

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 5516

By Delegates Cannon, Kimble, Pinson, Holstein, Maynor,
Burkhammer, Chiarelli, Kelly, Young, W. Clark, and Akers

[Originating in the Committee on the Judiciary;

Reported on February 22, 2024]

1 A BILL to amend and reenact §61-8-28 of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §61-8C-1 of said code, all relating to prohibiting the use of deep fake
3 images for the nonconsensual disclosure of private intimate images; prohibiting the
4 unlawful depiction of nude or partially nude minors or minors engaged in sexually explicit
5 conduct; establishing such conduct as criminal offenses, subject to criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-28a. Nonconsensual disclosure of private intimate images; definitions; and penalties.

1 (a) As used in this section:

2 (1) "Deep fake" means a visual depiction of an individual that did not occur in reality and the
3 production of which was substantially dependent upon technical means, including artificial
4 intelligence and photo editing software, rather than the ability of another person to physically
5 impersonate the other person, and, which is so realistic that a reasonable person would believe it
6 depicts speech or conduct of an individual who did not in fact engage in such speech or conduct.

7 (2) "Disclose" means to publish, publicly display, distribute, deliver, circulate or
8 disseminate by any means, including, but not limited to, electronic transmission.

9 (2) (3) "Image" means a photograph, videotape, motion picture film, digital recording,
10 deepfake, or any product of any mechanical or electronic recording process or device that can
11 preserve, for later viewing, a visual image.

12 (3) (4) "Intimate parts" means a person's genitalia, pubic area, anus or female post-
13 pubescent breasts.

14 (4) (5) To "publicly disclose" means to disclose an image to one or more persons other than
15 those persons whom the person depicted understood would view the image at the time it was
16 captured.

17 (b) No person may knowingly and intentionally disclose, cause to be disclosed or threaten
18 to disclose, with the intent to harass, intimidate, threaten, humiliate, embarrass, or coerce, an
19 image of another which shows the intimate parts of the depicted person or shows the depicted
20 person engaged in sexually explicit conduct which was captured under circumstances where the
21 person depicted had a reasonable expectation that the image would not be publicly disclosed, or,
22 which purports to be the same.

23 (c) (1) A person convicted of a violation of subsection (b) of this section is guilty of a
24 misdemeanor and, upon conviction thereof, shall be confined in jail for not more than one year,
25 fined not less than \$1,000 nor more than \$5,000, or both confined and fined.

26 (2) Notwithstanding the provisions of subdivision (1) of this subsection, a person convicted
27 of a second or subsequent violation of subsection (b) of this section is guilty of a felony and, upon
28 conviction thereof, shall be imprisoned in a state correctional facility for not more than three years,
29 fined not less than \$2,500 nor more than \$10,000, or both imprisoned and fined.

30 (d) The provisions of this section do not apply to:

31 (1) Images disclosed with the prior written consent of the person depicted;

32 (2) Images depicting the person voluntarily exposing himself or herself in a public or
33 commercial setting; or

34 (3) Disclosures made through the reporting of illegal conduct or the lawful and common
35 practices of law enforcement, criminal reporting, legal proceeding or medical treatment.

36 (e) Nothing in this section shall be construed to impose liability on the provider of an
37 interactive computer service as defined by 47 U. S. C. §230(f)(2), an information service as
38 defined by 47 U. S. C. §153(24), or telecommunications service as defined by 47 U. S. C.
39 §153(53), for content provided by another person.

ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF MINORS.

§61-8C-1. Definitions.

1 For the purposes of this article:

2 (a) "Minor" means any child under eighteen years of age.

3 (b) "Knowledge" means knowing or having reasonable cause to know which warrants
4 further inspection or inquiry.

5 (c) "Sexually explicit conduct" includes any of the following, whether actually performed or
6 simulated:

7 (1) Genital to genital intercourse;

8 (2) Fellatio;

9 (3) Cunnilingus;

10 (4) Anal intercourse;

11 (5) Oral to anal intercourse;

12 (6) Bestiality;

13 (7) Masturbation;

14 (8) Sadomasochistic abuse, including, but not limited to, flagellation, torture or bondage;

15 (9) Excretory functions in a sexual context; or

16 (10) Exhibition of the genitals, pubic or rectal areas of any person in a sexual context.

17 (d) "Person" means an individual, partnership, firm, association, corporation or other legal
18 entity- ;or

19 (e) "Deep fake" means a visual depiction of an individual that did not occur in reality and the
20 production of which was substantially dependent upon technical means, including artificial
21 intelligence and photo editing software, rather than the ability of another person to physically
22 impersonate the other person, and, which is so realistic that a reasonable person would believe it
23 depicts speech or conduct of an individual who did not in fact engage in such speech or conduct.

24 (f) "Visual portrayal" means:

25 (1) A photograph;

26 (2) A motion picture;

27 (3) A digital image;

- 28 (4) A digital video recording;
29 (5) A deep fake; or
30 (6) Any other mechanical or electronic recording process or device that can preserve, for
31 later viewing, a visual image of a person that includes, but is not limited to, computers, cellphones,
32 personal digital assistance, and other digital storage or transmitting devices.

NOTE: The purpose of this bill is to prohibit the use of deep fake images for the criminal invasion of privacy or the unlawful depiction of nude or partially nude minors or minors engaged in sexually explicit conduct; establishing such conduct as criminal offenses, subject to criminal penalties.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.