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FLORIDA HOUSE OF REPRESENTATIVES
BILL ANALYSIS

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This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.

BILL #: CS/HB 1161	**COMPANION BILL:** CS/SB 1400 (Calatayud)
TITLE: Removal of Altered Sexual Depictions Posted Without Consent	**LINKED BILLS:** None
	RELATED BILLS: None
SPONSOR(S): Duggan	

Committee References

Industries & Professional Activities 14 Y, 0 N, As CS	➤	Judiciary	➤	Commerce

SUMMARY

Effect of the Bill:

The bill revises provisions of Florida's deepfake law to require covered platforms, such as websites and online services, to remove altered sexual depictions and copies of such from their platform upon request of the victim. The bill requires such platforms to establish a process for persons to notify them of deepfake depictions and request their removal. The bill requires the platforms to remove such content within 48 hours of receiving a request, provides liability protections for platforms that act in good faith, establishes penalties for failure to comply, and makes such failures a violation of the Florida Deceptive and Unfair Trade Practices Act. The bill provides an exception for certain information or telecommunications services and certain online services that do not primarily consist of user-generated content.

The effective date of the bill is upon becoming law.

Fiscal or Economic Impact:

The bill may have an indeterminate economic impact on the private sector.

ANALYSIS

EFFECT OF THE BILL:

Notice and Removal Process
The bill revises provisions of Florida's deepfake law, as follows:
- Names the act, "Brooke's Law." (Section 1)
- Requires, no later than December 31, 2025, covered platforms to establish a process by which a person may notify and request removal of an altered sexual depiction that was published without their consent.
- Requires the notification and request for removal to include:
  - A physical or electronic signature of the identifiable person or an authorized person acting on their behalf.
  - An identification of, and information reasonably sufficient for the covered platform to locate, the altered sexual depiction of the identifiable person.
  - A brief statement that the identifiable person has a good faith belief that any altered sexual depiction identified is not consensual, including any relevant information for the covered platform to determine the depiction was published without consent.
  - Information sufficient to enable the covered platform to contact the person. (Section 2)

Clear and Conspicuous Notice
The bill defines "covered platform" as a website, online service, online application, or mobile application that serves the public and:

- Primarily provides a forum for user-generated content, including messages, videos, images, games, and audio files; or
- 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 altered sexual depictions. (Section 2)

The bill requires a covered platform to provide clear and conspicuous notice of the notice and removal process, which:
- Is easy to read and in plain language.
- Provides information regarding the responsibilities of the covered platform under the bill.
- Includes a description of how a person can submit a notification and request for removal. (Section 2)

The bill requires, upon receipt of a valid removal request, as soon as possible but no later than 48 hours, the covered platform to remove the altered sexual depiction and make reasonable efforts to identify and remove any known, identical copies of such depiction. (Section 2)

The bill exempts:
- Providers of information services or telecommunications services, as those terms are defined in 47 U.S.C. s. 153, for content provided by another person.
- Electronic mail.
- Except as otherwise provided, an online services, applications, or websites:
    o That consist primarily of preselected content by the provider, rather than content that is user generated; and
    o For which any chat, comment, or interactive functionality is incidental to, directly related to, or dependent on the provision of the content described above. (Section 2)

Liability
The bill provides that a covered platform is not liable for any claim based on the platform's good faith removal of material claimed to be a nonconsensual altered sexual depiction, regardless of whether the altered sexual depiction is ultimately found to be unlawful. (Section 2)

Remedies
In addition to the remedies provided in s. 836.13(5), F.S., a failure to comply with the notice and removal requirements of the bill constitutes an unfair or deceptive act or practice under the Florida Deceptive and Unfair Trade Practices Act. (Section 2)

Effective Date
The bill takes effect upon becoming law. (Section 3)

FISCAL OR ECONOMIC IMPACT:

PRIVATE SECTOR:

Indeterminate. The bill provides notification and removal requirements, and civil penalties for noncompliance, for businesses considered a covered platform. The cost of compliance and number of violations for noncompliance is unknown.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Nonconsensual Altered Sexual Depictions

