

# **Act Establishing Special Provisions on Performance Agreements That Are Meant to Help Prevent the Harm Associated with Performing in Sexually Explicit Videos and to Contribute to Remedies for Performers in Order to Contribute to the Formation of a Society in Which Individuals' Sexual Dignity Is Respected**

(Act No. 78 of June 22, 2022)

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## **Chapter I General Provisions**

(Purpose)

Article 1 In consideration of the fact that the production and release of sexually explicit videos may cause, and indeed has caused, serious and lasting harm to the physical and mental health and to the private lives of performers, and recognizing that helping to prevent the occurrence and amplification of harm associated with performing in sexually explicit videos and taking thorough measures to contribute to remedies for performers who have suffered that harm are essential to respecting performers' humanity as individuals and to protecting their physical and mental health, preserving peace in their private lives, and protecting their other interests, the purpose of this Act is first to

clarify the fundamental principles of implementation and construction of this Act, that coercing people into sex acts is prohibited and that the nullity of contracts and the prohibition or restriction of sex acts and other such acts under other laws and regulations is not altered in any way, and then to establish special provisions providing for strict controls covering things such as the duties of producer or releasers and others in entering into and performing obligations under performance agreements, limitations on the validity of performance agreements and cancellation of those agreements, and creation of the right to demand cessation of activities, as well as establishing special exceptions to the Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of the Sender (Act No. 137 of 2001), and to provide for development of consultation systems for performers and others, thereby contributing to the formation of a society in which performers' individual sexual dignity is respected.

(Definitions)

- Article 2 (1) The term "sex act" as used in this Act means sexual intercourse or any act similar to sexual intercourse; an act that involves a person having their exposed genitals or anus touched by another person; or an act that involves a person touching their own exposed genitals or anus or those of another person.
- (2) The term "sexually explicit video" as used in this Act means an electronic or magnetic record (meaning a record used in computerized information processing which is created in electronic form, magnetic form, or any other form that cannot be perceived by the human senses; the same applies hereinafter) consisting of images created by filming a person's body in a position that involves a sex act and related images and sound, and produced as something whose content would generally be accepted as being unified, or a recording medium containing such a record, whose content, as a whole, chiefly arouses or stimulates sexual desire.
- (3) The term "performing in a sexually explicit video" as used in this Act means being the subject of a sexually explicit video in which the body is filmed in a position that involves a sex act.
- (4) The term "performer" as used in this Act means a person who is performing, will perform, or seeks to perform in a sexually explicit video.
- (5) The term "producing or releasing" as used in this Act means carrying out all or part of a series of processes such as filming, editing, circulating, and releasing (meaning distributing, transmitting to the public (meaning making a transmission of wireless communications or wired telecommunications with the objective of allowing the public (including exclusive groups made up of many

- persons) to receive them directly), or showing on a screen; the same applies hereinafter) (including making arrangements in connection with these acts).
- (6) The term "performance agreement" as used in this Act means an agreement in which the performer consents to performing in a sexually explicit video and to the production or release of that sexually explicit video.
- (7) The term "producer or releaser" as used in this Act means a person that enters into or seeks to enter into a performance agreement with a performer, in the capacity of a person that produces or releases sexually explicit videos.
- (8) The term "member of production or release staff" as used in this Act means a person other than the producer or releaser, who is engaged in the production or release of a sexually explicit video based on an employment contract, service contract, entrustment contract, or other such agreement with the producer or releaser.

(Fundamental Principles of Implementation and Construction)

- Article 3 (1) Producers and releasers and members of production and release staff must ensure that performers' individual sexual dignity is respected by respecting performers' humanity as individuals and protecting their physical and mental health, preserving peace in their private lives, and protecting their other interests while remaining deeply aware that the production and release of sexually explicit videos may cause, and indeed has caused, serious and lasting harm to the physical and mental health of performers and to their private lives.
- (2) In filming a sexually explicit video, it is prohibited for a producer or releaser or a member of production or release staff to coerce a performer into a sex act.
- (3) None of the provisions of this Act must be construed as giving effect to a contract that is void pursuant to the provisions of Article 90 of the Civil Code (Act No. 89 of 1896) or of other laws and regulations establishing the nullity of juridical acts that are against public policy.
- (4) In producing and releasing a sexually explicit video, the producer and releaser and members of production or release staff must be mindful that this Act does not make it permissible for persons to engage in sex acts or other such acts that are prohibited or restricted by the Penal Code (Act No. 45 of 1907), Anti-Prostitution Act (Act No. 118 of 1956) or other laws and regulations, and must ensure that the rights and freedoms of performers are not violated.

