

118TH CONGRESS
2D SESSION

S. 4409

To prohibit the disclosure of intimate digital depictions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 23, 2024

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

A BILL

To prohibit the disclosure of intimate digital depictions, 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 “Preventing Deepfakes
5 of Intimate Images Act”.

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

8 Section 1309 of the Violence Against Women Act Re-
9 authorization Act of 2022 (15 U.S.C. 6851) is amended—

1 (1) in the heading, by striking “**IMAGES**” and
2 inserting “**DEPICTIONS**”;

3 (2) in subsection (a)—

4 (A) by redesignating paragraphs (2), (3),
5 (4), (5), and (6) as paragraphs (3), (5), (6),
6 (9), and (10), respectively;

7 (B) by inserting after paragraph (1) the
8 following:

9 “(2) COMMUNICATIONS SERVICE.—The term
10 ‘communications service’ means—

11 “(A) a service provided by a person that is
12 a common carrier, as that term is defined in
13 section 3 of the Communications Act of 1934
14 (47 U.S.C. 153), insofar as the person is acting
15 as a common carrier;

16 “(B) an electronic communication service,
17 as that term is defined in section 2510 of title
18 18, United States Code;

19 “(C) an information service, as that term
20 is defined in section 3 of the Communications
21 Act of 1934 (47 U.S.C. 153); and

22 “(D) an interactive computer service, as
23 that term is defined in section 230(f) of the
24 Communications Act of 1934 (47 U.S.C.
25 230(f)).”;

1 (C) by inserting after paragraph (3), as so
 2 redesignated, the following:

3 “(4) COVERED INTIMATE DEPICTION.—The
 4 term ‘covered intimate depiction’ means an intimate
 5 visual depiction or an intimate digital depiction.”;

6 (D) in paragraph (5), as so redesignated—

7 (i) by striking “means” and inserting
 8 the following—

9 “(A) with respect to an intimate visual de-
 10 piction, means”;

11 (ii) by striking “in an intimate visual
 12 depiction” and inserting “in the intimate
 13 visual depiction”;

14 (iii) by striking “the visual depiction”
 15 and inserting “the intimate visual depic-
 16 tion”;

17 (iv) by striking the period at the end
 18 and inserting “; and”; and

19 (v) by adding at the end the following:

20 “(B) with respect to an intimate digital de-
 21 piction, means an individual who, as a result of
 22 digitization or by means of digital manipulation,
 23 appears in whole or in part in the intimate dig-
 24 ital depiction and who is identifiable by virtue
 25 of the individual’s face, likeness, or other distin-

guishing characteristic, such as a unique birth-
 mark or other recognizable feature, or from in-
 formation displayed in connection with the inti-
 mate digital depiction.”;

(E) by inserting after paragraph (6), as so
 redesignated, the following:

“(7) INFORMATION CONTENT PROVIDER.—The
 term ‘information content provider’ has the meaning
 given the term in section 230 of the Communica-
 tions Act of 1934 (47 U.S.C. 230).

“(8) INTIMATE DIGITAL DEPICTION.—The term
 ‘intimate digital depiction’ means a realistic visual
 depiction, as that term is defined in section 2256(5)
 of title 18, United States Code, of an individual that
 has been created or altered using digitization or dig-
 ital manipulation and that depicts—

“(A) the uncovered genitals, pubic area,
 anus, or postpubescent female nipple of an
 identifiable individual;

“(B) the display or transfer of bodily sex-
 ual fluids—

“(i) onto any part of the body of an
 identifiable individual; or

“(ii) from the body of an identifiable
 individual; or

- 1 “(C) an identifiable individual engaging in
- 2 sexually explicit conduct.”; and
- 3 (F) in paragraph (9), as so redesignated—
- 4 (i) in subparagraph (A)—
- 5 (I) in clause (i), by striking “or”
- 6 at the end;
- 7 (II) in clause (ii)(I), by adding
- 8 “or” at the end;
- 9 (III) by redesignating subclause
- 10 (III) of clause (ii) as clause (iii) and
- 11 adjusting the margin accordingly; and
- 12 (IV) in clause (iii), as so redesign-
- 13 ated, by striking “conduct and” and
- 14 inserting “conduct; and”; and
- 15 (ii) in subparagraph (B)(ii), by insert-
- 16 ing “give” before “consent”; and
- 17 (3) in subsection (b)—
- 18 (A) in paragraph (1)—
- 19 (i) in subparagraph (A)—
- 20 (I) by inserting after “whose inti-
- 21 mate visual depiction is disclosed,”
- 22 the following: “or who is the subject
- 23 of an intimate digital depiction that is
- 24 disclosed,”; and

