

HOUSE BILL NO. 5569

March 13, 2024, Introduced by Reps. Tsernoglou, Paiz, Neeley, Brenda Carter, Bierlein, Young, Rigas, Martus, Conlin, Dievendorf, McFall, MacDonell, Hill, Byrnes, Breen, Rheingans, Andrews, Arbit, Morgan, Hood, Brabec, Price, Rogers, Brixie, Hoskins, Skaggs, Scott and Coffia and referred to the Committee on Criminal Justice.

A bill to impose civil liability and prescribe criminal penalties for the nonconsensual dissemination of deep fake sexual images; and to provide for remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act may be cited as the "protection from intimate
2 deep fakes act".

3 Sec. 2. As used in this act:

4 (a) "Deep fake" means a video recording, motion-picture film,
5 sound recording, electronic image, or photograph, or a

1 technological representation of speech or conduct substantially
2 derivative of such a recording, film, image, or photograph, to
3 which both of the following apply:

4 (i) It is so realistic that a reasonable person would believe
5 it depicts speech or conduct of a depicted individual.

6 (ii) The production of it was substantially dependent on
7 technical means, rather than the ability of another individual to
8 physically or verbally impersonate the depicted individual.

9 (b) "Depicted individual" means an individual in a deep fake
10 who is identifiable by virtue of the person's face, likeness, or
11 other distinguishing characteristic, such as a unique birthmark or
12 other recognizable feature, or from information displayed in
13 connection with the digital depiction, and who appears to be
14 engaging in speech or conduct in which the individual did not
15 engage.

16 (c) "Dissemination" means distribution to 1 or more persons,
17 other than the individual depicted in the deep fake, or publication
18 by any publicly available medium.

19 (d) "Harass" means an act that would cause a substantial
20 adverse effect on the safety, security, or privacy of a reasonable
21 person.

22 (e) "Intimate parts" means the genitals, pubic area, partially
23 or fully exposed nipple, or anus of an individual.

24 (f) "Personal information" means any identifier that permits
25 communication or in-person contact with an individual. Personal
26 information includes, but is not limited to, all of the following:

27 (i) The individual's first and last name, first initial and
28 last name, first name and last initial, or nickname.

29 (ii) The individual's home, school, or work address.

1 (iii) The individual's telephone number, email address, or
2 social media account information.

3 (iv) The individual's geolocation data.

4 (g) "Sexual act" means either sexual contact or sexual
5 penetration.

6 (h) "Sexual contact" means the intentional touching of
7 intimate parts or intentional touching with seminal fluid onto
8 another individual's body.

9 (i) "Sexual penetration" means any of the following acts:

10 (i) Sexual intercourse, cunnilingus, fellatio, or anal
11 intercourse.

12 (ii) An intrusion, however slight, into the genital or anal
13 openings of an individual by another's body part or an object used
14 by another for this purpose.

15 (j) "Social media" means any electronic medium, including an
16 interactive computer service, telephone network, or data network,
17 that allows users to create, share, and view user-generated
18 content.

19 Sec. 3. An individual may bring a civil action against a
20 person for the nonconsensual dissemination of a deep fake if all of
21 following apply:

22 (a) The person disseminated a deep fake with knowledge that or
23 with reckless disregard for whether the creation, distribution,
24 reproduction, or manipulation of the deep fake will cause physical,
25 emotional, reputational, or economic harm to an individual falsely
26 depicted; or in order to harass, extort, threaten, or cause
27 physical, emotional, reputational, or economic harm to an
28 individual falsely depicted.

29 (b) The deep fake realistically depicts any of the following:

1 (i) The intimate parts of another individual presented as the
2 intimate parts of the depicted individual.

3 (ii) Artificially generated intimate parts presented as the
4 intimate parts of the depicted individual.

5 (iii) The depicted individual engaging in a sexual act.

6 (c) The depicted individual is identifiable in either of the
7 following ways:

8 (i) From the deep fake itself, by the depicted individual or by
9 another individual.

10 (ii) From the personal information displayed in connection with
11 the deep fake.

12 Sec. 4. (1) A cause of action under section 3 accrues at the
13 time that the depicted individual discovers that the deep fake has
14 been disseminated.

15 (2) An action under section 3 may be filed in either of the
16 following:

17 (a) The county where the defendant or the plaintiff resides.

18 (b) The county where the deep fake was produced, reproduced,
19 or stored.

20 (3) The court shall allow confidential filings to protect the
21 privacy of the plaintiff in an action under section 3. In ordering
22 relief under this subsection, the court may grant injunctive relief
23 to maintain the confidentiality of the plaintiff using a pseudonym.

24 Sec. 5. (1) It is not a defense to an action under section 3
25 that the depicted individual consented to the creation of the deep
26 fake or to the voluntary private transmission of the deep fake.

27 (2) It is a defense to an action under section 3 that 1 or
28 more of the following apply:

29 (a) The dissemination was made for the purpose of a criminal

1 investigation or prosecution that is otherwise lawful.

2 (b) The dissemination was for the purpose of, or in connection
3 with, the reporting of unlawful conduct.

4 (c) The dissemination was made in the course of seeking or
5 receiving medical or mental health treatment, and the image is
6 protected from further dissemination.

