

HOUSE BILL 1299

By Powell

AN ACT to amend Tennessee Code Annotated, Title 28
and Title 39, Chapter 17, relative to the
unauthorized use of deepfake or actual likeness.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 17, is amended by adding
the following as a new part:

39-17-1901. Short title.

This part is known and may be cited as the "Preventing Deepfake Images Act."

39-17-1902. Part definitions.

As used in this part:

(1) "Consent" means an affirmative, conscious, and voluntary
authorization made by the individual free from force, fraud, misrepresentation, or
coercion;

(2) "Deepfakes" means videos, images, or audio files that have been
generated or manipulated by artificial intelligence in order to realistically portray
something that did not actually occur;

(3) "Depicted individual" means an individual who, as a result of
digitization or by means of digital manipulation, appears in whole or in part in an
intimate digital depiction and who is identifiable by virtue of the person's face,
likeness, or other distinguishing characteristic, such as a unique birthmark or
other recognizable feature, or from information displayed in connection with the
digital depiction;

(4) "Digital depiction" means a realistic visual depiction of an individual that has been created or altered using digital manipulation and includes stored data which is capable of conversion into a visual image;

(5) "Disclose" means to transfer, publish, distribute, or make accessible;

(6) "Intimate digital depiction" means a digital depiction of an individual that has been created or altered using digital manipulation and that appears to depict:

(A) The uncovered genitals, pubic area, anus, or postpubescent female nipple of an identifiable individual;

(B) The display or transfer of bodily sexual fluids:

(i) Onto any part of the body of an identifiable individual;

or

(ii) From the body of an identifiable individual; or

(C) An identifiable individual engaging in sexually explicit conduct;

and

(7) "Sexually explicit conduct" means graphic sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex, or lascivious simulated sexual intercourse where the genitals, breast, or pubic area of any person is exhibited; graphic or lascivious simulated bestiality, masturbation, or sadistic or masochistic abuse; or graphic or simulated lascivious exhibition of the anus, genitals, or pubic area of any person.

39-17-1903. Civil action – Consent.

(a) Except as provided in subsection (d), an individual who is the subject of an intimate digital depiction that is disclosed without the consent of the individual, where

such disclosure was made by a person who knows that, or recklessly disregards whether, the individual has not consented to such disclosure, may bring a civil action against that person in an appropriate court as set forth in § 39-17-1904.

(b) In the case of an individual who has not attained eighteen (18) years of age or is incompetent, incapacitated, or deceased, the legal guardian of the individual or representative of the individual's estate, another family member, or any other person appointed as suitable by the court, may assume the individual's rights under this section, but in no event may the defendant be named as such representative or guardian.

(c) For purposes of an action under this section:

(1) An individual's consent to the creation of the intimate digital depiction does not establish that the individual consented to its disclosure; and

(2) Consent is deemed validly given only if:

(A) The consent is set forth in an agreement written in plain language signed knowingly and voluntarily by the depicted individual; and

(B) The consent includes a general description of the intimate digital depiction and, if applicable, the visual work into which the digital depiction will be incorporated.

39-17-1904. Damages – Equitable relief – Preservation of anonymity – Exceptions

– Disclaimers.

(a) In a civil action filed under this part, an individual may recover any of the following:

(1) An amount equal to the monetary gain made by the defendant from the creation, development, or disclosure of the intimate digital depiction;

(2) Either of the following:

(A) The actual damages sustained by the individual as a result of the intimate digital depiction, including damages for emotional distress; or

(B) Liquidated damages in the amount of one hundred fifty thousand dollars (\$150,000);

(3) Punitive damages, pursuant to § 29-39-104; and

(4) The cost of the action, including reasonable attorney's fees and other litigation costs reasonably incurred.

(b) In a civil action filed under this part, a court may, in addition to any other relief available at law, order equitable relief, including a temporary restraining order, a preliminary injunction, or a permanent injunction ordering the defendant to cease display or disclosure of the intimate digital depiction.

(c) In ordering relief under this section, the court may grant injunctive relief maintaining the confidentiality of a plaintiff using a pseudonym.

(d) An identifiable individual shall not bring an action for relief under § 39-17-1904 relating to:

(1) A disclosure the defendant can show was made in good faith:

(A) To or by a law enforcement officer or agency in the course of reporting or investigating:

(i) Unlawful activity; or

(ii) Unsolicited or unwelcome conduct; or

(B) As part of a legal proceeding; or

(2) A disclosure made in good faith and reasonably intended to assist the identifiable individual.

(e) A court may authorize an in camera proceeding under this part.

(f) It is not a defense to an action under this section that there is a disclaimer stating that the intimate digital depiction of the depicted individual was unauthorized or that the depicted individual did not participate in the creation or development of the material.

39-17-1905. Limitations.

For purposes of this part, a provider of an interactive computer service is not liable on account of:

(1) Any action voluntarily taken in good faith to restrict access to or availability of intimate digital depictions; or

(2) Any action taken to enable or make available to information content providers or other persons the technical means to restrict access to intimate digital depictions.

39-17-1906. Criminal action for intimate digital depictions – Penalty – Limitations.

(a) It is an offense to disclose or threaten to disclose or solicit the disclosure of an intimate digital depiction:

(1) With the intent to harass, annoy, threaten, alarm, or cause substantial harm to the finances or reputation of the depicted individual; or

(2) With actual knowledge that, or reckless disregard for whether, such disclosure or threatened disclosure will cause physical, emotional, reputational, or economic harm to the depicted individual.

(b) A violation of subsection (a):

(1) Is a Class E felony; or

(2) Is a Class C felony, in the case of a violation in which the creation, reproduction, or distribution of the intimate digital depiction could be reasonably expected to:

(A) Affect the conduct of any administrative, legislative, or judicial proceeding of a governmental agency, including the administration of an election; or

(B) Facilitate violence.

(c) It is not a defense to prosecution under this section that there is a disclaimer stating that the intimate digital depiction of the depicted individual was unauthorized or that the depicted individual did not participate in the creation or development of the material.

(d) For purposes of this section, a provider of an interactive computer service is not liable on account of:

(1) Any action voluntarily taken in good faith to restrict access to or availability of intimate digital depictions; or

(2) Any action taken to enable or make available to information content providers or other persons the technical means to restrict access to intimate digital depictions.

(e) This section does not prohibit prosecution and conviction under another criminal statute.

SECTION 2. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3. This act takes effect July 1, 2025, the public welfare requiring it.