1 (II) by striking “consented” and
 2 inserting “given consent”; and

3 (ii) in subparagraph (B)—

4 (I) by striking “an individual”
 5 and inserting “a depicted individual”;

6 (II) by striking “the individual”
 7 and inserting “the depicted indi-
 8 vidual”;

9 (III) by striking “identifiable in-
 10 dividual’s” and inserting “depicted in-
 11 dividual’s”; and

12 (IV) by striking “identifiable in-
 13 dividual’s’” and inserting “depicted
 14 individual’s”;

15 (B) in paragraph (2)—

16 (i) in subparagraph (A)—

17 (I) by striking “consented” each
 18 place it appears and inserting “gave
 19 consent”;

20 (II) by inserting “covered inti-
 21 mate” before “depiction”; and

22 (III) by striking “distribution;
 23 and” and inserting “disclosure”;

24 (ii) by redesignating subparagraph
 25 (B) as subparagraph (C);

1 (iii) by inserting after subparagraph
 2 (A) the following:

3 “(B) consent shall be deemed validly given
 4 only if it is set forth in an agreement that—

5 “(i) is written in plain language
 6 signed knowingly and voluntarily by the
 7 depicted individual; and

8 “(ii) includes a general description of
 9 the covered intimate depiction and, if ap-
 10 plicable, the audiovisual work into which it
 11 will be incorporated; and”; and

12 (iv) in subparagraph (C), as so redes-
 13 ignated—

14 (I) by striking “intimate visual”
 15 each place it appears and inserting
 16 “covered intimate”; and

17 (II) by striking “person con-
 18 sented” and inserting “individual gave
 19 consent”;

20 (C) in paragraph (3)(A)—

21 (i) by striking clause (i) and inserting
 22 the following:

23 “(i) an individual may recover—

24 “(I) an amount equal to the
 25 monetary gain made by the defendant

from the disclosure of the covered intimate depiction;

“(II) either—

“(aa) the actual damages sustained by the individual as a result of the disclosure of the covered intimate depiction, including damages for emotional distress; or

“(bb) liquidated damages in the amount of \$150,000;

“(III) punitive damages; and

“(IV) the cost of the action, including reasonable attorney fees and other litigation costs reasonably incurred; and”;

(ii) in clause (ii), by striking “visual”;

(D) in paragraph (4)—

(i) in the matter preceding subparagraph (A), by striking “An identifiable individual” and inserting “A depicted individual”;

(ii) in subparagraph (A), by striking “an intimate image” and inserting “a covered intimate depiction”;

1 (iii) in subparagraph (C), by striking
 2 “public concern or public interest” and in-
 3 serting “legitimate public concern or public
 4 interest, except that it shall not be consid-
 5 ered a matter of legitimate public interest
 6 or public concern solely because the de-
 7 picted individual is a public figure”; and

8 (iv) in subparagraph (D), by striking
 9 “identifiable individual” and inserting “de-
 10 picted individual”; and

11 (E) by adding at the end the following:

12 “(5) IN CAMERA.—A court may authorize an in
 13 camera proceeding under this subsection.

14 “(6) DISCLAIMERS.—It shall not be a defense
 15 to an action under this subsection that there is a
 16 disclaimer stating that the covered intimate depic-
 17 tion of the depicted individual was unauthorized or
 18 that the depicted individual did not participate in
 19 the creation or development of the material.

20 “(7) LIMITATIONS.—For purposes of this sub-
 21 section, a provider of a communications service shall
 22 not be held liable on account of—

23 “(A) any action voluntarily taken in good
 24 faith to restrict access to or availability of a
 25 covered intimate depiction; or

1 “(B) any action taken to enable or make
 2 available to information content providers or
 3 other persons the technical means to restrict ac-
 4 cess to a covered intimate depiction.”.

