

118TH CONGRESS
2D SESSION

S. 3696

AN ACT

To improve rights to relief for individuals affected by non-consensual activities involving intimate digital forgeries, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Disrupt Explicit
3 Forged Images and Non-Consensual Edits Act of 2024”
4 or the “DEFLIANCE Act of 2024”.

5 **SEC. 2. FINDINGS.**

6 Congress finds that:

7 (1) Digital forgeries, often called deepfakes, are
8 synthetic images and videos that look realistic. The
9 technology to create digital forgeries is now ubiq-
10 uitous and easy to use. Hundreds of apps are avail-
11 able that can quickly generate digital forgeries with-
12 out the need for any technical expertise.

13 (2) Digital forgeries can be wholly fictitious but
14 can also manipulate images of real people to depict
15 sexually intimate conduct that did not occur. For ex-
16 ample, some digital forgeries will paste the face of
17 an individual onto the body of a real or fictitious in-
18 dividual who is nude or who is engaging in sexual
19 activity. Another example is a photograph of an indi-
20 vidual that is manipulated to digitally remove the
21 clothing of the individual so that the person appears
22 to be nude.

23 (3) The individuals depicted in such digital for-
24 geries are profoundly harmed when the content is
25 produced, disclosed, or obtained without the consent
26 of those individuals. These harms are not mitigated

1 through labels or other information that indicates
2 that the depiction is fake.

3 (4) It can be destabilizing to victims whenever
4 those victims are depicted in sexual digital forgeries
5 against their will, as the privacy of those victims is
6 violated and the victims lose control over their like-
7 ness and identity.

8 (5) Victims can feel helpless because the vic-
9 tims—

10 (A) may not be able to determine who has
11 created the content; and

12 (B) do not know how to prevent further
13 disclosure of the digital forgery or how to pre-
14 vent more forgeries from being made.

15 (6) Victims may be fearful of being in public
16 out of concern that individuals the victims encounter
17 have seen the digital forgeries. This leads to social
18 rupture through the loss of the ability to trust, stig-
19 matization, and isolation.

20 (7) Victims of non-consensual, sexually intimate
21 digital forgeries may experience depression, anxiety,
22 and suicidal ideation. These victims may also experi-
23 ence the “silencing effect” in which the victims with-
24 draw from online spaces and public discourse to
25 avoid further abuse.

1 (8) Digital forgeries are often used to—

2 (A) harass victims, interfering with their
3 employment, education, reputation, or sense of
4 safety; or

5 (B) commit extortion, sexual assault, do-
6 mestic violence, and other crimes.

7 (9) Because of the harms caused by non-con-
8 sensual, sexually intimate digital forgeries, such digi-
9 tal forgeries are considered to be a form of image-
10 based sexual abuse.

11 **SEC. 3. CIVIL ACTION RELATING TO DISCLOSURE OF INTI-**
12 **MATE IMAGES.**

13 (a) DEFINITIONS.—Section 1309 of the Consolidated
14 Appropriations Act, 2022 (15 U.S.C. 6851) is amended—

15 (1) in the heading, by inserting “**OR NON-**
16 **CONSENSUAL ACTIVITY INVOLVING DIGITAL**
17 **FORGERIES**” after “**INTIMATE IMAGES**”; and

18 (2) in subsection (a)—

19 (A) in paragraph (2), by inserting “com-
20 petent,” after “conscious,”;

21 (B) by redesignating paragraphs (5) and
22 (6) as paragraphs (6) and (7), respectively;

23 (C) by redesignating paragraph (3) as
24 paragraph (5);

1 (D) by inserting after paragraph (2) the
2 following:

3 “(3) DIGITAL FORGERY.—

4 “(A) IN GENERAL.—The term ‘digital for-
5 gery’ means any intimate visual depiction of an
6 identifiable individual created through the use
7 of software, machine learning, artificial intel-
8 ligence, or any other computer-generated or
9 technological means, including by adapting,
10 modifying, manipulating, or altering an authen-
11 tic visual depiction, that, when viewed as a
12 whole by a reasonable person, is indistinguish-
13 able from an authentic visual depiction of the
14 individual.

