

CONCURRENCE IN SENATE AMENDMENTS

AB 621 (Bauer-Kahan and Berman)

As Amended September 5, 2025

Majority vote

SUMMARY

Recasts and expands Civil Code Section 1708.86, which governs civil liability for nonconsensual deepfake pornography.

Major Provisions

- 1) Recasts "sexually explicit material" as "digitized sexually explicit material," defined as any portion of a visual or audiovisual work that is created or substantially altered through digitization to depict an individual in the nude or engaged in, or subjected to, sexual conduct.
- 2) Recasts "depicted individual" as an individual who is portrayed in sexually explicit material as a result of digitization.
- 3) Recasts "malice" as intent to cause harm to the depicted individual or to engage in despicable conduct with a willful and knowing disregard of the rights of the depicted individual.
- 4) Defines "deepfake pornography service" as an internet website, mobile application, or other service the primary purpose of which is to create digitized sexually explicit material.
- 5) Clarifies that a cause of action may be brought by a depicted individual who is portrayed in digitized sexually explicit material under any of the following circumstances:
 - a) When a person creates or intentionally discloses the material portraying the individual, and the person knows, or reasonably should know, that the individual did not consent to the creation or disclosure of the material, or was a minor when the material was created.
 - b) When a person knowingly *facilitates* or recklessly aids, or abets conduct of the creation or disclosure described in a).
- 6) Clarifies that a cause of action by or on behalf of a depicted individual is not limited to circumstances in which the individual is depicted as giving a "performance."
- 7) Provides that a minor cannot consent to creation and distribution of digitized sexually explicit material depicting the minor.
- 8) Establishes that the person that owns, operates, or controls a deepfake pornography service is engaged in the creation and intentional disclosure of digitized sexually explicit material and is presumed to know 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.
- 9) Establishes that providers of services *that enables the ongoing operation of* deepfake pornography services are presumed to act knowingly or recklessly if: 1) a plaintiff provides them with evidence *sufficient to* demonstrate that the entity they serve is a deepfake pornography service in violation of the statute; and 2) they fail to *take all necessary steps to*

cease providing services *that enable the ongoing operation of deepfake pornography* to that entity within 30 days of receiving the evidence.

- 10) *Clarifies that evidence in 9) must be submitted through a designated process or customer service email, and that the 30-day parameter may be extended by a court if the court finds that additional time is needed to conduct an ongoing law enforcement investigation or operation.*
- 11) *Provides that the customer service email or other designated process must be prominently displayed on the person's website and must include:*
 - a) *The name of the deepfake pornography service that the person or entity is providing services to that enable its ongoing operation.*
 - b) *A general description of the services the person or entity is providing that enable the ongoing operation of the deepfake pornography service.*
 - c) *Contact information of the depicted individual or public prosecutor providing the evidence.*
- 12) Forecloses the defense 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.
- 13) Increases the maximum civil penalty recoverable by a depicted individual from \$30,000 to \$50,000, and from \$150,000 to \$250,000 for violations of the act committed with malice.
- 14) Clarifies that a public prosecutor may bring a civil action and is not required to prove that a depicted individual suffered actual harm.
- 15) Establishes that a public prosecutor is entitled to: injunctive and other equitable relief; penalties, as provided; reasonable attorney's fees and costs, and other available relief.
- 16) Declares that the provisions of the bill clarifying that a deepfake pornography service is subject to Section 1708.86 are declaratory of existing law.
- 17) Confirms that the bill does not apply to conduct that is protected by federal law.
- 18) *Clarifies that the bill should not be construed to require an internet service provider (ISP) to engage in an activity that would violate existing law, and that an ISP shall not be held liable under this bill for the mere transmission, routing, or provision of access to third-party content over its network.*

Senate Amendments

Clarify the process for submitting evidence by providers to avoid liability, and make other clarifying changes.

COMMENTS

This bill responds to the explosive growth of nonconsensual deepfake pornography by strengthening California's civil protections against AI-driven image-based sexual abuse. As

generative AI tools become widely available, so too have “nudification” websites and apps that allow users—often minors—to fabricate and circulate hyper-realistic nude images of real people without their consent. The bill targets this form of digital exploitation by extending liability to those who facilitate its creation or distribution, enhancing enforcement tools for public prosecutors, and establishing key legal presumptions to support victims and hold platforms accountable.

Deepfake pornography services exploit generative AI to depict real people—especially women and girls—in fabricated, sexually explicit imagery. These tools are increasingly used in school settings, with reports from Fairfax High School in Los Angeles and schools in Beverly Hills involving students generating fake nudes of classmates. A 2024 Center for Democracy and Technology survey found that 15% of students have seen sexually explicit deepfake content created at school, typically distributed via social media. The U.S. Department of Homeland Security estimates that 90–95% of all deepfake videos created since 2018 are nonconsensual pornography, warning that these technologies are becoming more accessible, less traceable, and more harmful. Victims of this abuse—often minors or young women—suffer long-term reputational and psychological harm, yet face enormous obstacles in seeking justice. The primary perpetrators are frequently anonymous, overseas, or judgment-proof, while those who knowingly support or enable these services currently face little legal consequence under existing law.

