

**SUBSTITUTE FOR
HOUSE BILL NO. 4047**

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, that is
8 not an original recording of an actual occurrence or an original
9 photograph without substantial modification to which both of the

1 following apply:

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

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

7 (b) "Depicted individual" means an individual in a deep fake
8 who is identifiable by virtue of the person's face, likeness, or
9 other distinguishing characteristic.

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

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

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

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

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

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

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

26 (iv) The individual's geolocation data.

27 (g) "Sexual act" means either sexual contact or sexual
28 penetration.

29 (h) "Sexual contact" means the intentional touching of

1 intimate parts or intentional touching with seminal fluid onto
2 another individual's body.

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

4 (i) Sexual intercourse, cunnilingus, fellatio, or anal
5 intercourse.

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

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

13 Sec. 3. A depicted individual or a person representing the
14 depicted individual may bring a civil action against a person for
15 the nonconsensual creation or dissemination of a deep fake if all
16 of the following apply:

17 (a) The person who created or disseminated the deep fake knew
18 or reasonably should have known that the creation, distribution, or
19 reproduction of the deep fake would cause physical, emotional,
20 reputational, or economic harm to an individual falsely depicted;
21 or created or disseminated the deep fake in order to harass,
22 extort, threaten, or cause physical, emotional, reputational, or
23 economic harm to an individual falsely depicted.

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

25 (i) The intimate parts of the depicted individual.

26 (ii) The depicted individual engaging in a sexual act.

27 (c) The depicted individual is identifiable in either of the
28 following ways:

29 (i) From the deep fake itself, by the depicted individual or by

1 a reasonable individual viewing or listening to the deep fake.

2 (ii) From the personal information displayed in connection with
3 the deep fake.

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

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

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

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

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

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

20 (a) The consent is contained in an agreement written in plain
21 language signed knowingly and voluntarily by the depicted
22 individual.

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

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

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

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

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

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

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

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

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

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

26 (c) Actual court costs and fees and reasonable attorney fees.

27 (2) In an action under section 3, the court may enter a
28 temporary restraining order or a permanent injunction to prevent
29 further harm to the plaintiff. The court may award the plaintiff a

1 civil fine for the violation of an order entered under this
2 subsection of not more than \$1,000.00 per day.

3 Sec. 7. (1) Sections 3 to 6 must not be construed to impose
4 liability on the following entities for providing the transmission
5 infrastructure or access to content created by another person:

6 (a) An interactive computer service as defined in 47 USC
7 230(f)(2).

8 (b) A provider of public mobile services or private radio
9 services.

10 (c) A telecommunications network or broadband provider.

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

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

15 (a) The individual knew or reasonably should have known that
16 the creation, distribution, dissemination, or reproduction of the
17 deep fake would cause physical, emotional, reputational, or
18 economic harm to an individual falsely depicted.

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

20 (i) The intimate parts of the depicted individual.

21 (ii) The depicted individual engaging in a sexual act.

22 (c) The depicted individual is identifiable in either of the
23 following ways:

24 (i) From the deep fake itself, by the depicted individual or by
25 a reasonable individual viewing or listening to the deep fake.

26 (ii) From the personal information displayed in connection with
27 the deep fake.

28 (2) Except as provided in subsection (3), an individual who
29 violates subsection (1) is guilty of a misdemeanor punishable by

1 imprisonment for not more than 1 year, a fine of not more than
2 \$3,000.00, or both.

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

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

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

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

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

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

18 (f) The individual has previously been convicted of violating
19 subsection (1).

20 (4) It is not a defense to a prosecution under this section
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 (5) This section does not apply if any of the following apply:

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

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

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

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

11 (e) The creation or dissemination is made for legal
12 proceedings and is consistent with common practice in civil
13 proceedings necessary for the proper functioning of the civil
14 justice system, or protected by court order that prohibits any
15 further dissemination.

16 (6) This section must not be construed to impose liability on
17 the following entities for providing the transmission
18 infrastructure or access to content created by another person:

19 (a) An interactive computer service as defined in 47 USC
20 230(f) (2).

21 (b) A provider of public mobile services or private radio
22 services.

23 (c) A telecommunications network or broadband provider.

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

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

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