**Chapter II Special Provisions on Performance Agreements**

**Section 1 Special Provisions on Entry Into Performance Agreements**

(Performance Agreements)

- Article 4 (1) A performance agreement must be entered into for each sexually

explicit video.

(2) A performance agreement does not become effective unless it is in the form of a written document or electronic or magnetic record.

(3) The written document or electronic or magnetic record associated with the performance agreement referred to in the preceding paragraph (hereinafter referred to as the "performance contract") must include the names of the producer or releaser and the performer, other information needed to identify the producer or releaser and the performer, and the time, date, and place of their entry into the performance agreement, as well as the following information (but only information for the parts of the agreement that involve the producer or releaser in question):

(i) that the performer will perform in a sexually explicit video;

(ii) the time, date, and place that filming is scheduled for the performer's performance in the sexually explicit video;

(iii) the specific details of the positions of the body of the performer who is the subject of the filming referred to in the preceding item, which involve sex acts;

(iv) information needed to identify any other persons connected with the positions of the body that involve the sex acts referred to in the preceding item;

(v) specific details of how and when the sexually explicit video will be released;

(vi) if applicable, that the person releasing the sexually explicit video is someone other than the producer or releaser, the name of the person releasing the video, and other information needed to identify the person releasing the video;

(vii) the amount of the remuneration that the performer is to receive and the timing of payment; and

(viii) other information specified by Cabinet Office Order.

(Obligation to Explain Performance Agreements)

Article 5 (1) Before seeking to enter into a performance agreement with a performer, a producer or releaser must present the performer with a draft performance contract to explain the information provided for in paragraph (3) of the preceding Article (but only information for the parts of the agreement that involve the producer or releaser in question, as it concerns the information set forth in each item of the that paragraph; hereinafter referred to as the "details of the performance agreement" in the following Article and in Article 21, item (ii)), and must also deliver or provide a written document or electronic or magnetic record giving the following information (hereinafter referred to as an "explanatory document") to explain that information:

(i) the information prescribed in Articles 7 through 16;

- (ii) that the performer may exercise the right of rescission referred to in Article 11 for five years, from the time it becomes possible to ratify their manifestation of intention and until the right to rescind it is extinguished by prescription; and that the performer may exercise the right of cancellation referred to in Article 12, paragraph (1) for five years, from the time the performer learns that they may exercise the right to cancel the agreement and until that right is extinguished by prescription;
  - (iii) that it is possible the performer will be identified from the filmed images;
  - (iv) the name and contact details of organizations that handle the consultations prescribed in Article 17, paragraph (1) within the system established by the national government pursuant to the provisions of that paragraph (including any organizations that handle those consultations within a system established by a prefectural government pursuant to the provisions of Article 17, paragraph (2)); and
  - (v) other information specified by Cabinet Office Order.
- (2) In giving the explanations under the preceding paragraph, a producer or releaser must explain the relevant information thoroughly and straightforwardly so that the performer can easily and accurately understand the content of the explanations.
- (3) A person not constituting the producer or releaser must not give explanations concerning the content of the performance agreement or the information set forth in the items of paragraph (1) that could mislead the performer and must not take any other such action.

(Obligation to Deliver Performance Contracts)

Article 6 Upon entering into a performance agreement with a performer, the producer or releaser must promptly deliver or provide a performance contract containing the details of the performance agreement to the performer.

