

HOUSE BILL NO. 4047

January 30, 2025, Introduced by Reps. Bierlein, Tsernoglou, Kelly, Cavitt, Alexander, Outman, Martus, Mentzer, Rheingans, Koleszar, Wooden, Longjohn, Foreman, Price, Herzberg, Byrnes, Miller, Paiz, Andrews, Morgan, Wilson, McKinney, Hoskins, O'Neal, Hope, MacDonell, Conlin, Young, Scott, Breen, Xiong, Pohutsky, Dievendorf, B. Carter and Rogers and referred to Committee on Judiciary.

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

1 technological representation of speech or conduct substantially
2 derivative of such a recording, film, image, or photograph, that is
3 not an original recording of an actual occurrence or an original
4 photograph without substantial modification to which both of the
5 following apply:

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

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

11 (b) "Depicted individual" means an individual in a deep fake
12 who is identifiable by virtue of the person's face, likeness, or
13 other distinguishing characteristic and who appears to be engaging
14 in speech or conduct in which the individual did not engage.

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

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

21 (e) "Intimate parts" means an individual's genitalia or anus
22 or, if the individual is a female, her nipple.

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

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

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

29 (iii) The individual's telephone number, email address, or

1 social media account information.

2 (iv) The individual's geolocation data.

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

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

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

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

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

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

18 Sec. 3. A depicted individual or a person representing the
19 depicted individual may bring a civil action against a person for
20 the nonconsensual creation or dissemination of a deep fake if all
21 of the following apply:

22 (a) The person created or disseminated a deep fake with
23 knowledge that or with reckless disregard for whether the creation,
24 distribution, or reproduction 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 created or 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 or
26 possession of the deep fake or to the voluntary private or public
27 transmission of the deep fake unless both of the following apply:

28 (a) The consent is contained in an agreement written in plain
29 language signed knowingly and voluntarily by the depicted

1 individual.

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

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

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

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

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

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

21 (e) The creation or dissemination was made for legal
22 proceedings and was 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 prohibited any
25 further dissemination.

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

29 (a) Economic and noneconomic damages, including, but not

1 limited to, financial losses because of the creation or
2 dissemination of the deep fake and damages for mental anguish,
3 embarrassment, and humiliation.

4 (b) An amount equal to any profit made from the creation or
5 dissemination of the deep fake by the person found liable.

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

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

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

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

17 (a) An interactive computer service as defined in 47 USC
18 230(f)(2).

19 (b) A provider of public mobile services or private radio
20 services.

21 (c) A telecommunications network or broadband provider.

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

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

26 (a) The individual knows that or has reckless disregard for
27 whether the creation, distribution, dissemination, or reproduction
28 of the deep fake will cause physical, emotional, reputational, or
29 economic harm to an individual falsely depicted.

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 creation or dissemination of the deep fake.

23 (b) The individual creates or disseminates the deep fake with
24 intent to 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 creating or disseminating the deep fake.

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

29 (e) The individual creates or disseminates the deep fake with

1 intent to 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 to the voluntary private or public
8 transmission of the deep fake, unless both of the following apply:

9 (a) The consent is contained in an agreement written in plain
10 language signed knowingly and voluntarily by the depicted
11 individual.

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

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

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

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

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

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

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

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

4 (a) An interactive computer service as defined in 47 USC
5 230(f)(2).

6 (b) A provider of public mobile services or private radio
7 services.

8 (c) A telecommunications network or broadband provider.

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

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

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