5 **SEC. 3. CRIMINAL ACTION.**

6 (a) IN GENERAL.—Chapter 110 of title 18, United
 7 States Code, is amended by inserting after section 2252C
 8 the following:

9 **“§ 2252D. Disclosure of intimate digital depictions**

10 “(a) DEFINITIONS.—

11 “(1) DEFINITIONS OF TERMS DEFINED IN CIVIL
 12 ACTION STATUTE.—In this section, the terms ‘com-
 13 munications service’, ‘consent’, ‘depicted individual’,
 14 ‘disclose’, ‘information content provider’, and ‘sexu-
 15 ally explicit conduct’ have the meanings given those
 16 terms in section 1309 of the Violence Against
 17 Women Act Reauthorization Act of 2022 (15 U.S.C.
 18 6851).

19 “(2) OTHER TERMS.—In this section:

20 “(A) COVERED DIGITAL DEPICTION.—The
 21 term ‘covered digital depiction’ means—

22 “(i) an intimate digital depiction; or

23 “(ii) a digital depiction of a nude
 24 minor.

1 “(B) DIGITAL DEPICTION OF A NUDE
2 MINOR.—The term ‘digital depiction of a nude
3 minor’ means any digital visual depiction (as
4 that term is defined in section 2256(5))—

5 “(i) of an individual who—

6 “(I) is recognizable by an indi-
7 vidual other than the depicted indi-
8 vidual from the visual depiction itself
9 or information or text displayed in
10 connection with the visual depiction;
11 and

12 “(II) was under 18 years of age
13 when the visual depiction was created;
14 and

15 “(ii) in which the anus, genitals, or
16 pubic area, or post-pubescent female nip-
17 ple, of the depicted individual are
18 unclothed, visible, and displayed in a man-
19 ner that does not constitute sexually ex-
20 plicit conduct.

21 “(C) INTIMATE DIGITAL DEPICTION.—The
22 term ‘intimate digital depiction’ has the mean-
23 ing given the term in section 1309 of the Vio-
24 lence Against Women Act Reauthorization Act
25 of 2022 (15 U.S.C. 6851), except that it only

1 includes such a depiction of an individual who
2 was not less than 18 years of age when the de-
3 piction was created.

4 “(b) OFFENSES.—

5 “(1) INTIMATE DIGITAL DEPICTIONS.—Except
6 as provided in paragraph (3), it shall be unlawful to
7 knowingly disclose or threaten to disclose, through
8 the mail or using any means or facility of interstate
9 or foreign commerce or affecting interstate or for-
10 eign commerce, an intimate digital depiction of an
11 individual—

12 “(A) with knowledge of, or reckless dis-
13 regard for, the lack of consent of the depicted
14 individual to the disclosure of the intimate dig-
15 ital depiction;

16 “(B) with knowledge of, or reckless dis-
17 regard for, the lack of consent of the depicted
18 individual to the creation of the intimate digital
19 depiction;

20 “(C) with intent to harass, annoy, threat-
21 en, alarm, or cause substantial harm to the fi-
22 nances or reputation of the depicted individual;
23 or

24 “(D) with actual knowledge that, or reck-
25 less disregard for whether, the disclosure or

1 threatened disclosure will cause physical, emo-
2 tional, reputational, or economic harm to the
3 depicted individual.

4 “(2) DIGITAL DEPICTIONS OF NUDE MINORS.—

5 Except as provided in paragraph (3), it shall be un-
6 lawful to knowingly mail, or to knowingly distribute
7 using any means or facility of interstate or foreign
8 commerce or affecting interstate or foreign com-
9 merce, a digital depiction of a nude minor with in-
10 tent to abuse, humiliate, harass, or degrade the
11 minor, or to arouse or gratify the sexual desire of
12 any person.

13 “(3) EXCEPTIONS.—

14 “(A) LAW ENFORCEMENT, LAWFUL RE-
15 PORTING, AND OTHER LEGAL PROCEEDINGS.—

16 Paragraphs (1) and (2)—

17 “(i) do not prohibit any lawfully au-
18 thorized investigative, protective, or intel-
19 ligence activity of a law enforcement agen-
20 cy of the United States, a State, or a polit-
21 ical subdivision of a State, or of an intel-
22 ligence agency of the United States;

23 “(ii) shall not apply in the case of an
24 individual acting in good faith to report
25 unlawful or unsolicited activity or in pursu-

1 ance of a legal or professional or other law-
2 ful obligation; and

3 “(iii) shall not apply in the case of a
4 good faith and relevant document produc-
5 tion or filing associated with a legal pro-
6 ceeding.

