
THIRD READING

Bill No: AB 621
Author: Bauer-Kahan (D) and Berman (D), et al.
Amended: 7/3/25 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE: 13-0, 7/15/25

AYES: Umberg, Niello, Allen, Arreguín, Ashby, Caballero, Durazo, Laird, Stern, Valladares, Wahab, Weber Pierson, Wiener

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/29/25

AYES: Caballero, Seyarto, Cabaldon, Dahle, Grayson, Richardson, Wahab

ASSEMBLY FLOOR: 78-0, 6/2/25 - See last page for vote

SUBJECT: Deepfake pornography

SOURCE: San Francisco City Attorney David Chiu

DIGEST: This bill fortifies existing law providing a cause of action to persons depicted in nonconsensual, sexually explicit, digitized material.

ANALYSIS:

Existing law:

- 1) Provides that a depicted individual has a cause of action against a person who does either of the following:
 - a) Creates and intentionally discloses sexually explicit material and the person knows or reasonably should have known the depicted individual in that material did not consent to its creation or disclosure.
 - b) Intentionally discloses sexually explicit material that the person did not create, and the person knows the depicted individual in that material did not consent to the creation of the sexually explicit material. (Civil Code (Civ. Code) § 1708.86(b).)

2) Defines the relevant terms, including:

- a) “Depicted individual” means an individual who appears, as a result of digitization, to be giving a performance they did not actually perform or to be performing in an altered depiction.
- b) “Consent” means an agreement written in plain language signed knowingly and voluntarily by the depicted individual that includes a general description of the sexually explicit material and the audiovisual work in which it will be incorporated.
- c) “Altered depiction” means a performance that was actually performed by the depicted individual but was subsequently altered to be in violation of this statute.
- d) “Sexually explicit material” means any portion of an audiovisual work that shows the depicted individual performing in the nude or appearing to engage in, or being subjected to, sexual conduct.
- e) “Malice” means that the defendant acted with intent to cause harm to the plaintiff or despicable conduct that was done with a willful and knowing disregard of the rights of the plaintiff. A person acts with knowing disregard within the meaning of this paragraph when they are aware of the probable harmful consequences of their conduct and deliberately fail to avoid those consequences. (Civ. Code § 1708.86(a).)

3) Provides clear guidelines for when consent can be rescinded. (Civ. Code § 1708.86(a)(3)(B).)

4) Authorizes the following remedies for prevailing plaintiffs in the above actions:

- a) An amount equal to the monetary gain made by the defendant from the creation, development, or disclosure of the sexually explicit material.
- b) Economic and noneconomic damages proximately caused by the disclosure of the sexually explicit material, including damages for emotional distress or the plaintiff may, at any time before the final judgment is rendered, recover instead an award of statutory damages for all unauthorized acts involved in the action, with respect to any one work, as follows:
 - i. A sum of not less than \$1,500 but not more than \$30,000.
 - ii. If the act was committed with malice, the award of statutory damages may be increased to a maximum of \$150,000.

- c) Punitive damages.
 - d) Reasonable attorney's fees and costs.
 - e) Any other available relief, including injunctive relief. (Civ. Code § 1708.86(e).)
- 5) Establishes a statute of limitations of three years from the date the plaintiff discovered, or should have discovered, the unauthorized creation, development, or disclosure. (Civ. Code § 1708.86(f).)
- 6) Provides that a person is not liable for the above conduct in the following circumstances:
- a) The person discloses the sexually explicit material in the course of any of the following:
 - i. Reporting unlawful activity.
 - ii. Exercising the person's law enforcement duties.
 - iii. Hearings, trials, or other legal proceedings.
 - b) The material is any of the following:
 - i. A matter of legitimate public concern.
 - ii. A work of political or newsworthy value or similar work.
 - iii. Commentary, criticism, or disclosure that is otherwise protected by the California Constitution or the United States Constitution. (Civ. Code § 1708.86(c).)
- 7) Creates a private right of action against a person who intentionally distributes a photograph or recorded image of another that exposes that person's intimate body parts, as defined, or shows the other person engaged in specified sexual acts, without that person's consent, knowing that the other person had a reasonable expectation that the material would remain private, if specified conditions are met. (Civ. Code § 1708.85(a)-(c).)

