

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 1400

INTRODUCER: Commerce and Tourism Committee and Senator Calatayud

SUBJECT: Removal of Altered Sexual Depictions Posted Without Consent

DATE: March 31, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dike</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Parker</u>	<u>Stokes</u>	<u>CJ</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1400 amends s. 836.13, F.S., 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. Upon receipt of the request, a covered platform has 48 hours to remove the altered sexual depiction. The bill requires covered platforms to provide clear notice of the platform's responsibilities under the bill, including the manner in which a person can submit a notification and request for removal of the altered sexual depiction. The bill identifies which platforms are bound by these requirements and provides liability protections for platforms' good faith efforts to remove altered sexual depictions. Further, the bill provides a remedy for violations, classifying a failure to follow these requirements as an unfair or deceptive act or practice under the Florida Deceptive and Unfair Trade Practices Act.

The bill takes effect upon becoming law.

II. Present Situation:

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.”³ 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.⁴ 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.”⁵

Researchers have discovered that 98% of the deepfake videos found online are explicitly pornographic and 99% of deepfake pornography features women.⁶ 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 2022.⁷ Further, 90% of deepfake pornography is found on dedicated deepfake pornography platforms.⁸ 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.”⁹

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*, available at https://www.naag.org/attorney-general-journal/an-update-on-the-legal-landscape-of-revenge-porn/#identifier_4_21493 (last visited March 28, 2025).

² RAINN, *RAINN’s Recommendation for Effectively Addressing Nonconsensual Manipulated Intimate Material (Deepfakes)*, available at <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. 17, 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 March 28, 2025).

³ RAINN, *supra* note 2.

⁴ RAINN, *supra* note 2.

⁵ RAINN, *supra* note 2.

⁶ Security Hero, *2023 State of Deepfakes*, available at <https://www.securityhero.io/state-of-deepfakes/#concluding-remarks> (last visited March 28, 2025).

⁷ *Id.*

⁸ *Id.*

⁹ DEPT. OF HOMELAND SEC., *supra* note 2.

Altered Sexual Depictions under Florida Law

In 2022, the Florida Legislature created s. 836.13, F.S., to cover the gap in law in the law between revenge porn and nonconsensual altered sexual depictions. Nonconsensual altered sexual depictions are distinguishable from consensual pornography as the person being depicted has not given his or her consent and did not actually engage in the sexual behavior he or she is depicted as doing. Such depictions may exploit the depicted person for other's gratification and may cause emotional and reputational harm stemming from subsequent uses of the depiction and society's response to the person depicted.¹⁰

Section 836.13, F.S., defines "Altered sexual depiction" to mean 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:¹¹

- With the nude body parts of another person as the nude body parts of the identifiable person;
- With computer-generated nude body parts as the nude body parts of the identifiable person;
- or
- Engaging in sexual conduct as defined in s. 847.001, F.S.,¹² in which the identifiable person did not engage.

A person who willfully and maliciously promotes any altered sexual depiction of an identifiable person, without the consent of the identifiable person, and who knows or reasonably should have known that such visual depiction was an altered sexual depiction, commits a third degree felony.¹³

The presence of a disclaimer within an altered sexual depiction which notifies a viewer that the person or persons depicted did not consent to or participate in the creation or promotion of the material, or that the person or persons depicted did not actually perform the actions portrayed, is not a defense and does not relieve a person of criminal liability under this section.¹⁴

A person who is portrayed in such an altered sexual depiction without his or her consent may initiate a civil cause of action against a person who willfully and maliciously promoted such depiction and may obtain appropriate relief to prevent or remedy the promotion, including:

¹⁰ Mathew B. Kugler and Carly Pace, *Deepfake Privacy: Attitudes and Regulation*, *Northwestern University Law Review*, 2021 Vol 116:611, p. 624-25, <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1476&context=nulr> (last visited March 19, 2025).

¹¹ Section 836.13(1)(b), F.S., defines "Identifiable person" to mean a person who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature.

¹² Section 847.001(19), F.S., defines "Sexual conduct" to mean actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."

¹³ A third degree felony is punishable by a term of imprisonment up to 5 years and a \$5,000 fine as provided in ss. 775.082, 775.083, and 775.084, F.S.

