

STAND. COM. REP. NO.

1396

Honolulu, Hawaii

, 2021

MAR 25

RE: S.B. No. 309

S.D. 1

H.D. 1

Honorable Scott K. Saiki
Speaker, House of Representatives
Thirty-First State Legislature
Regular Session of 2021
State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which
was referred S.B. No. 309, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO PRIVACY,"

begs leave to report as follows:

The purpose of this measure is to include under the offense
of violation of privacy in the first degree the intentional
creation or disclosure or threat of disclosure of certain types of
deep fake images or video.

Your Committee received testimony in support of this measure
from the Department of the Prosecuting Attorney of the County of
Maui, Honolulu Police Department, Department of the Prosecuting
Attorney of the City and County of Honolulu, LGBT Caucus of the
Democratic Party of Hawaii, SAG-AFTRA Hawaii Local, Imua Alliance,
Hawaii State AFL-CIO, International Longshore & Warehouse Union
Local 142, International Brotherhood of Electrical Workers
Local 1260, IATSE Local 665, Iron Workers Stabilization Fund, and
four individuals. Your Committee received comments on this
measure from the Motion Picture Association - America.

Your Committee finds that H.C.R. No. 225, H.D. 1, S.D. 1
(Regular Session of 2019), established the Twenty-First Century
Privacy Law Task Force (Task Force) and tasked the Task Force to

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examine and recommend laws and regulations relating to internet privacy; the collection, transmission, processing, protection, storage, and sale of personal data; hacking; data breaches; and other similar subjects.

Your Committee further finds that, among the various areas of risk the Task Force discussed, the Task Force discussed and examined deep fake technology. Deep fake technology is the process of digitally manipulating existing audio and video to depict a person doing or saying something that they did not say or do. Identifying false video and audio employing the use of deep fake technology can be difficult for an unaware viewer. Additionally, deep fake technology is increasingly being used to depict individuals as engaging in sexual activity or as performing in the nude without consent or participation, with the intent of causing economic, reputational, and emotional harm.

Your Committee finds that, among the several recommendations made by the Task Force, the Task Force recommended addressing the issue of deep fake technology by establishing criminal violations for those who violate a person's privacy through the creation or disclosure of deep fake videos that include the likeness of another person engaging in sexual conduct or performing in the nude without consent or participation. This measure will protect the people of the State from the malicious use of this emerging technology.

Your Committee has amended this measure by:

- (1) Clarifying that the composite image or video depicting the fictitious person be a realistic photographic image or video;
- (2) Applying the reasonable person standard to the fictitious image of the depicted person;
- (3) Requiring that the depicted person suffer harm as a result of the realistic photographic image or video;
- (4) Exempting realistic photographic images or videos that are a matter of legitimate public concern; have political or newsworthy value; or are commentary, criticism, or disclosures that are otherwise protected



by the United States Constitution and Hawaii State
Constitution;

- (5) Changing the effective date to December 1, 2050, to encourage further discussion; and
- (6) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 309, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 309, S.D. 1, H.D. 1, and be referred to your Committee on Judiciary & Hawaiian Affairs.

Respectfully submitted on
behalf of the members of the
Committee on Consumer
Protection & Commerce,


AARON LING JOHANSON, Chair