7 “(B) SERVICE PROVIDERS.—Paragraphs
8 (1) and (2) shall not apply to any provider of
9 a communications service with regard to con-
10 tent provided by another information content
11 provider, unless—

12 “(i) in the case of an intimate digital
13 depiction, the provider of the communica-
14 tions service distributes the intimate digital
15 depiction with knowledge of the lack of
16 consent of the depicted individual; or

17 “(ii) in the case of a digital depiction
18 of a nude minor, the provider of the com-
19 munications service knowingly distributes
20 the digital depiction of a nude minor.

21 “(C) MATTERS OF PUBLIC CONCERN.—
22 Paragraphs (1) and (2) shall not apply with re-
23 spect to a covered digital depiction that is a
24 matter of public concern.

1 “(D) SUPPORT FOR VICTIMS.—Paragraphs
 2 (1) and (2) shall not apply to the distribution
 3 of a covered digital depiction if the distribution
 4 is made reasonably and in good faith to—

5 “(i) seek support or help with respect
 6 to the unsolicited receipt of the covered
 7 digital depiction; or

8 “(ii) assist the depicted individual.

9 “(c) PENALTIES.—

10 “(1) FINE AND IMPRISONMENT.—Any person
 11 who violates subsection (b) shall be—

12 “(A) fined under this title, imprisoned for
 13 not more than 2 years, or both; or

14 “(B) fined under this title, imprisoned for
 15 not more than 10 years, or both, in the case of
 16 a violation in which the disclosure or threatened
 17 disclosure of the covered digital depiction could
 18 be reasonably expected to—

19 “(i) affect the conduct of any adminis-
 20 trative, legislative, or judicial proceeding of
 21 a Federal, State, local, or Tribal govern-
 22 ment agency, including the administration
 23 of an election or the conduct of foreign re-
 24 lations; or

25 “(ii) facilitate violence.

1 “(2) FORFEITURE.—

2 “(A) IN GENERAL.—The court, in impos-
3 ing a sentence on any person convicted of a vio-
4 lation of subsection (b), shall order, in addition
5 to any other sentence imposed and irrespective
6 of any provision of State law, that the person
7 forfeit to the United States—

8 “(i) any material distributed in viola-
9 tion of that subsection;

10 “(ii) the person’s interest in property,
11 real or personal, constituting or derived
12 from any gross proceeds of the violation, or
13 any property traceable to such property,
14 obtained or retained directly or indirectly
15 as a result of the violation; and

16 “(iii) any property, real or personal,
17 used or intended to be used to commit or
18 facilitate the commission of the violation.

19 “(B) PROCEDURES.—Section 413 of the
20 Controlled Substances Act (21 U.S.C. 853),
21 with the exception of subsections (a) and (d),
22 shall apply to the criminal forfeiture of property
23 under subparagraph (A) of this paragraph.

24 “(3) RESTITUTION.—Section 2264 shall apply
25 to an offense under subsection (b) of this section in

1 the same manner as such section 2264 applies to an
 2 offense under chapter 110A.

3 “(d) DISCLAIMERS.—It shall not be a defense to a
 4 prosecution under this section that there is a disclaimer
 5 stating that the covered digital depiction of the depicted
 6 individual was unauthorized or that the depicted indi-
 7 vidual did not participate in the creation or development
 8 of the material.

9 “(e) LIMITATIONS.—For purposes of this section, a
 10 provider of a communications service shall not be held lia-
 11 ble on account of—

12 “(1) any action voluntarily taken in good faith
 13 to restrict access to or availability of a covered dig-
 14 ital depiction; or

15 “(2) any action taken to enable or make avail-
 16 able to an information content provider or another
 17 person the technical means to restrict access to a
 18 covered digital depiction.”.

19 (b) CLERICAL AMENDMENT.—The table of sections
 20 for chapter 110 of title 18, United States Code, is amend-
 21 ed by inserting after the item relating to section 2252C
 22 the following:

“2252D. Disclosure of intimate digital depictions.”.

