

**SUBSTITUTE FOR
HOUSE BILL NO. 5569**

A bill to impose civil liability and prescribe criminal penalties for the nonconsensual creation or 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
6 technological representation of speech or conduct substantially
7 derivative of such a recording, film, image, or photograph, to
8 which both of the following apply:

9 (i) It is so realistic that a reasonable person would believe

1 it depicts speech or conduct of a depicted individual.

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

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

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

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

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

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

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

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

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

28 (iv) The individual's geolocation data.

29 (g) "Sexual act" means either sexual contact or sexual

1 penetration.

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

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

6 (i) Sexual intercourse, cunnilingus, fellatio, or anal
7 intercourse.

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

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

15 Sec. 3. An individual may bring a civil action against a
16 person for the nonconsensual creation or dissemination of a deep
17 fake if all of the following apply:

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

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

26 (i) The intimate parts of another individual presented as the
27 intimate parts of the depicted individual.

28 (ii) Artificially generated intimate parts presented as the
29 intimate parts of the depicted individual.

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

2 (c) The depicted individual is identifiable in either of the
3 following ways:

4 (i) From the deep fake itself, by the depicted individual or by
5 another individual.

6 (ii) From the personal information displayed in connection with
7 the deep fake.

8 Sec. 4. (1) A cause of action under section 3 accrues at the
9 time that the depicted individual discovers that the deep fake has
10 been created or disseminated.

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

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

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

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

20 Sec. 5. (1) It is not a defense to an action under section 3
21 that the depicted individual consented to the creation or
22 possession of the deep fake or to the voluntary private or public
23 transmission of the deep fake unless both of the following apply:

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

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

3 (a) The creation or dissemination was made for the purpose of
4 a criminal investigation or prosecution that is otherwise lawful.

5 (b) The creation or dissemination was for the purpose of, or
6 in connection with, the reporting of unlawful conduct.

7 (c) The creation or dissemination was made in the course of
8 seeking or receiving medical or mental health treatment, and the
9 image is protected from further dissemination.

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

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

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

25 (a) Economic and noneconomic damages, including, but not
26 limited to, financial losses because of the creation or
27 dissemination of the deep fake and damages for mental anguish,
28 embarrassment, and humiliation.

29 (b) An amount equal to any profit made from the creation or

1 dissemination of the deep fake by the person found liable.

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

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

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

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

13 (a) An interactive computer service as defined in 47 USC
14 230(f) (2).

15 (b) A provider of public mobile services or private radio
16 services.

17 (c) A telecommunications network or broadband provider.

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

20 Sec. 8. (1) An individual shall not intentionally create or
21 disseminate a deep fake if all of the following apply:

22 (a) The individual knows that or has reckless disregard for
23 whether the creation, distribution, dissemination, reproduction, or
24 manipulation of the deep fake will cause physical, emotional,
25 reputational, or economic harm to an individual falsely depicted.

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

27 (i) The intimate parts of another individual presented as the
28 intimate parts of the depicted individual.

29 (ii) Artificially generated intimate parts presented as the

1 intimate parts of the depicted individual.

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

3 (c) The depicted individual is identifiable in either of the
4 following ways:

5 (i) From the deep fake itself, by the depicted individual or by
6 another individual.

7 (ii) From the personal information displayed in connection with
8 the deep fake.

9 (2) Except as provided in subsection (3), an individual who
10 violates subsection (1) is guilty of a misdemeanor punishable by
11 imprisonment for not more than 1 year, a fine of not more than
12 \$3,000.00, or both.

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

17 (a) The depicted individual suffers financial loss because of
18 the creation or dissemination of the deep fake.

19 (b) The individual creates or disseminates the deep fake with
20 intent to profit from the dissemination.

21 (c) The individual maintains an internet website, online
22 service, online application, or mobile application for the purpose
23 of creating or disseminating the deep fake.

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

25 (e) The individual creates or disseminates the deep fake with
26 intent to harass, extort, threaten, or cause physical, emotional,
27 reputational, or economic harm to the depicted individual.

28 (f) The individual has previously been convicted of violating
29 subsection (1).

1 (4) It is not a defense to a prosecution under this section
2 that the depicted individual consented to the creation or
3 possession of the deep fake, or to the voluntary private or public
4 transmission of the deep fake, unless both of the following apply:

5 (a) The consent is contained in an agreement written in plain
6 language signed knowingly and voluntarily by the depicted
7 individual.

8 (b) The consent includes a general description of the intimate
9 digital depiction and, if applicable, the audiovisual work into
10 which it will be incorporated.

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

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

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

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

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

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

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

29 (a) An interactive computer service as defined in 47 USC

1 230(f)(2).

2 (b) A provider of public mobile services or private radio
3 services.

4 (c) A telecommunications network or broadband provider.

5 Sec. 9. (1) This act does not affect the ability to bring a
6 civil action under any other law.

7 (2) This act does not limit the ability to prosecute a person
8 under any other law.

9 Sec. 10. As provided in section 5 of 1846 RS 1, MCL 8.5, this
10 act is severable.

11 Sec. 11. This act takes effect and applies to the creation or
12 dissemination of a deep fake after December 31, 2024.