

118TH CONGRESS
1ST SESSION

H. R. 3106

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

IN THE HOUSE OF REPRESENTATIVES

MAY 5, 2023

Mr. MORELLE (for himself and Ms. ROSS) introduced the following bill; which was 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. INTIMATE DIGITAL DEPICTIONS.**

7 The Violence Against Women Act Reauthorization
8 Act of 2022 is amended by inserting after section 1309
9 the following:

1 **“SEC. 1309A. DISCLOSURE OF INTIMATE DIGITAL DEPIC-**
2 **TIONS.**

3 “(a) DEFINITIONS.—In this section:

4 “(1) CONSENT.—The term ‘consent’ has the
5 meaning given such term in section 1309.

6 “(2) DEPICTED INDIVIDUAL.—The term ‘de-
7 picted individual’ means an individual who, as a re-
8 sult of digitization or by means of digital manipula-
9 tion, appears in whole or in part in an intimate dig-
10 ital depiction and who is identifiable by virtue of the
11 person’s face, likeness, or other distinguishing char-
12 acteristic, such as a unique birthmark or other rec-
13 ognizable feature, or from information displayed in
14 connection with the digital depiction.

15 “(3) DIGITAL DEPICTION.—The term ‘digital
16 depiction’ means a realistic visual depiction, as that
17 term is defined in section 2256(5) of title 18, United
18 States Code, of an individual that has been created
19 or altered using digital manipulation.

20 “(4) DISCLOSE.—The term ‘disclose’ has the
21 meaning given such term in section 1309.

22 “(5) INTIMATE DIGITAL DEPICTION.—The term
23 ‘intimate digital depiction’ means a digital depiction
24 of an individual that has been created or altered
25 using digital manipulation and that depicts—

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

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

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

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

10 “(C) an identifiable individual engaging in
11 sexually explicit conduct.

12 “(6) SEXUALLY EXPLICIT CONDUCT.—The term
13 ‘sexually explicit conduct’ has the meaning given the
14 term in subparagraphs (A) and (B) of section
15 2256(2) of title 18, United States Code.

16 “(b) RIGHT OF ACTION.—

17 “(1) IN GENERAL.—Except as provided in sub-
18 section (e), an individual who is the subject of an in-
19 timate digital depiction that is disclosed, in or af-
20 fecting interstate or foreign commerce or using any
21 means or facility of interstate or foreign commerce,
22 without the consent of the individual, where such
23 disclosure was made by a person who knows that, or
24 recklessly disregards whether, the individual has not
25 consented to such disclosure, may bring a civil ac-

1 tion against that person in an appropriate district
2 court of the United States for relief as set forth in
3 subsection (d).

4 “(2) RIGHTS ON BEHALF OF CERTAIN INDIVID-
5 UALS.—In the case of an individual who have not at-
6 tained 18 years of age or are incompetent, incapaci-
7 tated, or deceased, the legal guardian of the indi-
8 vidual or representative of the individual’s estate,
9 another family member, or any other person ap-
10 pointed as suitable by the court, may assume the in-
11 dividual’s rights under this section, but in no event
12 shall the defendant be named as such representative
13 or guardian.

14 “(c) CONSENT.—For purposes of an action under
15 subsection (b)—

16 “(1) an individual’s consent to the creation of
17 the intimate digital depiction shall not establish that
18 the person consented to its disclosure; and

19 “(2) consent shall be deemed validly given only
20 if—

21 “(A) it is set forth in an agreement written
22 in plain language signed knowingly and volun-
23 tarily by the depicted individual; and

24 “(B) it includes a general description of
25 the intimate digital depiction and, if applicable,

1 the audiovisual work into which it will be incor-
2 porated.

3 “(d) RELIEF.—

4 “(1) IN GENERAL.—

5 “(A) DAMAGES.—In a civil action filed
6 under this section, an individual may recover
7 any of the following:

8 “(i) An amount equal to the monetary
9 gain made by the defendant from the cre-
10 ation, development, or disclosure of the in-
11 timate digital depiction.

12 “(ii) Either of the following:

13 “(I) The actual damages sus-
14 tained by the individual as a result of
15 the intimate digital depiction, includ-
16 ing damages for emotional distress.

17 “(II) Liquidated damages in the
18 amount of \$150,000.

19 “(iii) Punitive damages.

20 “(iv) The cost of the action, including
21 reasonable attorney’s fees and other litiga-
22 tion costs reasonably incurred.

23 “(B) EQUITABLE RELIEF.—In a civil ac-
24 tion filed under this section, a court may, in ad-
25 dition to any other relief available at law, order

1 equitable relief, including a temporary restrain-
2 ing order, a preliminary injunction, or a perma-
3 nent injunction ordering the defendant to cease
4 display or disclosure of the intimate digital de-
5 picture.