**Section 2 Special Provisions on Performance of Obligations**

(Filming Sexually Explicit Videos)

- Article 7 (1) Filming of a performer's performance in a sexually explicit video must not take place until after the expiration of one month from the date on which the performer was delivered or provided with the performance contract or the date on which the performer was delivered or provided with the explanatory document, whichever is later.
- (2) Even if the filming of a performer's performance in a sexually explicit video consists of the performer's body being filmed in positions that involve sex acts which are provided for in the performance agreement, the performer may refuse to take part in all or part of the filming. The performer is not liable for

damage sustained by the producer or releaser or a third party as a consequence of this.

- (3) In the filming of a performer's performance in a sexually explicit video, necessary measures must be taken with particular consideration being given to protecting the health of the performer (including protecting their reproductive functions) and to other such matters of safety and sanitation, and to ensuring the voluntary nature of their performance of their obligations, including enabling the performer to refuse to take part in the filming of their body in positions that involve sex acts.
- (4) Irrespective of the terminology used, any filming of a performer that is closely related to the filming of a performer's performance in a sexually explicit video (limited to the filming of a person's body in a position set forth in any of the items in Article 2, paragraph (1) of the Act on Preventing Harm That Is Due to Private Sexual Image Recordings Being Provided to Third Parties (Act No. 126 of 2014)) is deemed to be the filming of a performer's performance in a sexually explicit video and the provisions of the preceding three paragraphs apply. In such a case, the term "their body in positions that involve sex acts" in the preceding two paragraphs is deemed to be replaced with "the body in a position set forth in any of the items of Article 2, paragraph (1) of the Act on Preventing Harm That Is Due to Private Sexual Image Recordings Being Provided to Third Parties".

#### (Looking Over Filmed Images)

Article 8 Before a sexually explicit video is released, the producer or releaser must provide the performer with an opportunity to look over those of the images filmed based on the performance agreement that involve the performer's performance in the sexually explicit video and that will be released (limited to images that the producer or releaser has the authority to release).

#### (Restrictions on the Release of Sexually Explicit Videos)

Article 9 A sexually explicit video must not be released until after the expiration of four months from the date on which all of the filming for the sexually explicit video is completed.

### **Section 3 Special Provisions on Nullity, Rescission, and Cancellation**

#### (Nullity of Performance Agreement Clauses)

Article 10 (1) A clause in an agreement that imposes an obligation on a performer to perform in a sexually explicit video designated by the other party to the agreement or any other such person without specifying the sexually explicit video, is void.

(2) The following performance agreement clauses are void:

- (i) clauses that designate an amount of damages or fix a penalty for non-performance by the performer;
- (ii) clauses that fully or partially release a producer or releaser from liability for damage that a performer incurs due to non-performance by the producer or releaser, or that grant the producer or releaser the authority to determine whether or not it is liable or the extent of its liability;
- (iii) clauses that fully or partially release a producer or releaser from liability for damage that a performer incurs due to a tortious act by the producer or releaser that took place at the time of the producer or releaser's performance of its obligations, or that grant the producer or releaser the authority to determine whether or not it is liable or the extent of its liability; and
- (iv) clauses restricting a performer's rights or expanding a performer's obligations, which are found to unilaterally prejudice the interests of the performer in violation of the fundamental principle provided in Article 1, paragraph (2) of the Civil Code.

(Rescission of Performance Agreements)

Article 11 If a producer or releaser violates the provisions of Article 5, paragraph (1) or Article 6, the performer may rescind the manifestation of intention constituting their offer to enter into a performance agreement that concerns their performance in a sexually explicit video or their acceptance of such an offer. The same applies if a member of production or release staff violates the provisions of Article 5, paragraph (3).

(Cancellation of Performance Agreements Due to Breach of Statutory Duty)

Article 12 (1) In the following cases, the performer may immediately cancel the performance agreement that concerns their performance in the sexually explicit video without making the demand referred to in Article 541 of the Civil Code:

- (i) if the filming of the performer's performance in the sexually explicit video (including filming that is deemed to constitute the filming of the performer's performance in the sexually explicit video pursuant to the provisions of Article 7, paragraph (4)) has been conducted in violation of the provisions of Article 7, paragraphs (1) or (3);
- (ii) if, in violation of the provisions of Article 8, the sexually explicit video has been released without the performer having been given an opportunity to look over those of the filmed images that involved the performer's performance in the sexually explicit video and that would be released; and
- (iii) if, in violation of the provisions of Article 9, the sexually explicit video was released before the expiration of the period of time referred to in that Article.

