

115TH CONGRESS  
2D SESSION

# S. 3805

To amend title 18, United States Code, to prohibit certain fraudulent audiovisual records, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

DECEMBER 21, 2018

Mr. SASSE introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, to prohibit certain fraudulent audiovisual records, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Malicious Deep Fake  
5 Prohibition Act of 2018”.

6 **SEC. 2. FRAUD IN CONNECTION WITH AUDIOVISUAL**  
7 **RECORDS.**

8 (a) AMENDMENT.—Chapter 47 of title 18, United  
9 States Code, is amended by adding at the end the fol-  
10 lowing:

1 **“§ 1041. Fraud in connection with audiovisual**  
2 **records**

3 “(a) DEFINITIONS.—In this section—

4 “(1) the term ‘audiovisual record’—

5 “(A) means any audio or visual media in  
6 an electronic format; and

7 “(B) includes any photograph, motion-pic-  
8 ture film, video recording, electronic image, or  
9 sound recording;

10 “(2) the term ‘deep fake’ means an audiovisual  
11 record created or altered in a manner that the  
12 record would falsely appear to a reasonable observer  
13 to be an authentic record of the actual speech or  
14 conduct of an individual; and

15 “(3) the terms ‘interactive computer service’  
16 and ‘information content provider’ have the same  
17 meaning given the terms in section 230 of the Com-  
18 munications Act of 1934 (47 U.S.C. 230).

19 “(b) OFFENSE.—It shall be unlawful to, using any  
20 means or facility of interstate or foreign commerce—

21 “(1) create, with the intent to distribute, a deep  
22 fake with the intent that the distribution of the deep  
23 fake would facilitate criminal or tortious conduct  
24 under Federal, State, local, or Tribal law; or

25 “(2) distribute an audiovisual record with—

1           “(A) actual knowledge that the audiovisual  
2 record is a deep fake; and

3           “(B) the intent that the distribution of the  
4 audiovisual record would facilitate criminal or  
5 tortious conduct under Federal, State, local, or  
6 Tribal law.

7           “(c) PENALTY.—Any person who violates subsection  
8 (b) shall be—

9           “(1) fined under this title, imprisoned for not  
10 more than 2 years, or both; or

11           “(2) fined under this title, imprisoned for not  
12 more than 10 years, or both, in the case of a viola-  
13 tion in which the creation, reproduction, or distribu-  
14 tion of the deep fake could be reasonably expected  
15 to—

16           “(A) affect the conduct of any administra-  
17 tive, legislative, or judicial proceeding of a Fed-  
18 eral, State, local, or Tribal government agency,  
19 including the administration of an election or  
20 the conduct of foreign relations; or

21           “(B) facilitate violence.

22           “(d) LIMITATIONS.—

23           “(1) IN GENERAL.—For purposes of this sec-  
24 tion, a provider of an interactive computer service  
25 shall not be held liable on account of—

1           “(A) any action voluntarily taken in good  
2           faith to restrict access to or availability of deep  
3           fakes; or

4           “(B) any action taken to enable or make  
5           available to information content providers or  
6           other persons the technical means to restrict ac-  
7           cess to deep fakes.

8           “(2) FIRST AMENDMENT PROTECTION.—No  
9           person shall be held liable under this section for any  
10          activity protected by the First Amendment to the  
11          Constitution of the United States.”.

12          (b) TECHNICAL AND CONFORMING AMENDMENT.—  
13          The table of sections for chapter 47 is amended by insert-  
14          ing after the item relating to section 1040 the following:  
            “1041. Fraud in connection with audiovisual records.”.

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