

Senate Bill 418

By: Senators Burns of the 23rd, Parent of the 44th, Anavitarte of the 31st, Still of the 48th, Hatchett of the 50th and others

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 1 of Title 51 of the Official Code of Georgia Annotated, relating to
2 general provisions regarding torts, so as to authorize the Attorney General or an appropriate
3 prosecuting attorney to bring civil enforcement actions against the knowing and unauthorized
4 use of an individual's photograph or image together with representations of nudity or sexually
5 explicit conduct; to provide for stays of such civil enforcement actions; to provide for a
6 limitation of liability; to provide for definitions; to provide for related matters; to repeal
7 conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Chapter 1 of Title 51 of the Official Code of Georgia Annotated, relating to general
11 provisions regarding torts, is amended by adding a new Code section to read as follows:

12 "51-1-58.

13 (a) As used in this Code section, the term:

14 (1) 'Depiction' means any visual representation of an individual or sexually explicit
15 conduct.

16 (2) 'Identifiable' means recognizable by a person other than the individual depicted.

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17 (3) 'Image' means any readily identifiable depiction of an individual, including, but not
18 limited to, a photograph.

19 (4) 'Individual' means a natural person, living or dead.

20 (5) 'Nudity' shall have the same meaning as set forth in Code Section 16-11-90.

21 (6) 'Photograph' means any photograph or photorealistic representation in any format,
22 still or moving, of an individual.

23 (7) 'Sexually explicit conduct' shall have the same meaning as set forth in Code Section
24 16-12-100.

25 (8) 'Use' or 'uses' means and includes personal use and use that involves publication,
26 performance, distribution, transmission, or otherwise making available to the public
27 irrespective of whether such use is for commercial purposes.

28 (b) The Attorney General or an appropriate prosecuting attorney may bring a civil
29 enforcement action against any person, irrespective of such person's age, who knowingly
30 uses an individual's image together at the same time with one or more depictions of nudity
31 or sexually explicit conduct with the knowledge that such use was not authorized by such
32 individual or, in the case of a minor, such minor's parent or legal guardian, or, in the case
33 of a deceased individual, the executor or administrator, heirs, or devisees of such deceased
34 individual. For violations of this Code section, the Attorney General or an appropriate
35 prosecuting attorney shall be authorized to seek injunctive relief, civil penalties up to
36 \$10,000.00 per violation, or both.

37 (c) Any civil enforcement action filed under subsection (b) of this Code section shall be
38 stayed during the pendency of any criminal action arising out of the same occurrence
39 giving rise to such enforcement action.

40 (d) Notwithstanding any other law to the contrary, an action may be brought under
41 subsection (b) of this Code section within ten years after:

42 (1) The civil enforcement action arose; or

43 (2) The individual victim reaches 18 years of age, if such individual was a minor at the
44 time of the alleged violation.

45 (e) No internet service provider, search engine provider, cloud service provider, or affiliate
46 or subsidiary thereof shall be liable under this Code section solely on the basis of providing
47 access or connection to or from a website, other information or content on the internet, or
48 a facility, system, or network not under the control of such provider, including, but not
49 limited to, the transmission, download, intermediate storage, or access software of content
50 that is a depiction of nudity or sexually explicit conduct except to the extent such provider
51 is responsible for the creation of such depiction."

52 **SECTION 2.**

53 All laws and parts of laws in conflict with this Act are repealed.