Over the last decade, Americans have started to recognize the growing problem of distribution of sexually explicit images without consent, otherwise known as "revenge porn."[1] Although Florida and other states have enacted protections against revenge porn, there are still instances in which a person may be a victim of nonconsensual pornography in the form of altered sexual depictions, more commonly known as "deepfakes."[2] Deepfakes typically take the form of imagery, video, and audio material that "is produced or distributed without the consent of the subject and has been altered, potentially with artificial intelligence, to show nonconsensual intimate or explicit content." Advancements in technology, such as increased availability and usage of generative AI, have enabled perpetrators to manipulate sexual materials in ways that circumvent revenge porn laws. For example, "if a photo depicted the victim nude, where the victim's face was real, but the victim's genitals were computer generated, many laws would not apply because the intimate part of the image was not the victim's."[3]

Researchers have discovered that 98% of the deepfake videos found online are explicitly pornographic and 99% of deepfake pornography features women.[4] Moreover, the creation of deepfake pornography is rapidly increasing, as researchers found that there were 464% more deepfake pornographic videos created in 2023 than in 2022.[5] Further, 90% of deepfake pornography is found on dedicated deepfake pornography platforms.[6] In response to the prevalence of deepfakes, the Department of Homeland Security has declared that "[d]eepfakes and the misuse of synthetic content pose a clear, present, and evolving threat to the public across national security, law enforcement, financial, and societal domains."[7]

Florida Deepfake Law
In 2022, the Florida Legislature created s. 836.13, F.S., to address deepfake images by providing a third degree felony for the willful and malicious promotion of any altered sexual depiction[8] of an identifiable person, without the consent of the identifiable person, and for knowing that such visual depiction was an altered sexual depiction.[9]

The law authorizes the following civil remedies for victims:
- Injunctive relief;
- Monetary damages of $10,000 or actual damages; and
- Reasonable attorney's fees and costs.[10]

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[1] "In 2016, 10 million people, or 2% of Americans had reported being victims of nonconsensual porn. Individuals ages 18-29 generally, and women aged 18-29 specifically, as well as LGTBQ+ Americans were victimized at even higher rates. In 2017, the number of young Americans ages 18-29 who had become victims of nonconsensual porn jumped to 12%, an increase of over 100%. In 2019, a larger study suggests that the problem has only grown, showing a 400% increase in the number of victims from 2016. Taken as a whole, these statistics show the number of victims continues to rise at an alarming rate even though both the legal system and society as a whole have attempted to address the issue." Chance Carter, NAT'L ASS'N OF ATT'Y GEN., *An Update on the Legal Landscape of Revenge Porn*, https://www.naag.org/attorney-general-journal/an-update-on-the-legal-landscape-of-revenge-porn/#identifier_4_21493 (last visited Mar. 15, 2025).

[2] RAINN, *RAINN's Recommendation for Effectively Addressing Nonconsensual Manipulated Intimate Material (Deepfakes)*, https://www.rainn.org/sites/default/files/import/RAINN%20on%20nonconsensual%20manipulated%20intimate%20material%20-%20Google%20Docs.pdf#:~:text=We%20refer%20to%20imagery%2C%20video%2C%20audio%2C%20etc.%20that,or%20explicit%20content%20as%20%E2%80%9Cnonconsensual%20manipulated%20intimate%20material%E2%80%9D (last visited Mar. 15, 2025).; *see also* DEPT. OF HOMELAND SEC., *Increasing Threat of Deepfake Identities*, https://www.dhs.gov/sites/default/files/publications/increasing_threats_of_deepfake_identities_0.pdf (last visited Mar. 15, 2025).

[3] RAINN, *supra* note 2.

[4] Security Hero, *2023 State of Deepfakes*, https://www.securityhero.io/state-of-deepfakes/#concluding-remarks (last visited Mar. 15, 2025).

[5] *Id.*

[6] *Id.*

[7] DEPT. OF HOMELAND SEC., *supra* note 2.