15 “(B) LABELS, DISCLOSURE, AND CON-
16 TEXT.—Any visual depiction described in sub-
17 paragraph (A) constitutes a digital forgery for
18 purposes of this paragraph regardless of wheth-
19 er a label, information disclosed with the visual
20 depiction, or the context or setting in which the
21 visual depiction is disclosed states or implies
22 that the visual depiction is not authentic.”;

23 (E) in paragraph (5), as so redesignated—

24 (i) by striking “(5) DEPICTED” and
25 inserting “(5) IDENTIFIABLE”; and

1 (ii) by striking “depicted individual”
2 and inserting “identifiable individual”; and
3 (F) in paragraph (6)(A), as so redesignated—
4

5 (i) in clause (i), by striking “; or” and
6 inserting a semicolon;

7 (ii) in clause (ii)—

8 (I) in subclause (I), by striking
9 “individual;” and inserting “indi-
10 vidual; or”; and

11 (II) by striking subclause (III);
12 and

13 (iii) by adding at the end the fol-
14 lowing:

15 “(iii) an identifiable individual engag-
16 ing in sexually explicit conduct; and”.

17 (b) CIVIL ACTION.—Section 1309(b) of the Consoli-
18 dated Appropriations Act, 2022 (15 U.S.C. 6851(b)) is
19 amended—

20 (1) in paragraph (1)—

21 (A) by striking paragraph (A) and insert-
22 ing the following:

23 “(A) IN GENERAL.—Except as provided in
24 paragraph (5)—

1 “(i) an identifiable individual whose
2 intimate visual depiction is disclosed, in or
3 affecting interstate or foreign commerce or
4 using any means or facility of interstate or
5 foreign commerce, without the consent of
6 the identifiable individual, where such dis-
7 closure was made by a person who knows
8 or recklessly disregards that the identifi-
9 able individual has not consented to such
10 disclosure, may bring a civil action against
11 that person in an appropriate district court
12 of the United States for relief as set forth
13 in paragraph (3);

14 “(ii) an identifiable individual who is
15 the subject of a digital forgery may bring
16 a civil action in an appropriate district
17 court of the United States for relief as set
18 forth in paragraph (3) against any person
19 that knowingly produced or possessed the
20 digital forgery with intent to disclose it, or
21 knowingly disclosed or solicited the digital
22 forgery, if—

23 “(I) the identifiable individual
24 did not consent to such production or

1 possession with intent to disclose, dis-
2 closure, or solicitation;

3 “(II) the person knew or reck-
4 lessly disregarded that the identifiable
5 individual did not consent to such pro-
6 duction or possession with intent to
7 disclose, disclosure, or solicitation;
8 and

9 “(III) such production, diselo-
10 sure, solicitation, or possession is in
11 or affects interstate or foreign com-
12 merce or uses any means or facility of
13 interstate or foreign commerce; and

14 “(iii) an identifiable individual who is
15 the subject of a digital forgery may bring
16 a civil action in an appropriate district
17 court of the United States for relief as set
18 forth in paragraph (3) against any person
19 that knowingly produced the digital forgery
20 if—

21 “(I) the identifiable individual
22 did not consent to such production;

23 “(II) the person knew or reck-
24 lessly disregarded that the identifiable
25 individual—

1 “(aa) did not consent to
2 such production; and

3 “(bb) was harmed, or was
4 reasonably likely to be harmed,
5 by the production; and

6 “(III) such production is in or
7 affects interstate or foreign commerce
8 or uses any means or facility of inter-
9 state or foreign commerce.”; and

10 (B) in subparagraph (B)—

11 (i) in the heading, by inserting “IDEN-
12 TIFIABLE” before “INDIVIDUALS”; and

13 (ii) by striking “an individual who is
14 under 18 years of age, incompetent, inca-
15 pacitated, or deceased, the legal guardian
16 of the individual” and inserting “an identi-
17 fiable individual who is under 18 years of
18 age, incompetent, incapacitated, or de-
19 ceased, the legal guardian of the identifi-
20 able individual”;

21 (2) in paragraph (2)—

22 (A) in subparagraph (A)—

23 (i) by inserting “identifiable” before
24 “individual”;

1 (ii) by striking “depiction” and insert-
2 ing “intimate visual depiction or digital
3 forgery”; and

4 (iii) by striking “distribution” and in-
5 serting “disclosure, solicitation, or posses-
6 sion”; and

7 (B) in subparagraph (B)—

8 (i) by inserting “identifiable” before
9 individual;

10 (ii) by inserting “or digital forgery”
11 after each place the term “depiction” ap-
12 pears; and

13 (iii) by inserting “, solicitation, or
14 possession” after “disclosure”;

15 (3) by redesignating paragraph (4) as para-
16 graph (5);

17 (4) by striking paragraph (3) and inserting the
18 following:

19 “(3) RELIEF.—

20 “(A) IN GENERAL.—In a civil action filed
21 under this section, an identifiable individual
22 may recover—

23 “(i) damages as provided under sub-
24 paragraph (C); and

1 “(ii) the cost of the action, including
2 reasonable attorney fees and other litiga-
3 tion costs reasonably incurred.

