

118TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To require covered platforms to remove nonconsensual intimate visual depictions, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

Mr. CRUZ (for himself, Ms. KLOBUCHAR, Mrs. CAPITO, Mr. BLUMENTHAL, Ms. LUMMIS, Ms. ROSEN, Mr. BUDD, Ms. BUTLER, Mr. YOUNG, Mr. MANCHIN, Mr. CASSIDY, Mr. HICKENLOOPER, and Mr. HEINRICH) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To require covered platforms to remove nonconsensual intimate visual depictions, 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 “Tools to Address  
5 Known Exploitation by Immobilizing Technological  
6 Deepfakes on Websites and Networks Act” or the “TAKE  
7 IT DOWN Act”.

1 **SEC. 2. CRIMINAL PROHIBITION ON INTENTIONAL DISCLO-**  
2 **SURE OF NONCONSENSUAL INTIMATE VISUAL**  
3 **DEPICTIONS.**

4 (a) IN GENERAL.—Section 223 of the Communica-  
5 tions Act of 1934 (47 U.S.C. 223) is amended—

6 (1) by redesignating subsection (h) as sub-  
7 section (i); and

8 (2) by inserting after subsection (g) the fol-  
9 lowing:

10 “(h) INTENTIONAL DISCLOSURE OF NONCONSEN-  
11 SUAL INTIMATE VISUAL DEPICTIONS.—

12 “(1) DEFINITIONS.—In this subsection:

13 “(A) CONSENT.—The term ‘consent’  
14 means an affirmative, conscious, and voluntary  
15 authorization made by an individual free from  
16 force, fraud, duress, misrepresentation, or coer-  
17 cion.

18 “(B) DEEPPFAKE.—The term ‘deepfake’  
19 means a video or image that is generated or  
20 substantially modified using machine-learning  
21 techniques or any other computer-generated or  
22 machine-generated means to falsely depict an  
23 individual’s appearance or conduct within an in-  
24 timate visual depiction.

25 “(C) IDENTIFIABLE INDIVIDUAL.—

1 “(i) IN GENERAL.—The term ‘identifi-  
2 able individual’ means an individual—

3 “(I) who appears in whole or in  
4 part in an intimate visual depiction;  
5 and

6 “(II) whose face, likeness, or  
7 other distinguishing characteristic (in-  
8 cluding a unique birthmark or other  
9 recognizable feature) is displayed in  
10 connection with such intimate visual  
11 depiction.

12 “(ii) APPEARS.—For purposes of  
13 clause (i), an individual appears in an inti-  
14 mate visual depiction if—

15 “(I) the individual is actually the  
16 individual identified in the intimate  
17 visual depiction; or

18 “(II) a deepfake of the individual  
19 is used to realistically depict the indi-  
20 vidual such that a reasonable person  
21 would believe the individual is actually  
22 depicted in the intimate visual depic-  
23 tion.

1           “(D) INTERACTIVE COMPUTER SERVICE.—  
2           The term ‘interactive computer service’ has the  
3           meaning given the term in section 230.

4           “(E) INTIMATE VISUAL DEPICTION.—The  
5           term ‘intimate visual depiction’ has the mean-  
6           ing given such term in section 1309 of the Con-  
7           solidated Appropriations Act, 2022 (15 U.S.C.  
8           6851).

9           “(F) MINOR.—The term ‘minor’ means  
10          any individual under the age of 18 years.

11          “(2) OFFENSE.—

12           “(A) INVOLVING ADULTS.—Except as pro-  
13          vided in subparagraph (C), it shall be unlawful  
14          for any person, in interstate or foreign com-  
15          merce, to use an interactive computer service to  
16          knowingly publish an intimate visual depiction  
17          of an identifiable individual who is not a minor  
18          if—

19           “(i) the intimate visual depiction was  
20          obtained or created under circumstances in  
21          which the person knew or reasonably  
22          should have known the identifiable indi-  
23          vidual had a reasonable expectation of pri-  
24          vacy;

1                   “(ii) what is depicted was not volun-  
2                   tarily exposed by the identifiable individual  
3                   in a public or commercial setting;

4                   “(iii) what is depicted is not a matter  
5                   of public concern; and

6                   “(iv) publication of the intimate visual  
7                   depiction—

8                   “(I) is intended to cause harm;  
9                   or

10                   “(II) causes harm, including psy-  
11                   chological, financial, or reputational  
12                   harm, to the identifiable individual.

