

Cruz-Klobuchar Substitute

7/18

AMENDMENT NO. _____

Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—118th Cong., 2d Sess.

S. 4569

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

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. CRUZ (for himself and Ms. KLOBUCHAR)

Viz:

- 1 Strike all after the enacting clause and insert the fol-
- 2 lowing:
- 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) DEEPFAKE.—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.—

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“(i) IN GENERAL.—The term ‘identifiable individual’ means an individual—

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

“(II) whose face, likeness, or other distinguishing characteristic (including a unique birthmark or other recognizable feature) is displayed in connection with such intimate visual depiction.

“(ii) APPEARS.—For purposes of clause (i), an individual appears in an intimate visual depiction if—

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

“(II) a deepfake of the individual is used to realistically depict the individual such that a reasonable person would believe the individual is actually depicted in the intimate visual depiction.

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—

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

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

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

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

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

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

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

“(IV) in the reporting of unlaw-
ful content or unsolicited or unwel-
come conduct or in pursuance of a
legal, professional, or other lawful ob-
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 “(8) RULE OF CONSTRUCTION.—Nothing in
19 this subsection shall be construed to limit the appli-
20 cation of any other relevant law, including section
21 2252 of title 18, United States Code.”

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

1 (c) TECHNICAL AND CONFORMING AMENDMENT.—
2 Subsection (i) of section 223 of the Communications Act
3 of 1934 (47 U.S.C. 223), as so redesignated by subsection
4 (a), is amended by inserting “DEFINITIONS.—” before
5 “For purposes of this section”.

6 **SEC. 3. NOTICE AND REMOVAL OF NONCONSENSUAL INTI-**
7 **MATE VISUAL DEPICTIONS.**

8 (a) IN GENERAL.—

9 (1) NOTICE AND REMOVAL PROCESS.—

10 (A) ESTABLISHMENT.—Not later than 1
11 year after the date of enactment of this Act, a
12 covered platform shall establish a process
13 whereby an identifiable individual (or an au-
14 thorized person acting on behalf of such indi-
15 vidual) may—

16 (i) notify the covered platform of an
17 intimate visual depiction published on the
18 covered platform that—

19 (I) includes a depiction of the
20 identifiable individual; and

21 (II) was published without the
22 consent of the identifiable individual;
23 and

1 (ii) submit a request for the covered
2 platform to remove such intimate visual
3 depiction.

4 (B) REQUIREMENTS.—A notification and
5 request for removal of an intimate visual depic-
6 tion submitted under the process established
7 under subparagraph (A) shall include, in writ-
8 ing—

9 (i) a physical or electronic signature
10 of the identifiable individual (or an author-
11 ized person acting on behalf of such indi-
12 vidual);

13 (ii) an identification of, and informa-
14 tion reasonably sufficient for the covered
15 platform to locate, the intimate visual de-
16 piction of the identifiable individual;

17 (iii) a brief statement that the identi-
18 fiable individual has a good faith belief
19 that any intimate visual depiction identi-
20 fied under clause (ii) is not consensual, in-
21 cluding any relevant information for the
22 covered platform to determine the intimate
23 visual depiction was published without the
24 consent of the identifiable individual; and

1 (iv) information sufficient to enable
2 the covered platform to contact the identi-
3 fiable individual (or an authorized person
4 acting on behalf of such individual).

5 (2) NOTICE OF PROCESS.—A covered platform
6 shall provide on the platform a clear and con-
7 spicuous notice of the notice and removal process es-
8 tablished under paragraph (1)(A).

9 (3) REMOVAL OF NONCONSENSUAL INTIMATE
10 VISUAL DEPICTIONS.—Upon receiving a valid re-
11 moval request from an identifiable individual (or an
12 authorized person acting on behalf of such indi-
13 vidual) using the process described in paragraph
14 (1)(A)(ii), a covered platform shall, as soon as pos-
15 sible, but not later than 48 hours after receiving
16 such request—

17 (A) remove the intimate visual depiction;

18 and

19 (B) make reasonable efforts to identify and
20 remove any known identical copies of such de-
21 piction.

22 (4) LIMITATION ON LIABILITY.—A covered plat-
23 form shall not be liable for any claim based on the
24 covered platform's good faith disabling of access to,
25 or removal of, material claimed to be a nonconsen-

1 sual intimate visual depiction based on facts or cir-
2 cumstances from which the unlawful publishing of
3 an intimate visual depiction is apparent, regardless
4 of whether the intimate visual depiction is ultimately
5 determined to be unlawful or not.

6 (b) ENFORCEMENT BY THE COMMISSION.—

7 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
8 TICES.—A violation of this section shall be treated
9 as a violation of a rule defining an unfair or a de-
10 ceptive act or practice under section 18(a)(1)(B) of
11 the Federal Trade Commission Act (15 U.S.C.
12 57a(a)(1)(B)).

13 (2) POWERS OF THE COMMISSION.—

14 (A) IN GENERAL.—Except as provided in
15 subparagraph (D), the Commission shall en-
16 force this section in the same manner, by the
17 same means, and with the same jurisdiction,
18 powers, and duties as though all applicable
19 terms and provisions of the Federal Trade
20 Commission Act (15 U.S.C. 41 et seq.) were in-
21 corporated into and made a part of this section.

22 (B) PRIVILEGES AND IMMUNITIES.—Any
23 person who violates this Act shall be subject to
24 the penalties and entitled to the privileges and

1 immunities provided in the Federal Trade Com-
2 mission Act (15 U.S.C. 41 et seq.).

3 (C) **AUTHORITY PRESERVED.**—Nothing in
4 this Act shall be construed to limit the author-
5 ity of the Federal Trade Commission under any
6 other provision of law.

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

16 **SEC. 4. DEFINITIONS.**

17 In this Act:

18 (1) **COMMISSION.**—The term “Commission”
19 means the Federal Trade Commission.

20 (2) **CONSENT; DEEPFAKE; IDENTIFIABLE INDI-**
21 **VIDUAL; INTIMATE VISUAL DEPICTION.**—The terms
22 “consent”, “deepfake”, “identifiable individual”,
23 “intimate visual depiction”, and “minor” have the
24 meaning given such terms in section 223(h) of the

1 Communications Act of 1934 (47 U.S.C. 223), as
2 added by section 2.

3 (3) COVERED PLATFORM.—

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

7 (i) serves the public; and

8 (ii) primarily provides a forum for
9 user-generated content, including mes-
10 sages, videos, images, games, and audio
11 files.

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

14 (i) A provider of broadband internet
15 access service (as described in section
16 8.1(b) of title 47, Code of Federal Regula-
17 tions, or successor regulation).

18 (ii) Electronic mail.

19 (iii) An online service, application, or
20 website—

21 (I) that consists primarily of con-
22 tent that is not user generated but is
23 preselected by the provider of such on-
24 line service, application, or website;
25 and

1 (II) for which any chat, com-
2 ment, or interactive functionality is
3 incidental to, directly related to, or
4 dependent on the provision of the con-
5 tent described in subclause (I).