

116TH CONGRESS
2D SESSION

S. 4994

To provide civil relief for victims of the disclosure of certain intimate images,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 9, 2020

Ms. HASSAN (for herself, Mr. HAWLEY, and Mr. TILLIS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide civil relief for victims of the disclosure of certain
intimate images, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Intimate Imagery and
5 Privacy Protection Act of 2020”.

6 **SEC. 2. CIVIL ACTION RELATING TO DISCLOSURE OF INTI-** 7 **MATE IMAGES.**

8 (a) DEFINITIONS.—In this section:

9 (1) CONSENT.—The term “consent” means,
10 with respect to an individual, an affirmative, con-

1 scious, and voluntary authorization made by the in-
 2 dividual free from force, fraud, misrepresentation, or
 3 coercion of the depicted individual.

4 (2) COMMERCIAL PORNOGRAPHIC CONTENT.—
 5 The term “commercial pornographic content” means
 6 any material that is subject to the record keeping re-
 7 quirements under section 2257 of title 18, United
 8 States Code.

9 (3) DEPICTED INDIVIDUAL.—The term “de-
 10 picted individual” means an individual whose body is
 11 disclosed in whole or in part in an intimate image.

12 (4) DISCLOSE.—The term “disclose” means to
 13 transfer, publish, distribute, or make accessible an
 14 intimate image.

15 (5) IDENTIFIABLE.—The term “identifiable”
 16 means recognizable by an individual other than the
 17 depicted individual from—

18 (A) the intimate image itself; or

19 (B) information or text displayed in con-
 20 nection with the intimate image.

21 (6) INTIMATE IMAGE.—The term “intimate
 22 image”—

23 (A) means a photograph, film, video re-
 24 cording, or digital recording that shows—

1 (i) the uncovered genitals, pubic area,
2 anus, or female nipple of an individual;

3 (ii) the display or transfer of bodily
4 sexual fluids on to any part of the body of
5 an individual;

6 (iii) an individual engaging in sexually
7 explicit conduct; or

8 (iv) an individual being subjected to
9 sexually explicit conduct; and

10 (B) includes any image described in sub-
11 paragraph (A) captured or recorded while the
12 depicted individual was in a public place if—

13 (i) the depicted individual did not vol-
14 untarily display the content depicted in the
15 image; or

16 (ii) the depicted individual did not
17 consent to the sexual conduct depicted in
18 the image.

19 (7) SEXUALLY EXPLICIT CONDUCT.—The term
20 “sexually explicit conduct” has the meaning given
21 the term in subparagraphs (A) and (B) of section
22 2256(2) of title 18, United States Code.

23 (b) CIVIL ACTION.—

24 (1) RIGHT OF ACTION.—Except as provided in
25 paragraph (4), a depicted individual, or in the case

1 of a depicted individual who is a minor, the parent
2 of the depicted individual, whose intimate image is
3 disclosed, in or through interstate or foreign com-
4 merce or using a means of interstate or foreign com-
5 merce (including the internet), without the consent
6 of the depicted individual, and such disclosure was
7 made by a person who acted knowingly without, or
8 with reckless disregard for, the consent of the de-
9 picted individual to such disclosure, may bring a civil
10 action against that person in an appropriate district
11 court of the United States for appropriate relief.

12 (2) CONSENT.—For purposes of an action
13 under paragraph (1)—

14 (A) evidence that the depicted individual
15 provided consent to the capture or recording of
16 the intimate image shall not, by itself, con-
17 stitute evidence that the depicted individual
18 provided consent to the disclosure of the inti-
19 mate image; and

20 (B) evidence that the depicted individual
21 disclosed the image to the person alleged to
22 have violated paragraph (1) shall not, by itself,
23 constitute evidence that the depicted individual
24 provided consent to the further disclosure of the
25 intimate image.

1 (3) RELIEF.—

2 (A) IN GENERAL.—In a civil action filed
3 under this section—

4 (i) an individual may recover the ac-
5 tual damages sustained by the individual
6 or liquidated damages in the amount of
7 \$150,000, and the cost of the action, in-
8 cluding reasonable attorney's fees and
9 other litigation costs reasonably incurred;
10 and

11 (ii) the court may, in addition to any
12 other relief available at law, order equi-
13 table relief, including a temporary restrain-
14 ing order, a preliminary injunction, or a
15 permanent injunction ordering the defend-
16 ant to cease display or disclosure of the
17 image.

18 (B) PRESERVATION OF ANONYMITY.—In
19 ordering relief under subparagraph (A), the
20 court may grant injunctive relief maintaining
21 the confidentiality of a plaintiff using a pseu-
22 donym.

23 (4) EXCEPTIONS.—A depicted individual may
24 not bring an action for relief under this section re-
25 lating to—

1 (A) an intimate image that is commercial
 2 pornographic content unless—

3 (i) the content was produced by force,
 4 fraud, misrepresentation, or coercion of the
 5 depicted individual; and

6 (ii) the claim of force, fraud, mis-
 7 representation, or coercion under clause (i)
 8 is demonstrated through a preponderance
 9 of evidence;

10 (B) a disclosure made in good faith—

11 (i) to a law enforcement officer or
 12 agency;

13 (ii) as part of a legal proceeding;

14 (iii) as part of medical education, di-
 15 agnosis, or treatment; or

16 (iv) in the reporting or investigation
 17 of—

18 (I) unlawful content; or

19 (II) unsolicited or unwelcome
 20 conduct;

21 (C) a matter of public concern or public in-
 22 terest; or

23 (D) a disclosure reasonably intended to as-
 24 sist the depicted individual.

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