- (2) If a performance agreement has been cancelled as referred to in the preceding paragraph, the producer or releaser may not seek damages in connection with the cancellation.

(At-Will Cancellation and Withdrawal)

Article 13 (1) A performer may, at will, withdraw their offer to enter into a performance agreement that concerns their performance in a sexually explicit video or cancel the performance agreement (hereinafter referred to as "at-will cancellation or withdrawal" in this Article), by a written document or an electronic or magnetic record; provided, however, that this does not apply after the expiration of one year from the date on which the sexually explicit video involving the performer is released (or after the expiration of one year from the date on which the performer receives a document that indicates that the performer may cancel or withdraw at will and that is delivered by the producer or releaser or a member of production or release staff, pursuant to the provisions of Cabinet Office Order, if the producer or releaser or a member of production or release staff conveyed false information concerning the particulars of at-will cancellations or withdrawals, in violation of the provisions of paragraph (5), and this caused the performer to mistakenly believe that what was conveyed to them was true, or if the producer or releaser or a member of production or release staff used intimidation, in violation of the provisions of paragraph (6), and this caused the performer to be overwhelmed, and if either of these circumstances was the reason why the performer did not make the at-will cancellation or withdrawal before the expiration of one year following the release date).

- (2) An at-will cancellation or withdrawal becomes effective from the time the performer issues notice of this by a written document or an electronic or magnetic record.
- (3) If an at-will cancellation or withdrawal has been made, the producer or releaser may not seek damages in connection with it.
- (4) Any special agreement contrary to the provisions of the preceding three paragraphs that is disadvantageous to the performer is void.
- (5) It is prohibited for a producer or releaser or a member of production or release staff to convey false information to a performer concerning the particulars of at-will cancellations or withdrawals (including the particulars of the provisions of paragraphs (1) through (3)) or other important particulars of the performance agreement that will impact the performer's decisions, in order to prevent an at-will cancellation or withdrawal.
- (6) It is prohibited for a producer or releaser or a member of production or release staff to intimidate and overwhelm a performer in order to prevent an at-will cancellation or withdrawal.

(Effect of Cancellation)

Article 14 If a performance agreement is cancelled, each of the parties has an obligation to restore the other party to its original state.

#### **Section 4 Right to Demand Cessation of Activities**

Article 15 (1) If a sexually explicit video has been produced or released without being based on a performance agreement, or if the performance agreement has been rescinded or cancelled, the performer may demand that the persons producing or releasing the sexually explicit video, or persons likely to produce or release it, cease or prevent its production or release.

(2) When making a demand pursuant to the provisions of the preceding paragraph, the performer may request that necessary measures be taken to cease or prevent the production or release.

(3) If a performer seeks to make a demand pursuant to the provisions of paragraph (1), the producer or releaser must provide the performer with information on the persons producing or releasing the sexually explicit video, or persons likely to produce or release it, and must cooperate as necessary, including by notifying the relevant persons about the cessation or prevention of its production or release.

#### **Chapter III Special Exceptions to the Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of the Sender**

Article 16 Beyond what is provided for in Article 3, paragraph (2) and Article 4 (limited to the part involving item (i)) of the Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of the Sender and in Article 4 of the Act on Preventing Harm That Is Due to Private Sexual Image Recordings Being Provided to Third Parties, if a specified telecommunications service provider (meaning a specified telecommunications service provider referred to in Article 2, paragraph (3) of the Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of the Sender; the same applies in items (i) and (ii)) has taken measures to prevent the transmission of information by specified telecommunications (meaning specified telecommunications referred to in Article 2, item (i) of that Act; the same applies in item (i)), the specified telecommunications service provider is not liable for damage incurred by the sender (meaning a sender referred to in

