

118TH CONGRESS
2D SESSION

S. 3986

To establish a private right of action against a person who sends unsolicited visual depictions of sexually explicit conduct.

IN THE SENATE OF THE UNITED STATES

MARCH 20, 2024

Mr. SCHATZ (for himself and Mr. DAINES) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To establish a private right of action against a person who sends unsolicited visual depictions of sexually explicit conduct.

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 “Curbing Online Non-
5 consensual Sexually Explicit Nudity Transfers Act” or the
6 “CONSENT Act”.

7 **SEC. 2. TRANSMISSION OF UNSOLICITED VISUAL DEPIC-**
8 **TIONS OF SEXUALLY EXPLICIT CONDUCT.**

9 (a) DEFINITIONS.—

10 (1) IN GENERAL.—In this section:

1 (A) CONSENT.—The term “consent” has
2 the meaning given the term in section 1309 of
3 the Violence Against Women Act Reauthoriza-
4 tion Act of 2022 (15 U.S.C. 6851).

5 (B) MACHINE-MANIPULATED MEDIA.—The
6 term “machine-manipulated media” means a
7 video, image, or audio recording generated or
8 substantially modified using machine-learning
9 techniques in order to—

10 (i) falsely depict—

11 (I) an event; or

12 (II) the speech or conduct of an
13 individual; or

14 (ii) depict an individual who does not
15 exist.

16 (C) SEXUALLY EXPLICIT CONDUCT.—The
17 term “sexually explicit conduct” has the mean-
18 ing given the term in section 2256(2)(B) of title
19 18, United States Code.

20 (D) THIRD-PARTY PROVIDER.—The term
21 “third-party provider” means—

22 (i) a provider of an interactive com-
23 puter service (as defined in section 230 of
24 the Communications Act of 1934 (47
25 U.S.C. 230)); or

1 (ii) any other entity that transmits,
 2 routes, or provides connections for elec-
 3 tronic communications.

4 (E) VISUAL DEPICTION.—The term “visual
 5 depiction”—

6 (i) has the meaning given the term in
 7 section 1466A of title 18, United States
 8 Code; and

9 (ii) includes machine-manipulated
 10 media.

11 (2) RULE OF CONSTRUCTION.—Notwith-
 12 standing the application of the terms “sexually ex-
 13 plicit conduct” and “visual depiction” to only minors
 14 in chapter 110 and section 1466A, respectively, of
 15 title 18, United States Code, the applicability of
 16 those terms shall not be limited to minors for pur-
 17 poses of this section.

18 (b) CIVIL ACTION.—

19 (1) RIGHT OF ACTION.—

20 (A) IN GENERAL.—If an individual 18
 21 years of age or older, or any person that is not
 22 an individual, (referred to in this subparagraph
 23 as the “sender”) knowingly sends an individual
 24 (referred to in this subparagraph as the “recipi-
 25 ent”) a visual depiction of sexually explicit con-

duct, in or affecting interstate or foreign commerce or using any means or facility of interstate or foreign commerce, without the consent of the recipient, knowing that, or recklessly disregarding whether, the recipient has not provided consent to receive the visual depiction, the recipient may bring a civil action against the sender in an appropriate district court of the United States for relief under paragraph (2).

(B) RIGHTS ON BEHALF OF CERTAIN INDIVIDUALS.—If an individual who receives a visual depiction of sexually explicit conduct as described in subparagraph (A) is under 18 years of age, incompetent, or incapacitated, a legal guardian of the individual may bring a civil action under that subparagraph on behalf of the individual.

(C) PRIVACY PROTECTION FOR MINORS.—

(i) IN GENERAL.—If a civil action is brought under subparagraph (A) on behalf of an individual who is a minor when the complaint is filed or by an individual who was a minor when the acts giving rise to the civil action took place, the plaintiff

1 may elect to use the plaintiff's initials in
2 all filings with the court.

3 (ii) REQUIREMENT.—If a plaintiff
4 elects to proceed using the plaintiff's ini-
5 tials under clause (i), the court and each
6 other party to the action shall use the
7 plaintiff's initials in—

8 (I) any order, filing, or other
9 such document; and

10 (II) any proceeding that is tran-
11 scribed by a court reporter.

12 (D) EXCEPTIONS.—A civil action under
13 subparagraph (A) may not be brought
14 against—

15 (i) a third-party provider, to the ex-
16 tent that the provider is transmitting,
17 routing, or providing connections of elec-
18 tronic communications initiated by or at
19 the direction of another person;

20 (ii) a person who sends a visual depic-
21 tion for a good faith medical, educational,
22 or law enforcement purpose; or

23 (iii) a person who lawfully publishes a
24 visual depiction of sexually explicit conduct

1 on a website that requires users to be not
2 less than 18 years of age.

3 (2) RELIEF.—In a civil action brought under
4 paragraph (1), an individual may obtain—

5 (A) either—

6 (i) statutory damages of not more
7 than \$500; or

8 (ii) compensatory damages for emo-
9 tional distress;

10 (B) reasonable attorney fees and costs; and

11 (C) a temporary restraining order, a pre-
12 liminary injunction, or a permanent injunction
13 ordering the defendant to cease sending visual
14 depictions of sexually explicit conduct to the
15 plaintiff without consent.

16 (3) RELATION TO CRIMINAL LAWS.—Nothing in
17 this subsection shall be construed to modify, impair,
18 or supersede any provision of criminal law.

19 (c) SEVERABILITY.—If any provision of this section,
20 or the application of such provision to any person or cir-
21 cumstance, is held to be unconstitutional, the remainder
22 of this section, and the application of the provision to any
23 other person or circumstance, shall not be affected.

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