6 “(2) PRESERVATION OF ANONYMITY.—In order-
7 ing relief under this subsection, the court may grant
8 injunctive relief maintaining the confidentiality of a
9 plaintiff using a pseudonym.

10 “(e) EXCEPTIONS.—An identifiable individual may
11 not bring an action for relief under this section relating
12 to—

13 “(1) a disclosure made in good faith—

14 “(A) to or by a law enforcement officer or
15 agency in the course of reporting or inves-
16 tigating—

17 “(i) unlawful activity; or

18 “(ii) unsolicited or unwelcome con-
19 duct; or

20 “(B) as part of a legal proceeding;

21 “(2) a matter of legitimate public concern or
22 public interest, except that it shall not be considered
23 a matter of legitimate public interest or public con-
24 cern solely because the depicted individual is a pub-
25 lic figure; or

1 “(3) a disclosure reasonably intended to assist
2 the identifiable individual.

3 “(f) IN CAMERA.—A court may authorize an in cam-
4 era proceeding under this section.

5 “(g) DISCLAIMERS.—It shall not be a defense to an
6 action under this section that there is a disclaimer stating
7 that the intimate digital depiction of the depicted indi-
8 vidual was unauthorized or that the depicted individual
9 did not participate in the creation or development of the
10 material.

11 “(h) LIMITATIONS.—For purposes of this section, a
12 provider of an interactive computer service shall not be
13 held liable on account of—

14 “(1) any action voluntarily taken in good faith
15 to restrict access to or availability of intimate digital
16 depictions; or

17 “(2) any action taken to enable or make avail-
18 able to information content providers or other per-
19 sons the technical means to restrict access to inti-
20 mate digital depictions.”.

21 **SEC. 3. CRIMINAL ACTION.**

22 “(a) IN GENERAL.—Chapter 110 of title 18, United
23 States Code, is amended by inserting after section 2252C
24 the following:

1 **“§ 2252D. Intimate digital depictions**

2 “(a) OFFENSE.—Whoever, in or affecting interstate
3 or foreign commerce, discloses or threatens to disclose an
4 intimate digital depiction—

5 “(1) with the intent to harass, annoy, threaten,
6 alarm, or cause substantial harm to the finances or
7 reputation of the depicted individual; or

8 “(2) with actual knowledge that, or reckless dis-
9 regard for whether, such disclosure or threatened
10 disclosure will cause physical, emotional,
11 reputational, or economic harm to the depicted indi-
12 vidual,

13 shall be punished as provided under subsection (b).

14 “(b) PENALTY.—Any person who commits an offense
15 under subsection (a) shall be—

16 “(1) fined under this title, imprisoned for not
17 more than 2 years, or both; or

18 “(2) fined under this title, imprisoned for not
19 more than 10 years, or both, in the case of a viola-
20 tion in which the creation, reproduction, or distribu-
21 tion of the intimate digital depiction could be rea-
22 sonably expected to—

23 “(A) affect the conduct of any administra-
24 tive, legislative, or judicial proceeding of a Fed-
25 eral, State, local, or Tribal government agency,

1 including the administration of an election or
2 the conduct of foreign relations; or

3 “(B) facilitate violence.

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

10 “(d) LIMITATIONS.—For purposes of this section, a
11 provider of an interactive computer service shall not be
12 held liable on account of—

13 “(1) any action voluntarily taken in good faith
14 to restrict access to or availability of intimate digital
15 depictions; or

16 “(2) any action taken to enable or make avail-
17 able to information content providers or other per-
18 sons the technical means to restrict access to inti-
19 mate digital depictions.

20 “(e) DEFINITIONS.—In this section:

21 “(1) CONSENT.—The term ‘consent’ has the
22 meaning given such term in section 1309 of the Vio-
23 lence Against Women Act Reauthorization Act of
24 2022.

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2 picted individual’ means an individual who, as a re-
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5 tal depiction and who is identifiable by virtue of the
6 person’s face, likeness, or other distinguishing char-
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8 ognizable feature, or from information displayed in
9 connection with the digital depiction.

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11 depiction’ means a realistic visual depiction, as that
12 term is defined in section 2256(5), of an individual
13 that has been created or altered using digital manip-
14 ulation.

15 “(4) DISCLOSE.—The term ‘disclose’ has the
16 meaning given such term in section 1309 of the Vio-
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20 ‘intimate digital depiction’ means a digital depiction
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24 anus, or postpubescent female nipple of an
25 identifiable individual;

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

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

7 “(C) an identifiable individual engaging in
8 sexually explicit conduct.

9 “(6) SEXUALLY EXPLICIT CONDUCT.—The term
10 ‘sexually explicit conduct’ has the meaning given the
11 term in subparagraphs (A) and (B) of section
12 2256(2).”.

13 (b) CLERICAL AMENDMENT.—The table of sections
14 for chapter 110 of title 18, United States Code is amended
15 by inserting after the item relating to section 2252C the
16 following new item:

 “2252D. Intimate digital depictions.”.

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