

118TH CONGRESS  
2D SESSION

# S. 3696

To improve rights to relief for individuals affected by non-consensual activities involving intimate digital forgeries, and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

JANUARY 30, 2024

Mr. DURBIN (for himself, Mr. GRAHAM, Mr. HAWLEY, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

## A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Disrupt Explicit  
5 Forged Images And Non-Consensual Edits Act of 2024”  
6 or the “DEFLIANCE Act of 2024”.

1 **SEC. 2. CIVIL ACTION RELATING TO DISCLOSURE OF INTI-**  
2 **MATE IMAGES.**

3 (a) DEFINITIONS.—Section 1309(a) of the Consoli-  
4 dated Appropriations Act, 2022 (15 U.S.C. 6851(a)) is  
5 amended—

6 (1) in paragraph (2), by inserting “competent,”  
7 after “conscious,”;

8 (2) by redesignating paragraphs (5) and (6) as  
9 paragraphs (6) and (7), respectively;

10 (3) by redesignating paragraph (3) as para-  
11 graph (5);

12 (4) by inserting after paragraph (2) the fol-  
13 lowing:

14 “(3) DIGITAL FORGERY.—The term ‘digital for-  
15 gery’ means any intimate visual depiction of an iden-  
16 tifiable individual created through the use of soft-  
17 ware, machine learning, artificial intelligence, or any  
18 other computer-generated or technological means, in-  
19 cluding by adapting, modifying, manipulating, or al-  
20 tering an authentic visual depiction, to appear to a  
21 reasonable person to be indistinguishable from an  
22 authentic visual depiction of the individual, regard-  
23 less of whether the visual depiction indicates,  
24 through a label or some other form of information  
25 published with the visual depiction, that the visual  
26 depiction is not authentic.”;

1 (5) in paragraph (5), as so redesignated—

2 (A) by striking “(5) DEPICTED” and in-  
3 serting “(5) IDENTIFIABLE”; and

4 (B) by striking “depicted individual” and  
5 inserting “identifiable individual”; and

6 (6) in paragraph (6)(A), as so redesignated—

7 (A) in clause (i), by striking “; or” and in-  
8 serting a semicolon;

9 (B) in clause (ii)—

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

12 (ii) by striking subclause (III); and

13 (C) by adding at the end the following:

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

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

19 (1) in paragraph (1)—

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

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

24 “(i) an identifiable individual whose  
25 intimate visual depiction is disclosed, in or

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

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

21 “(I) the identifiable individual  
22 did not consent to such production,  
23 disclosure, solicitation, or possession;

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

1 individual did not consent to such pro-  
2 duction, disclosure, solicitation, or  
3 possession; and

4 “(III) such production, disclo-  
5 sure, solicitation, or possession is in  
6 or affects interstate or foreign com-  
7 merce or uses any means or facility of  
8 interstate or foreign commerce; and

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

16 “(I) the identifiable individual  
17 did not consent to such production;

18 “(II) the person knew or reck-  
19 lessly disregarded that the identifiable  
20 individual did not consent to such pro-  
21 duction; and

22 “(III) such production is in or  
23 affects interstate or foreign commerce  
24 or uses any means or facility of inter-  
25 state or foreign commerce.”; and

1 (B) in subparagraph (B)—

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

4 (ii) by striking “an individual who is  
5 under 18 years of age, incompetent, inca-  
6 pacitated, or deceased, the legal guardian  
7 of the individual” and inserting “an identi-  
8 fiable individual who is under 18 years of  
9 age, incompetent, incapacitated, or de-  
10 ceased, the legal guardian of the identifi-  
11 able individual”;

12 (2) in paragraph (2)—

13 (A) in subparagraph (A)—

14 (i) by inserting “identifiable” before  
15 “individual”;

16 (ii) by striking “depiction” and insert-  
17 ing “intimate visual depiction or digital  
18 forgery”; and

19 (iii) by striking “distribution” and in-  
20 serting “disclosure, solicitation, or posses-  
21 sion”; and

22 (B) in subparagraph (B)—

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

1 (ii) by inserting “or digital forgery”  
2 after each place the term “depiction” ap-  
3 pears; and

4 (iii) by inserting “, solicitation, or  
5 possession” after “disclosure”;

6 (3) by redesignating paragraph (4) as para-  
7 graph (5);

8 (4) by striking paragraph (3) and inserting the  
9 following:

10 “(3) RELIEF.—In a civil action filed under this  
11 section—

12 “(A) an identifiable individual may recover  
13 the actual damages sustained by the individual  
14 or liquidated damages in the amount of  
15 \$150,000, and the cost of the action, including  
16 reasonable attorney’s fees and other litigation  
17 costs reasonably incurred; and

18 “(B) the court may, in addition to any  
19 other relief available at law, order equitable re-  
20 lief, including a temporary restraining order, a  
21 preliminary injunction, or a permanent injunc-  
22 tion ordering the defendant to cease display or  
23 disclosure of the intimate visual depiction or  
24 digital forgery.

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

5                   “(A) permitting the plaintiff to use a pseu-  
6                   donym;

7                   “(B) requiring the parties to redact the  
8                   personal identifying information of the plaintiff  
9                   from any public filing, or to file such documents  
10                  under seal; and

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

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

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

19                   (B) by striking “depicted” and inserting  
20                   “identifiable”; and

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

22                   “(6) STATUTE OF LIMITATIONS.—Any action  
23                   commenced under this section shall be barred unless  
24                   the complaint is filed not later than 10 years from  
25                   the later of—

1           “(A) the date on which the identifiable in-  
2           dividual reasonably discovers the violation that  
3           forms the basis for the claim; or

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

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

13          (c) CONTINUED APPLICABILITY OF FEDERAL,  
14          STATE, AND TRIBAL LAW.—

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

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

1 **SEC. 3. 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.

○