Article 2, item (iv) of that Act; the same applies in items (ii) and (iii) of the information whose transmission was prevented by those measures, if the extent to which those measures have been taken represents what is necessary for preventing transmission of the information to unspecified persons, and if those measures fall under all of the following items:

- (i) if a person alleging that their rights have been violated by the circulation of data from a sexually explicit video via specified telecommunications (limited to a person in that sexually explicit video) has asked the specified telecommunications service provider to take measures to prevent the data that violates their rights (hereinafter referred to as "violating data" in this item and the following item) from being transmitted (referred to as "measures for preventing the transmission of violating data" in items (ii) and (iii)), by indicating the violating data, the fact that their rights have been violated, the reason for alleging the violation of rights, and the fact that the violating data is from a sexually explicit video (referred to as "violating data and related information" in item (ii));
- (ii) if the specified telecommunications service provider has indicated violating data and related information to its originator and inquired whether the originator consents to the measures for preventing the transmission of violating data being taken; and
- (iii) if, even though two days have elapsed from the date the originator received the inquiry, the specified telecommunications service provider has not received any notice from the originator indicating that it does not consent to the measures for preventing the transmission of violating data being taken.

#### **Chapter IV Making Arrangements for Consultation Systems; Related Matters**

(Making Arrangements for Consultation Systems)

Article 17 (1) From the perspective of respecting performers' humanity as individuals and protecting their physical and mental health, preserving peace in their private lives, and protecting their other interests at each stage of producing and releasing a sexually explicit video, including inviting performers to perform in a sexually explicit video and entering into and performing obligations under performance agreements, and thereby ensuring that performers' individual sexual dignity is respected, the national government is to arrange for the necessary systems to handle consultations with performers and others and for providing them with appropriate support in view of their physical and mental states, what is happening in their lives, and other such circumstances, in order to prevent the occurrence and amplification of harm associated with performing in sexually explicit videos, to contribute to

remedies for performers who have suffered that harm, as well as contributing to fundamental solutions for problems such as the poverty, sex crimes, and sexual violence underlying that harm.

- (2) Prefectural governments are to endeavor to make arrangements for systems that are equivalent to the arrangements that the national government makes for the systems referred to in the preceding paragraph, while taking regional circumstances into consideration.

(Other Support Measures)

Article 18 Beyond what is provided for in the preceding Article, the national and local governments are to provide support for performers and others and take other necessary measures in coordination with social welfare initiatives, initiatives to support victims of sex crimes and sexual violence, and other related initiatives, in order to contribute to fundamental solutions for problems such as the poverty, sex crimes, and sexual violence underlying the harm associated with performing in sexually explicit videos.

(Education and Awareness-Raising to Prevent Harm Before It Occurs)

Article 19 In light of the fact that it is particularly difficult to help performers recover from the harm associated with performing in sexually explicit videos once it has occurred, the national and local governments are to help enhance the educational activities and awareness-raising activities that are needed in order to further sufficient public understanding of and interest in the matters concerning which public understanding and interest is needed in order to prevent the harm associated with performing in sexually explicit videos before it occurs, through the schools, in the community, in the home, in the workplace, and in a variety of other such settings.

## **Chapter V Penal Provisions**

Article 20 If a person violates the provisions of Article 13, paragraphs (5) or (6), the person committing that violation is subject to imprisonment for up to three years, a fine of up to three million yen, or both.

Article 21 In circumstances falling under any of the following items, the person committing the violation is subject to imprisonment for up to six months, a fine of up to one million yen, or both:

- (i) if a person has not delivered or provided an explanatory document, in violation of the provisions of Article 5, paragraph (1), or has delivered or provided an explanatory document that either does not include the information set forth in the items of that paragraph or includes false

- information; or
- (ii) if a person has not delivered or provided a performance contract, in violation of the provisions of Article 6, or has delivered or provided a performance contract that either does not include the details of the performance agreement or includes false details.