[8] Section 836.13(1)(a), F.S., defines an "altered sexual depiction" as any visual depiction that, as a result of any type of digital, electronic, mechanical, or other modification, alteration, or adaptation, depicts a realistic version of an identifiable person: 1. With the nude body parts of another person as the nude body parts of the identifiable person; 2. With computer-generated nude body parts as the nude body parts of the identifiable person; or 3. Engaging in sexual conduct as defined in s. 847.001 in which the identifiable person did not engage.

[9] *See* s. 836.13, F.S.

[10] S. 836.13(5), F.S.

This statute may be used by victims to obtain justice from violations regarding deepfake pornography, the statute does not currently provide for the removal of such content from online platforms.

Florida Deceptive and Unfair Trade Practices Act

FDUTPA is a consumer and business protection measure that prohibits unfair methods of competition, and unconscionable, deceptive, or unfair acts or practices in the conduct of trade or commerce.[11] FDUTPA was modeled after the FTC Act.[12]

The Department of Legal Affairs (DLA) or state attorney's office (SAO) in the judicial circuit affected or where the violation occurs may bring actions on behalf of consumers or governmental entities when it serves the public interest.[13] The SAO may enforce violations of FDUTPA if the violations take place within its jurisdiction. The DLA has enforcement authority when the violation is multi-jurisdictional, the state attorney defers to the DLA in writing, or the state attorney fails to act within 90 days after a written complaint is filed.[14] In certain circumstances, consumers may also file suit through private actions.[15]

The DLA and the SAO have powers to investigate FDUTPA claims, which include:[16]
- Administering oaths and affirmations;
- Subpoenaing witnesses or matter; and
- Collecting evidence.

The DLA and SAO may seek the following remedies:
- Declaratory judgments;
- Injunctive relief;
- Actual damages on behalf of consumers and businesses;
- Cease and desist orders; and
- Civil penalties of up to $10,000 per willful violation.[17]

FDUTPA may not be applied to certain entities in certain circumstances, including:[18]
- Any person or activity regulated under laws administered by the Office of Insurance Regulation or the Department of Financial Services; or
- Banks, credit unions, and savings and loan associations regulated by the Office of Financial Regulation or federal agencies.

RECENT LEGISLATION:

YEAR	BILL #	HOUSE SPONSOR(S)	SENATE SPONSOR	OTHER INFORMATION
2022	CS/CS/SB 1798	Harding	Book	The bill became law on October 1, 2022.

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[11] S. 501.202, F.S.

[12] D. Matthew Allen, et. al., *The Federal Character of Florida's Deceptive and Unfair Trade Practices Act*, 65 U. MIAMI L. REV. 1083 (Summer 2011).

[13] Ss. 501.203(2) and 501.207(1)(c) and (2), F.S.; *see also* David J. Federbush, *FDUTPA for Civil Antitrust: Additional Conduct, Party, and Geographic Coverage; State Actions for Consumer Restitution*, 76 FLORIDA BAR JOURNAL 52, Dec. 2002 (analyzing the merits of FDUPTA and the potential for deterrence of anticompetitive conduct in Florida), *available at* http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/99aa165b7d8ac8a485256c8300791ec1!OpenDocument&Highlight=0,business,Division* (last visited on Jan. 6, 2024).

[14] S. 501.203(2), F.S.

[15] S. 501.211, F.S.

[16] S. 501.206(1), F.S.

[17] Ss. 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Enforcing authorities may also request attorney fees and costs of investigation or litigation. S. 501.2105, F.S.

[18] S. 501.212(4), F.S.

OTHER RESOURCES:

Thomson Reuters, Deepfakes: Federal and state regulation aims to curb a growing threat.

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Industries & Professional Activities Subcommittee	14 Y, 0 N, As CS	3/19/2025	Anstead	Thompson
THE CHANGES ADOPTED BY THE COMMITTEE:	Revises the exemption for certain providers of "broadband Internet service," to instead exempt providers of "information or telecommunications services."			
Judiciary Committee				
Commerce Committee				

THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.