13                   “(B) INVOLVING MINORS.—Except as pro-  
14                   vided in subparagraph (C), it shall be unlawful  
15                   for any person, in interstate or foreign com-  
16                   merce, to use an interactive computer service to  
17                   knowingly publish an intimate visual depiction  
18                   of an identifiable individual who is a minor with  
19                   intent to—

20                   “(i) abuse, humiliate, harass, or de-  
21                   grade the minor; or

22                   “(ii) arouse or gratify the sexual de-  
23                   sire of any person.

24                   “(C) EXCEPTIONS.—Subparagraphs (A)  
25                   and (B) shall not apply to—

1 “(i) a lawfully authorized investiga-  
2 tive, protective, or intelligence activity of—

3 “(I) a law enforcement agency of  
4 the United States, a State, or a polit-  
5 ical subdivision of a State; or

6 “(II) an intelligence agency of  
7 the United States;

8 “(ii) a disclosure made reasonably and  
9 in good faith—

10 “(I) to a law enforcement officer  
11 or agency;

12 “(II) as part of a document pro-  
13 duction or filing associated with a  
14 legal proceeding;

15 “(III) as part of medical edu-  
16 cation, diagnosis, or treatment or for  
17 a legitimate medical, scientific, or  
18 education purpose; or

19 “(IV) in the reporting of unlaw-  
20 ful content or unsolicited or unwel-  
21 come conduct or in pursuance of a  
22 legal, professional, or other lawful ob-  
23 ligation; or

1                   “(V) to seek support or help with  
2                   respect to the receipt of an unsolicited  
3                   intimate visual depiction;

4                   “(iii) a disclosure reasonably intended  
5                   to assist the identifiable individual; or

6                   “(iv) a person who possesses or pub-  
7                   lishes an intimate visual depiction of him-  
8                   self or herself engaged in nudity or sexu-  
9                   ally explicit conduct (as that term is de-  
10                  fined in section 2256(2)(A) of title 18,  
11                  United States Code).

12                  “(3) PENALTIES.—

13                  “(A) OFFENSES INVOLVING ADULTS.—Any  
14                  person who violates paragraph (2)(A) shall be  
15                  fined under title 18, United States Code, im-  
16                  prisoned not more than 2 years, or both.

17                  “(B) OFFENSES INVOLVING MINORS.—Any  
18                  person who violates paragraph (2)(B) shall be  
19                  fined under title 18, United States Code, im-  
20                  prisoned not more than 3 years, or both.

21                  “(4) RULES OF CONSTRUCTION.—For purposes  
22                  of paragraph (2)—

23                  “(A) the fact that the identifiable indi-  
24                  vidual provided consent for the creation of the  
25                  intimate visual depiction shall not establish that

1 the individual provided consent for the publica-  
2 tion of the intimate visual depiction; and

3 “(B) the fact that the identifiable indi-  
4 vidual disclosed the intimate visual depiction to  
5 another individual shall not establish that the  
6 identifiable individual provided consent for the  
7 publication of the intimate visual depiction by  
8 the person alleged to have violated paragraph  
9 (2).

10 “(5) THREATS.—Any person who intentionally  
11 threatens to commit an offense under paragraph (2)  
12 for the purpose of intimidation, coercion, extortion,  
13 or to create mental distress shall be punished as pro-  
14 vided in paragraph (3).