Article 22 (1) If the representative or manager of a corporation, or the agent, employee, or other such worker of a corporation or individual commits a violation referred to in the provisions set forth in any of the following items in connection with the business of that corporation or individual, in addition to the offender being subject to punishment, the relevant corporation is subject to the fine specified in the relevant item, and the individual is subject to the fine prescribed in the relevant Article:

- (i) Article 20: a fine of not more than 100 million yen;
  - (ii) the preceding Article: the fine referred to in that Article.
- (2) When the provisions of the preceding paragraph apply to an association or foundation without legal personality, its representative or manager represents it with respect to procedural acts, and the provisions of laws concerning criminal proceedings that have a corporation as the defendant or a suspect apply *mutatis mutandis*.

### **Supplementary Provisions**

(Effective Date)

Article 1 This Act comes into effect on the day after the date of promulgation; provided, however, that the provisions of Chapter V come into effect on the day on which 20 days have elapsed from the date of promulgation.

(Transitional Measures)

Article 2 (1) The provisions of Chapter II (excluding Article 10, paragraph (1) and Section 4) do not apply to a performance agreement concluded before this Act comes into effect, nor do they apply to the filming of a performer's performance in a sexually explicit video based on such a performance agreement, the looking over of those filmed images, and the release of that sexually explicit video.

(2) The provisions of Article 10, paragraph (1) do not apply to agreements entered into before this Act comes into effect.

Article 3 (1) To apply the provisions of Article 13, paragraph (1) to an offer that a performer makes to enter into a performance agreement during the period that runs from the effective date of this Act until the final day in the two-year

period that follows (referred to as the "final day in the prescribed two-year period" in the following paragraph), to a performance agreement associated with such an offer, or to a performance agreement entered into during that period, the term "one year" in that paragraph is deemed to be replaced with "two years".

- (2) To apply the provisions of Article 13, paragraph (1) to an offer that a performer makes to enter into a performance agreement during the period that runs from the day after the final day in the prescribed two-year period until the final day in the one-year period that follows, to a performance agreement associated with such an offer, or to a performance agreement entered into during that period (excluding one that is subject to the provisions of the preceding paragraph), the term "after the expiration of one year from the date on which the sexually explicit video involving the performer is released" is deemed to be replaced with "after the expiration of one year from the date on which the sexually explicit video involving the performer is released, and after the expiration of four years and six months from the effective date of this Act".
- (3) To apply the provisions of Article 5, paragraph (1) (limited to the part that involves item (i)) when the provisions of the preceding two paragraphs apply, the term "information" in item (i) is deemed to be replaced with "information (including the information prescribed in Article 13, paragraph (1), with the terms deemed to have been replaced pursuant to the provisions of Article 3, paragraphs (1) or (2) of the Supplementary Provisions)."

#### (Review)

- Article 4 (1) Within two years after this Act comes into effect, the relevant parties are to conduct a review of the provisions of this Act in consideration of things such as the extent to which this Act is in effect, and to take the necessary measures based on the results of their review.
- (2) In conducting the review referred to in the preceding paragraph, the relevant parties are also to review restrictions on the period for releasing sexually explicit videos, the scope of clauses in performance agreements that are void, and other special provisions on performance agreements.

#### (Adjusting Provisions)

- Article 5 To apply the provisions of Article 16 during the period that runs from the effective date of this Act until the day before the effective date of the Act Partially Amending the Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of the Sender (Act No. 27 of 2021), the phrase "and Article 4" in that Article is deemed to be replaced with "and Article 3-2".

(Partial Amendment of the Act on the Arrangement of Related Acts to Accommodate the Entry Into Force of the Act Partially Amending the Penal Code and Other Acts)

Article 6 The Act on the Arrangement of Related Acts to Accommodate the Entry Into Force of the Act Partially Amending the Penal Code and Other Acts (Act No. 68 of 2022) is partially amended as follows.

The following single item is added to Article 80.

(xvii) Articles 20 and 21 of the Act Establishing Special Provisions on Performance Agreements That Are Meant to Help Prevent the Harm Associated with Performing in Sexually Explicit Videos and to Contribute to Remedies for Performers in Order to Contribute to the Formation of a Society in Which Individuals' Sexual Dignity Is Respected (Act No. 78 of 2022).

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