This bill:

- 1) Updates and expands the cause of action for depicted individuals to provide a cause of action against a person doing any the following:

- a) Creates and intentionally discloses digitized sexually explicit material portraying the depicted individual, and the person knows, or reasonably should know, that the depicted individual in that material did not consent to its creation or disclosure or was a minor when the material was created.
 - b) Intentionally discloses digitized sexually explicit material portraying the depicted individual that the person did not create, and the person knows, or reasonably should know, that the depicted individual in that material did not consent to the creation of the digitized sexually explicit material or was a minor when the material was created.
 - c) Knowingly facilitates or recklessly aids or abets conduct prohibited above.
- 2) Provides that for purposes of this statute, both of the following apply:
- a) A person that owns, operates, or controls a deepfake pornography service is engaged in the creation and intentional disclosure of digitized sexually explicit material and shall be presumed to have known that the depicted individual did not consent to the creation or disclosure of the digitized sexually explicit material, unless the person produces evidence of the depicted individual's express written consent.
 - b) A person that provides a service that enables the ongoing operation of a deepfake pornography service shall be presumed to be in violation of 2)c) above if both of the following are true:
 - i. A depicted individual or public prosecutor provides the person with evidence sufficient to demonstrate that the person is providing services that enable the ongoing operation of a deepfake pornography service that engages in conduct violating this statute. Such evidence may be submitted through a customer service email.
 - ii. The person fails to take all necessary steps to stop providing services that enable the ongoing operation of a deepfake pornography service within 30 days of receiving this evidence. This timeline may be extended by a court if it finds it is necessary to conduct an ongoing law enforcement investigation or operation.
- 3) Provides that it shall not be a defense to an action hereunder that a deepfake pornography service has a disclaimer or statement that states that users are prohibited from generating digitized sexually explicit material of a depicted individual without the individual's consent.

- 4) Updates or adds the relevant definitions, including:
 - a) “Deepfake pornography service” means a website, mobile application, or other service the primary purpose of which is to create digitized sexually explicit material.
 - b) “Depicted individual” means an individual who is portrayed in sexually explicit material.
 - c) “Digitized sexually explicit material” means any portion of a visual or audiovisual work created or substantially altered through digitization, including an image, that shows the depicted individual in the nude or appearing to engage in, or being subjected to, sexual conduct.
- 5) Enhances the statutory penalties available to a depicted individual to a maximum of \$50,000 and for acts committed with malice a maximum of \$250,000.
- 6) Explicitly includes a cause of action for public prosecutors for violations hereof, regardless of whether a depicted individual suffered actual harm, and makes the following remedies available:
 - a) Injunctive and other equitable relief.
 - b) A civil penalty of \$25,000 per violation.
 - c) For a violation committed with malice, a civil penalty of \$50,000 per violation.
 - d) Reasonable attorney’s fees.
 - e) Any other relief the court deems appropriate.
- 7) Clarifies that it does not apply to conduct that is federally protected.
- 8) Finds and declares that the clarification that this statute applies to deepfake pornography services is declaratory of existing law.

Background

With the technological advances in digital editing capabilities, the use of such tools to alter audiovisual work to portray individuals in various states of undress and/or engaging in sexually explicit conduct in which they are not actually performing has become an increasingly widespread issue. California passed AB 602 (Berman, Ch. 491, Stats. 2019) in response. That law provides a cause of action against a person who creates and intentionally discloses sexually explicit, nonconsensual deepfakes,

as specified, and those who intentionally disclose them knowing they are nonconsensual. However, the rapid growth of generative AI (GenAI) capabilities has intensified the incidence and impact of nonconsensual, sexual deepfakes. “Nudification” applications and websites have made the ability to create these deepfakes even more accessible. This bill updates existing law to combat this troubling new trend and provides stronger enforcement mechanisms to incentivize compliance. It expands the cause of action to include material depicting minors and extends liability to those knowingly facilitating or recklessly aiding or abetting the actionable conduct. This bill also takes aim at “deepfake pornography services” whose primary purpose is to create these sexually explicit deepfakes.

This bill is sponsored by San Francisco City Attorney David Chiu. It is supported by a variety of organizations, including the American Association of University Women of California and the California Police Chiefs Association. It is opposed by Technet. For a more thorough discussion, please see the Senate Judiciary Committee analysis of this bill.

