

# Chapter 58

2023 Regular Session

**Subject** Establishing a cause of action and criminal violations for dissemination of certain deep fake images

**Bill** H.F. 1370

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## Overview

This act establishes a civil cause of action and criminal penalty for the nonconsensual dissemination of video and images that are altered to appear to depict a person as being naked or engaging in a sexual act when the person was not actually naked or engaging in the conduct. The statutes closely resemble Minnesota’s “revenge porn” laws that address the nonconsensual dissemination of private sexual images: sections 604.31 and 617.261.

The act also establishes a crime for the dissemination of a video, photograph, or sound recording that was altered through technological means and appears to authentically depict the speech or conduct of a person who did not engage in that speech or conduct if the dissemination occurs within 90 days of an election, takes place without the consent of the depicted person, and is disseminated with the intent to influence an election.

## Summary

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1	<b>Cause of action for nonconsensual dissemination of a deep fake depicting intimate parts or sexual acts.</b>
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**Subd. 1. Definitions.** Defines the term “deep fake” to include a video, motion picture, sound recording, electronic image, photograph, or any similar technology that appears to depict the speech or conduct of an individual who did not engage in that speech or conduct and the production of which was substantially dependent upon technical means rather than impersonation. Also defines the terms “depicted individual,” “intimate parts,” and “personal information.”

**Subd. 2. Nonconsensual dissemination of a deep fake.** Establishes a civil cause of action against a person for the nonconsensual dissemination of a deep fake

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when the deep fake is disseminated without the consent of the depicted individual and the deep fake realistically depicts the person as being naked or engaging in a sexual act. Provides that consent to the creation of a deep fake is not a defense to dissemination of the deep fake without permission.

**Subd. 3. Damages.** Establishes that a plaintiff may recover actual damages, an amount equal to any profit made from the dissemination of the deep fake, a civil penalty of up to \$10,000, and attorney fees.

**Subd. 4. Injunction; temporary relief.** Expressly authorizes a court to issue an injunction or restraining order and permits the court to impose a civil fine for a violation of the order in an amount of up to \$1,000 each day.

**Subd. 5. Confidentiality.** Directs the court to permit confidential filings to protect the privacy of a plaintiff.

**Subd. 6. Liability; exceptions.** Establishes exceptions to liability including when dissemination is related to a lawful investigation, medical or mental health treatment, or a matter of public interest. Provides that the section does not alter liabilities and protections established under federal law and does not prevent bringing a cause of action or seeking other remedy available under the law.

**Subd. 7. Jurisdiction.** Provides that a court has jurisdiction over a cause of action if the plaintiff or defendant resides in the state.

**Subd. 8. Venue.** Provides that a plaintiff may bring a suit in the county where the defendant or plaintiff resides, or the county where any deep fake is produced, reproduced, or stored in violation of this section.

**Subd. 9. Discovery of dissemination.** Establishes that the civil statute of limitations for a claim under this section is tolled until the plaintiff discovers that the deep fake has been disseminated.

2 **Use of deep fake technology to influence an election.**

Establishes a crime for a person who disseminates a deep fake or enters into an agreement to disseminate a deep fake if the person disseminating the deep fake knows, or should know, that it is a deep fake and dissemination: (1) takes place within 90 days before an election; (2) is made without the consent of the depicted person; and (3) is made with the intent to injure a candidate or influence the result of an election. Establishes a penalty of a felony if the person commits a second or subsequent violation within five years, a gross misdemeanor if the person commits the violation with the intent to cause violence, and a misdemeanor in all other cases. Establishes the right for the attorney general, a county or city attorney, the depicted

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individual, or a candidate harmed by the deep fake to seek an injunction when someone is about to commit a violation, or is in the course of violating, this section.

3	<b>Nonconsensual dissemination of a deep fake depicting intimate parts or sexual acts.</b>
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Establishes a crime for intentionally disseminating a deep fake when the actor knows, or should know, that the person depicted does not consent to dissemination and the deep fake realistically depicts the person as being naked or engaging in a sexual act. Establishes a felony penalty for certain violations including posting the deep fake to a website, disseminating the deep fake with the intent to profit from dissemination, disseminating the deep fake with the intent to harass the person, or committing a second or subsequent offense. Provides that consent to the creation of the deep fake is not a defense for unauthorized dissemination. Establishes that venue is proper in the county where the offense occurred; where the plaintiff or defendant resides; or, if venue cannot be located in either of those locations, where the deep fake is produced, reproduced, found, stored, received, or possessed. Establishes exemptions to liability including when dissemination is related to a lawful investigation, medical or mental health treatment, or a matter of public interest. Establishes immunities for internet service providers and similar providers.



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