15 “(6) FORFEITURE.—

16 “(A) IN GENERAL.—The court, in impos-  
17 ing a sentence on any person convicted of a vio-  
18 lation of subparagraph (2), shall order, in addi-  
19 tion to any other sentence imposed and irre-  
20 spective of any provision of State law, that the  
21 person forfeit to the United States—

22 “(i) any material distributed in viola-  
23 tion of that paragraph;

24 “(ii) the person’s interest in property,  
25 real or personal, constituting or derived

1 from any gross proceeds of the violation, or  
2 any property traceable to such property,  
3 obtained or retained directly or indirectly  
4 as a result of the violation; and

5 “(iii) any personal property of the  
6 person used, or intended to be used, in any  
7 manner or part, to commit or to facilitate  
8 the commission of the violation.

9 “(B) PROCEDURES.—Section 413 of the  
10 Controlled Substances Act (21 U.S.C. 853),  
11 with the exception of subsections (a) and (d),  
12 shall apply to the criminal forfeiture of property  
13 under subparagraph (A).

14 “(7) RESTITUTION.—The court shall order res-  
15 titution for an offense under paragraph (2) in the  
16 same manner as under section 2264 of title 18,  
17 United States Code.”.

18 (b) DEFENSES.—Section 223(e)(1) of the Commu-  
19 nications Act of 1934 (47 U.S.C. 223(e)(1)) is amended  
20 by striking “or (d)” and inserting “, (d), or (h)”.

21 (c) TECHNICAL AND CONFORMING AMENDMENT.—  
22 Subsection (i) of section 223 of the Communications Act  
23 of 1934 (47 U.S.C. 223), as so redesignated by subsection  
24 (a), is amended by inserting “DEFINITIONS.—” before  
25 “For purposes of this section”.

1 **SEC. 3. NOTICE AND REMOVAL OF NONCONSENSUAL INTI-**  
2 **MATE VISUAL DEPICTIONS.**

3 (a) IN GENERAL.—

4 (1) NOTICE AND REMOVAL PROCESS.—

5 (A) ESTABLISHMENT.—Not later than 1  
6 year after the date of enactment of this Act, a  
7 covered platform shall establish a process  
8 whereby an identifiable individual (or an au-  
9 thorized representative of such individual)  
10 may—

11 (i) notify the covered platform of an  
12 intimate visual depiction published on the  
13 covered platform that—

14 (I) includes a depiction of the  
15 identifiable individual; and

16 (II) was published without the  
17 consent of the identifiable individual;  
18 and

19 (ii) submit a request for the covered  
20 platform to remove such intimate visual  
21 depiction.

22 (B) REQUIREMENTS.—A notification and  
23 request for removal of an intimate visual depic-  
24 tion submitted under the process established  
25 under subparagraph (A) shall include, in writ-  
26 ing—

1 (i) a physical or electronic signature  
2 of the identifiable individual (or an author-  
3 ized representative of such individual);

4 (ii) an identification of the intimate  
5 visual depiction of the identifiable indi-  
6 vidual; and

7 (iii) a brief statement that the identi-  
8 fiable individual has a good faith belief  
9 that any intimate visual depiction identi-  
10 fied under clause (ii) is not consensual, in-  
11 cluding any relevant information for the  
12 covered platform to determine the intimate  
13 visual depiction was published without the  
14 consent of the identifiable individual.

15 (2) NOTICE OF PROCESS.—A covered platform  
16 shall provide on the platform a clear and con-  
17 spicuous notice of the notice and removal process es-  
18 tablished under paragraph (1)(A).

19 (3) REMOVAL OF NONCONSENSUAL INTIMATE  
20 VISUAL DEPICTIONS.—Upon receiving a valid re-  
21 moval request from an identifiable individual (or an  
22 authorized representative of such individual) using  
23 the process described in paragraph (1)(A)(ii), a cov-  
24 ered platform shall remove the intimate visual depic-  
25 tion and make reasonable efforts to remove any

1 identical copies of such depiction as soon as possible,  
2 but not later than 48 hours after receiving such re-  
3 quest.