AB 621 strengthens Civil Code Section 1708.86 by expanding its reach in three critical ways:

- 1) *Extends Liability to Aiders and Abettors.* Recognizing that many deepfake pornography websites operate anonymously or offshore, the bill imposes liability on intermediaries—such as hosting providers, payment processors, or content promoters—who knowingly or recklessly aid or abet in the creation or dissemination of nonconsensual deepfake pornography. This follows established California tort principles and mirrors laws like Civil Code Section 52.65, which holds hotels liable for knowingly allowing human trafficking on their premises.
- 2) *Creates Evidentiary Presumptions to Aid Enforcement.* The bill establishes two key presumptions to address evidentiary barriers: (1) A rebuttable presumption of violation applies to any deepfake pornography service that fails to produce written consent from the depicted individual. Given that the vast majority of such content is nonconsensual, the burden rightly shifts to the operator to demonstrate lawful behavior. (2) A rebuttable presumption of knowledge applies to third-party service providers that continue to support deepfake porn services after receiving *evidence* of their illegal activity.
- 3) *Provides Express Public Prosecutor Standing and Enhanced Remedies.* AB 621 explicitly authorizes public prosecutors to bring civil actions under the statute, supplementing the limited remedies currently available through California’s Unfair Competition Law (UCL). While UCL claims are capped at \$2,500 per violation and do not allow for attorney’s fees, AB 621 allows for penalties of up to \$25,000 per violation—or \$50,000 if committed with malice—and permits recovery of attorney’s fees. This will help incentivize enforcement in cases where victims may be reluctant or unable to sue.

The bill clarifies that deepfake pornography services—defined as platforms primarily engaged in the creation or dissemination of nonconsensual deepfake content—are covered by the statute. It explicitly states that disclaimers prohibiting nonconsensual content do not shield operators from

liability. *It also exempts internet service providers engaged solely in passive transmission or routing, preserving consistency with California's net neutrality statutes.*

The bill includes a savings clause preserving the application of federal law, including the First Amendment and Section 230 of the Communications Decency Act. It targets conduct—not speech—related to the nonconsensual sexual exploitation of real people. Courts have consistently held that such content is not entitled to full constitutional protection. Moreover, Section 230 immunity does not apply to platforms that help create or develop unlawful content, and this bill applies to those who materially contribute to the abuse, rather than merely hosting it.

According to the Author

AB 621 strengthens civil enforcement mechanisms against 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.

Arguments in Support

The bill's sponsor, San Francisco District Attorney David Chiu, explains the importance of this measure in closing significant enforcement gaps in prosecuting deepfake pornography cases:

In August 2024, my office announced a first-of-its-kind lawsuit against some of the world's largest websites that create and distribute nonconsensual AI-generated pornography. Our lawsuit alleges violations of state and federal laws prohibiting deepfake pornography, revenge pornography, and child pornography, as well as violations of California's Unfair Competition Law. My office pursues public interest cases under California's Unfair Competition Law to protect consumers and ensure fair competition among businesses. We have successfully litigated a range of consumer protection cases targeting unlawful and deceptive practices across a variety of industries.

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.

The California District Attorneys Association explains its support of this measure:

The proliferation of deepfake technology has led to a disturbing rise in digitally manipulated sexually explicit content, often used to harass, exploit, and defame individuals—particularly women and minors. While existing law provides victims with a cause of action against those who create or distribute such material, AB 621 strengthens these protections by extending liability to those who knowingly facilitate, aid, or abet the distribution of deepfake pornography. The bill also increases statutory damages for victims and provides a mechanism for public prosecutors to pursue civil enforcement actions.

By holding accountable both creators and enablers of this abusive content, AB 621 closes critical loopholes in current law and ensures that victims have meaningful legal recourse. Furthermore, by allowing for public enforcement actions, the bill empowers law enforcement agencies to take proactive steps against bad actors operating deepfake pornography services.

Arguments in Opposition

TechNet continues to oppose AB 621, even after recent amendments:

[D]espite 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. Crucially, the bill does not define what constitutes "a person who provides a service" or any formal process for a depicted individual or prosecutor to provide a company with notice.

For example, an anonymous call to a customer service line could constitute notice yet be completely insufficient for a company to act upon. This vague language could implicate a broad range of service providers regardless of how incidental their role may be, including electric utilities, data centers, telecommunications carriers, landlords, or arguably janitorial contractors if their services are construed as having enabled the operation of a prohibited service.

Additionally, AB 621 allows plaintiffs to recover "economic and noneconomic damages proximately caused by the disclosure of the digitized sexually explicit material." This would make service providers liable for the harms caused by a deepfake pornography platform's conduct—not their own. Under this structure, a service provider could be held equally liable as the operator of the deepfake pornography site itself. This approach fails to distinguish between those who directly create or disseminate abusive content and those whose services may be indirectly associated.

Our proposed amendments would have preserved a depicted individual's cause of action against the deepfake pornography service, including economic, noneconomic, punitive damages, and statutory penalties, while limiting enforcement actions against service providers to public prosecutors. We also proposed substantial civil penalties to ensure accountability and incentivize compliance without creating undue risk of liability for companies that are not the source of the harm.

FISCAL COMMENTS

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.

VOTES:

ASM PRIVACY AND CONSUMER PROTECTION: 15-0-0

YES: Bauer-Kahan, Dixon, Bryan, DeMaio, Ellis, Irwin, Lowenthal, McKinnor, Ortega, Patterson, Pellerin, Petrie-Norris, Ward, Wicks, Wilson

ASM JUDICIARY: 12-0-0

YES: Kalra, Dixon, Wicks, Bryan, Connolly, Harabedian, Pacheco, Papan, Sanchez, Stefani, Zbur, Tangipa

ASM APPROPRIATIONS: 14-0-1

YES: Wicks, Arambula, Calderon, Caloza, Dixon, Elhawary, Fong, Mark González, Hart, Pacheco, Pellerin, Solache, Ta, Tangipa

ABS, ABST OR NV: Sanchez

ASSEMBLY FLOOR: 78-0-1

YES: 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

ABS, ABST OR NV: Jeff Gonzalez

UPDATED

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