another, anal
11 intercourse, the causing of penetration to any extent and with
12 any object of the genital or anal opening of another whether or
13 not there is any emission or the emission or display of bodily
14 sexual fluid.

15 B. A person may maintain a cause of action for
16 libel, slander or invasion of privacy based on the publication,
17 exhibition or communication of a sensitive deepfake image;
18 provided that:

19 (1) a person's consent to the creation of a
20 sensitive deepfake image alone shall not establish that the
21 person consented to the publication, exhibition or
22 communication of the image; and

23 (2) in addition to actual damages, a person
24 who succeeds in a claim for libel, slander or invasion of
25 privacy based on the publication, exhibition or communication

1 of a sensitive deepfake image may recover:

2 (a) if applicable, an amount equal to
3 the monetary gain made by the defendant from the publication,
4 exhibition or communication of the sensitive deepfake image;

5 (b) punitive damages;

6 (c) court costs, reasonable attorney
7 fees and other litigation costs reasonably incurred; and

8 (d) any other legal or equitable relief
9 the court deems just and proper.

10 C. A victim of the crime provided for in Subsection
11 G of Section 30-6A-3 NMSA 1978 or a victim of a crime provided
12 for in Section 30-37A-1 NMSA 1978 shall establish a prima facie
13 case for a claim of intentional infliction of emotional
14 distress upon filing a petition in the district court for such
15 a claim. In addition to actual damages, a person who succeeds
16 in claim for intentional infliction of emotional distress as
17 provided for in this subsection may recover:

18 (1) if applicable, an amount equal to the
19 monetary gain made by the defendant from the fruits of the
20 crime committed;

21 (2) punitive damages;

22 (3) court costs, reasonable attorney fees and
23 other litigation costs reasonably incurred; and

24 (4) any other legal or equitable relief the
25 court deems just and proper."