4 (4) LIMITATION ON LIABILITY.—A covered plat-  
5 form shall not be liable for any claim based on the  
6 covered platform’s good faith disabling of access to,  
7 or removal of, material claimed to be a nonconsen-  
8 sual intimate visual depiction based on facts or cir-  
9 cumstances from which the unlawful publishing of  
10 an intimate visual depiction is apparent, regardless  
11 of whether the intimate visual depiction is ultimately  
12 determined to be unlawful or not.

13 (b) ENFORCEMENT BY THE COMMISSION.—

14 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-  
15 TICES.—A violation of this section shall be treated  
16 as a violation of a rule defining an unfair or a de-  
17 ceptive act or practice under section 18(a)(1)(B) of  
18 the Federal Trade Commission Act (15 U.S.C.  
19 57a(a)(1)(B)).

20 (2) POWERS OF THE COMMISSION.—

21 (A) IN GENERAL.—Except as provided in  
22 subparagraph (D), the Commission shall en-  
23 force this section in the same manner, by the  
24 same means, and with the same jurisdiction,  
25 powers, and duties as though all applicable

1 terms and provisions of the Federal Trade  
2 Commission Act (15 U.S.C. 41 et seq.) were in-  
3 corporated into and made a part of this section.

4 (B) PRIVILEGES AND IMMUNITIES.—Any  
5 person who violates this Act shall be subject to  
6 the penalties and entitled to the privileges and  
7 immunities provided in the Federal Trade Com-  
8 mission Act (15 U.S.C. 41 et seq.).

9 (C) AUTHORITY PRESERVED.—Nothing in  
10 this Act shall be construed to limit the author-  
11 ity of the Federal Trade Commission under any  
12 other provision of law.

13 (D) SCOPE OF JURISDICTION.—Notwith-  
14 standing sections 4, 5(a)(2), or 6 of the Federal  
15 Trade Commission Act (15 U.S.C. 44, 45(a)(2),  
16 46), or any jurisdictional limitation of the Com-  
17 mission, the Commission shall also enforce this  
18 section in the same manner provided in sub-  
19 paragraph (A), with respect to organizations  
20 that are not organized to carry on business for  
21 their own profit or that of their members.

22 **SEC. 4. DEFINITIONS.**

23 In this Act:

24 (1) COMMISSION.—The term “Commission”  
25 means the Federal Trade Commission.

1           (2) CONSENT; DEEPPFAKE; IDENTIFIABLE INDI-  
2 VIDUAL; INTIMATE VISUAL DEPICTION.—The terms  
3 “consent”, “deepfake”, “identifiable individual”,  
4 “intimate visual depiction”, and “minor” have the  
5 meaning given such terms in section 223(h) of the  
6 Communications Act of 1934 (47 U.S.C. 223), as  
7 added by section 2.

8           (3) COVERED PLATFORM.—

9           (A) IN GENERAL.—The term “covered  
10 platform” means a website, online service, on-  
11 line application, or mobile application that—

12                   (i) serves the public; and

13                   (ii) primarily provides a forum for  
14 user-generated content, including mes-  
15 sages, videos, images, games, and audio  
16 files.

17           (B) EXCLUSIONS.—The term “covered  
18 platform” shall not include the following:

19                   (i) A provider of broadband internet  
20 access service (as described in section  
21 8.1(b) of title 47, Code of Federal Regula-  
22 tions, or successor regulation).

23                   (ii) Electronic mail.

24                   (iii) An online service, application, or  
25 website—

1 (I) that consists primarily of con-  
2 tent that is not user generated but is  
3 preselected by the provider of such on-  
4 line service, application, or website;  
5 and  
6 (II) for which any chat, com-  
7 ment, or interactive functionality is  
8 incidental to, directly related to, or  
9 dependent on the provision of the con-  
10 tent described in subclause (I).