Comments

According to the author:

AB 621 strengthens civil enforcement mechanisms against nudify websites that use artificial intelligence to create fake nude images of real people. These sites are most often used on photos without the consent of the individuals in them and have a detrimental impact on the victims, taking away both their autonomy and their privacy. In one recent instance, five students were expelled from a Beverly Hills Middle School after creating and sharing AI generated nude photos of their classmates. The accountability laws regarding such sites must be updated to close gaps and ensure that all those who facilitate and platform these sites are held responsible. AB 621 makes important progress towards protecting the privacy and safety of women and girls online.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- Unknown, potentially significant costs to the state funded trial court system (Trial Court Trust Fund, General Fund) to adjudicate civil actions. Creating new private causes of action may lead to additional case filings that otherwise would not have been commenced and could lead to lengthier and

more complex court proceedings with attendant workload and resource costs to the court. The fiscal impact of this bill to the courts will depend on many unknowns, including the number of cases filed and the factors unique to each case. An eight-hour court day costs approximately \$10,500 in staff in workload. This is a conservative estimate, based on the hourly rate of court personnel including at minimum the judge, clerk, bailiff, court reporter, jury administrator, administrative staff, and jury per-diems. If court days exceed 10, costs to the trial courts could reach hundreds of thousands of dollars. While the courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to fund additional staff and resources and to increase the amount appropriated to backfill for trial court operations.

SUPPORT: (Verified 8/29/25)

David Chiu, San Francisco City Attorney (Source)
American Association of University Women - California
California Catholic Conference
California Police Chiefs Association
Civil Prosecutors Coalition
Joyful Heart Foundation

OPPOSITION: (Verified 8/29/25)

Technet

ARGUMENTS IN SUPPORT: San Francisco City Attorney David Chiu, the sponsor of this bill, writes:

The widespread availability of “nudify” websites and apps enable the use of a person’s likeness to create highly-realistic pornographic imagery and videos. With the single click of a button, these deepfakes go viral, with devastating impacts for the victims.

These images are used to extort, bully, threaten, and humiliate victims. The Federal Bureau of Investigation has also warned of an uptick in extortion schemes using nonconsensual AI-generated pornography. Worse yet, victims of nonconsensual deepfake pornography have found virtually no recourse or ability to control their own image after deepfake images have been distributed.

...

Even though existing law prohibits the creation and distribution of nonconsensual AI-generated pornography, and public prosecutors have broad enforcement powers that enable them to sue operators of websites that create such imagery, there are significant enforcement gaps within existing law. Crucially, it does not apply to entities that facilitate the operation of such websites, allowing enablers of bad actors to profit off deepfake pornography with impunity. Additionally, the civil penalties public prosecutors can recover through their general enforcement powers are relatively small, limiting the deterrent effect of these laws.

AB 621 augments the existing statute that provides civil liability for the intentional creation and distribution of deepfake pornography by expressly applying it to deepfake pornography websites, expanding it to apply to those who knowingly or recklessly facilitate the operation of such websites or the creation or distribution of such images, expressly giving standing to public prosecutors to take enforcement actions under the statute, and increasing the amount of damages and penalties that violators may face.

ARGUMENTS IN OPPOSITION: TechNet writes:

We greatly appreciate you, your staff, and your sponsors' willingness to engage in these conversations over the intervening months and work towards a solution. These conversations resulted in important improvements to the bill, including language confirming that AB 621 applies only to ongoing services—not to companies that no longer have a contractual relationship to terminate—and clarification regarding what constitutes sufficient notice when an individual or public prosecutor informs a company that it is providing services to a deepfake pornography site in violation of the Act.

However, despite these important changes, we remain opposed to the bill's core enforcement mechanism. As drafted, AB 621 permits a depicted individual or a public prosecutor to bring a civil action against any company that provides an ongoing "service that enables the operation of a deepfake pornography service," if the company is notified and fails to cease service within 30 days.

ASSEMBLY FLOOR: 78-0, 6/2/25

AYES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Castillo, Chen, Connolly, Davies, DeMaio, Dixon, Elhawary, Ellis, Flora, Fong, Gabriel, Gallagher, Garcia, Gipson, Mark González, Hadwick, Haney, Harabedian, Hart, Hoover, Irwin, Jackson, Kalra, Krell, Lackey, Lee, Lowenthal, Macedo, McKinnor, Muratsuchi, Nguyen, Ortega, Pacheco, Papan, Patel, Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Michelle Rodriguez, Rogers, Blanca Rubio, Sanchez, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Ta, Tangipa, Valencia, Wallis, Ward, Wicks, Wilson, Zbur, Rivas

NO VOTE RECORDED: Jeff Gonzalez

Prepared by: Christian Kurpiewski / JUD. / (916) 651-4113
8/29/25 20:47:07

**** END ****