7 (d) The deep fake related to a matter of public interest,
8 dissemination served a lawful public purpose, the person
9 disseminating the deep fake as a matter of public interest clearly
10 identified that the video recording, motion-picture film, sound
11 recording, electronic image, photograph, or other item was a deep
12 fake, and the person acted in good faith to prevent further
13 dissemination of the deep fake.

14 (e) The dissemination was made for legal proceedings and was
15 consistent with common practice in civil proceedings necessary for
16 the proper functioning of the criminal justice system, or protected
17 by court order that prohibited any further dissemination.

18 Sec. 6. (1) In an action under section 3, the court may award
19 all of the following damages to a prevailing plaintiff from a
20 person found liable:

21 (a) Economic and noneconomic damages, including, but not
22 limited to, financial losses because of the dissemination of the
23 deep fake and damages for mental anguish, embarrassment, and
24 humiliation.

25 (b) An amount equal to any profit made from the dissemination
26 of the deep fake by the person found liable.

27 (c) A civil fine, to be awarded to the plaintiff, of not more
28 than \$100,000.00.

29 (d) Actual court costs and fees and reasonable attorney fees.

1 (2) In an action under section 3, the court may enter a
2 temporary restraining order or a permanent injunction to prevent
3 further harm to the plaintiff. The court may award the plaintiff a
4 civil fine for the violation of an order entered under this
5 subsection of not more than \$1,000.00 per day.

6 Sec. 7. (1) Sections 3 to 6 must not be construed to impose
7 liability on the following entities solely as a result of content
8 or information provided by another person:

9 (a) An interactive computer service as defined in 47 USC
10 230(f)(2).

11 (b) A provider of public mobile services or private radio
12 services.

13 (c) A telecommunications network or broadband provider.

14 (2) Liability under sections 3 to 6 does not affect any other
15 remedy available under law.

16 Sec. 8. (1) An individual shall not intentionally disseminate
17 a deep fake if all of the following apply:

18 (a) The individual knows that or has reckless disregard for
19 whether the creation, distribution, dissemination, reproduction, or
20 manipulation of the deep fake will cause physical, emotional,
21 reputational, or economic harm to an individual falsely depicted.
22 Any consent to dissemination is not valid unless both of the
23 following apply:

24 (i) The consent is contained in an agreement written in plain
25 language signed knowingly and voluntarily by the depicted
26 individual.

27 (ii) The consent includes a general description of the intimate
28 digital depiction and, if applicable, the audiovisual work into
29 which it will be incorporated.

1 (b) The deep fake realistically depicts any of the following:

2 (i) The intimate parts of another individual presented as the
3 intimate parts of the depicted individual.

4 (ii) Artificially generated intimate parts presented as the
5 intimate parts of the depicted individual.

6 (iii) The depicted individual engaging in a sexual act.

7 (c) The depicted individual is identifiable in either of the
8 following ways:

9 (i) From the deep fake itself, by the depicted individual or by
10 another individual.

11 (ii) From the personal information displayed in connection with
12 the deep fake.

13 (2) Except as provided in subsection (3), an individual who
14 violates subsection (1) is guilty of a misdemeanor punishable by
15 imprisonment for not more than 1 year, a fine of not more than
16 \$3,000.00, or both.

17 (3) An individual who violates subsection (1) is guilty of a
18 felony punishable by imprisonment for not more than 3 years, a fine
19 of not more than \$5,000.00, or both, if 1 or more of the following
20 apply:

21 (a) The depicted individual suffers financial loss because of
22 the dissemination of the deep fake.

23 (b) The individual disseminates the deep fake with intent to
24 profit from the dissemination.

25 (c) The individual maintains an internet website, online
26 service, online application, or mobile application for the purpose
27 of disseminating the deep fake.

28 (d) The individual posts the deep fake on a website.

29 (e) The individual disseminates the deep fake with intent to

1 harass, extort, threaten, or cause physical, emotional,
2 reputational, or economic harm to the depicted individual.

3 (f) The individual has previously been convicted of violating
4 subsection (1).

5 (4) It is not a defense to a prosecution under this section
6 that the depicted individual consented to the creation or
7 possession of the deep fake, or the private transmission of the
8 deep fake to an individual other than those to whom the deep fake
9 was disseminated.

10 (5) This section does not apply if any of the following apply:

11 (a) The dissemination is made for the purpose of a criminal
12 investigation or prosecution that is otherwise lawful.

13 (b) The dissemination is for the purpose of, or in connection
14 with, the reporting of unlawful conduct.

15 (c) The dissemination is made in the course of seeking or
16 receiving medical or mental health treatment, and the image is
17 protected from further dissemination.

18 (d) The deep fake relates to a matter of public interest and
19 dissemination serves a lawful public purpose.

20 (e) The dissemination is made for legal proceedings and is
21 consistent with common practice in civil proceedings necessary for
22 the proper functioning of the criminal justice system, or protected
23 by court order that prohibits any further dissemination.

24 (6) This section must not be construed to impose liability on
25 the following entities solely as a result of content or information
26 provided by another person:

27 (a) An interactive computer service as defined in 47 USC
28 230(f)(2).

29 (b) A provider of public mobile services or private radio

1 services.

2 (c) A telecommunications network or broadband provider.

3 Sec. 9. This act takes effect and applies to the dissemination

4 of a deep fake after December 31, 2024.