4 “(B) PUNITIVE DAMAGES AND OTHER RE-
5 LIEF.—The court may, in addition to any other
6 relief available at law, award punitive damages
7 or order equitable relief, including a temporary
8 restraining order, a preliminary injunction, or a
9 permanent injunction ordering the defendant to
10 delete, destroy, or cease display or disclosure of
11 the intimate visual depiction or digital forgery.

12 “(C) DAMAGES.—For purposes of subpara-
13 graph (A)(i), the identifiable individual may re-
14 cover—

15 “(i) liquidated damages in the amount
16 of—

17 “(I) \$150,000; or

18 “(II) \$250,000 if the conduct at
19 issue in the claim was—

20 “(aa) committed in relation
21 to actual or attempted sexual as-
22 sault, stalking, or harassment of
23 the identifiable individual by the
24 defendant; or

1 “(bb) the direct and proxi-
2 mate cause of actual or at-
3 tempted sexual assault, stalking,
4 or harassment of the identifiable
5 individual by any person; or

6 “(ii) actual damages sustained by the
7 individual, which shall include any profits
8 of the defendant that are attributable to
9 the conduct at issue in the claim that are
10 not otherwise taken into account in com-
11 puting the actual damages.

12 “(D) CALCULATION OF DEFENDANT’S
13 PROFIT.—For purposes of subparagraph (C)(ii),
14 to establish the defendant’s profits, the identifi-
15 able individual shall be required to present
16 proof only of the gross revenue of the defend-
17 ant, and the defendant shall be required to
18 prove the deductible expenses of the defendant
19 and the elements of profit attributable to fac-
20 tors other than the conduct at issue in the
21 claim.

22 “(4) PRESERVATION OF PRIVACY.—In a civil
23 action filed under this section, the court may issue
24 an order to protect the privacy of a plaintiff, includ-
25 ing by—

1 “(A) permitting the plaintiff to use a pseu-
2 donym;

3 “(B) requiring the parties to redact the
4 personal identifying information of the plaintiff
5 from any public filing, or to file such documents
6 under seal; and

7 “(C) issuing a protective order for pur-
8 poses of discovery, which may include an order
9 indicating that any intimate visual depiction or
10 digital forgery shall remain in the care, custody,
11 and control of the court.”;

12 (5) in paragraph (5)(A), as so redesignated—

13 (A) by striking “image” and inserting “vis-
14 ual depiction or digital forgery”; and

15 (B) by striking “depicted” and inserting
16 “identifiable”; and

17 (6) by adding at the end the following:

18 “(6) STATUTE OF LIMITATIONS.—Any action
19 commenced under this section shall be barred unless
20 the complaint is filed not later than 10 years from
21 the later of—

22 “(A) the date on which the identifiable in-
23 dividual reasonably discovers the violation that
24 forms the basis for the claim; or

1 “(B) the date on which the identifiable in-
2 dividual reaches 18 years of age.

3 “(7) DUPLICATIVE RECOVERY BARRED.—No re-
4 lief may be ordered under paragraph (3) against a
5 person who is subject to a judgment under section
6 2255 of title 18, United States Code, for the same
7 conduct involving the same identifiable individual
8 and the same intimate visual depiction or digital for-
9 gery.”.

10 (c) CONTINUED APPLICABILITY OF FEDERAL,
11 STATE, AND TRIBAL LAW.—

12 (1) IN GENERAL.—This Act shall not be con-
13 strued to impair, supersede, or limit a provision of
14 Federal, State, or Tribal law.

15 (2) NO PREEMPTION.—Nothing in this Act
16 shall prohibit a State or Tribal government from
17 adopting and enforcing a provision of law governing
18 disclosure of intimate images or nonconsensual activ-
19 ity involving a digital forgery, as defined in section
20 1309(a) of the Consolidated Appropriations Act,
21 2022 (15 U.S.C. 6851(a)), as amended by this Act,
22 that is at least as protective of the rights of a victim
23 as this Act.

1 **SEC. 4. SEVERABILITY.**

2 If any provision of this Act, an amendment made by
3 this Act, or the application of such a provision or amend-
4 ment to any person or circumstance, is held to be uncon-
5 stitutional, the remaining provisions of and amendments
6 made by this Act, and the application of the provision or
7 amendment held to be unconstitutional to any other per-
8 son or circumstance, shall not be affected thereby.

Passed the Senate July 23, 2024.

Attest:

Secretary.

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