¹⁴ Section 836.13(4), F.S.

- Injunctive relief.
- Monetary damages to include \$10,000 or actual damages incurred.
- Reasonable attorney fees and costs.¹⁵

Florida Deceptive and Unfair Trade Practices Act

It is unlawful under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), ss. 501.201-501.213, F.S., for a party to take part in “unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts of practices in the conduct of any trade or commerce.”¹⁶ Such practices include fraudulent billing,¹⁷ misleading a consumer or misrepresenting a product’s characteristics,¹⁸ or other behavior determined to be unfair by a court.¹⁹ Under the FDUTPA, the Office of the State Attorney or Department of Legal Affairs, either by their own inquiry or through complaints, may investigate violations of the FDUTPA.²⁰ In addition to other remedies under state and federal law, the enforcing authority may bring actions for declaratory judgment, injunctive relief, actual damages on behalf of consumers and businesses, cease and desist orders, and civil penalties up to \$10,000 per violation.²¹ Moreover, consumers may bring private actions against parties for violating the FDUTPA, resulting in either:

- Declaratory judgment and injunctive relief when the consumer is aggrieved by a FDUTPA violation; or
- Actual damages, attorney fees, and court costs, when the consumer has suffered a loss due to the FDUTPA violation.²²

III. Effect of Proposed Changes:

Required Removal Procedure

CS/SB 1400 requires that no later than December 31, 2025, covered platforms establish a process by which a person may notify and request removal of an altered sexual depiction²³ that was published without their consent. The notification and request for removal must include, in writing:

- A physical or electronic signature of the identifiable person or an authorized person acting on their behalf.

¹⁵ Section 836.13(5), F.S.

¹⁶ Section 501.204, F.S.

¹⁷ *State Farm Mut. Auto. Ins. Co. v. Medical Service Center of Florida, Inc.*, 103 F. Supp. 3d 1343 (S.D. Fla. 2015).

¹⁸ *Lewis v. Mercedes-Benz USA, LLC*, 530 F. Supp. 3d 1183 (S.D. Fla. 2021); *Marty v. Anheuser-Busch Companies, LLC*, 43 F. Supp. 3d 1333 (S.D. Fla. 2014).

¹⁹ *See Siever v. BWGaskets, Inc.*, 669 F. Supp. 2d 1286, 1292-93 (M.D. Fla. 2009).

²⁰ The enforcing authority under the FDUTPA may “administer oaths and affirmations, subpoena witnesses or matter, and collect evidence.” Section 501.206, F.S.

²¹ Sections 501.207, 501.2077, 501.2075, 501.208, F.S.

²² Sections 501.2105, 501.211, F.S.

²³ “Altered sexual depiction” means 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, F.S., in which the identifiable person did not engage. Section 836.13, F.S.

- 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.

Upon receipt of a valid removal request, within 48 hours the covered platform must remove the altered sexual depiction and make reasonable efforts to identify and remove any known, identical copies of such depiction.

Clear and Conspicuous Notice

The bill requires a covered platform to provide clear and conspicuous notice of the notice and removal process, which:

- Is easy to read and is in plain language.
- Provides information regarding the responsibilities of the covered platform under this bill.
- Includes a description of how a person can submit a notification and request for removal.

Covered Platforms

Under the bill, “covered platform” means 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.

The bill explicitly does not apply to:

- A provider of information service or telecommunications service, as defined in 47 U.S.C. s. 153, for content provided by another person.
- Electronic mail.
- Except as otherwise provided, an online service, application, or website:
 - That consists primarily of preselected content by the provider, rather than content that is user generated; and
 - For which any chat, comment, or interactive functionality is incidental to, directly related to, or dependent on the provision of the content described above.

Liability

The bill provides that a covered platform shall not be found 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.

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 FDUTPA.

Effective Date

The bill takes effect upon becoming law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Covered platforms will need to comply with the notification and removal requirements in the bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 836.13 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism Committee on March 17, 2024:

The committee substitute excludes providers of information service or telecommunications service, for content provided by another person, from the covered platforms under this bill.

B. Amendments:

None.