

**AMENDMENT TO RULES COMMITTEE PRINT 117-**

**54**

**OFFERED BY MS. SPEIER OF CALIFORNIA**

Page 1348, insert after line 23 the following (and conform the table of contents accordingly):

1 **SEC. 5806. CERTAIN ACTIVITIES RELATING TO INTIMATE**  
2 **VISUAL DEPICTIONS.**

3 (a) IN GENERAL.—Chapter 88 of title 18, United  
4 States Code, is amended by adding at the end the fol-  
5 lowing:

6 **“§ 1802. Certain activities relating to intimate visual**  
7 **depictions**

8 “(a) DEFINITIONS.—In this section:

9 “(1) COMMUNICATIONS SERVICE.—The term  
10 ‘communications service’ means—

11 “(A) a service provided by a person that is  
12 a common carrier, as that term is defined in  
13 section 3 of the Communications Act of 1934  
14 (47 U.S.C. 153), insofar as the person is acting  
15 as a common carrier;

16 “(B) an electronic communication service,  
17 as that term is defined in section 2510;

1           “(C) an information service, as that term  
2 is defined in section 3 of the Communications  
3 Act of 1934 (47 U.S.C. 153); and

4           “(D) an interactive computer service, as  
5 that term is defined in section 230(f) of the  
6 Communications Act of 1934 (47 U.S.C.  
7 230(f)).

8           “(2) INFORMATION CONTENT PROVIDER.—The  
9 term ‘information content provider’ has the meaning  
10 given that term in section 230(f) of the Communica-  
11 tions Act of 1934 (47 U.S.C. 230(f)).

12           “(3) INTIMATE VISUAL DEPICTION.—The term  
13 ‘intimate visual depiction’ means any visual depic-  
14 tion (as that term is defined in section 2256(5)) of  
15 an individual who is recognizable by an individual  
16 other than the depicted individual from the intimate  
17 image itself or information or text displayed in con-  
18 nection with the intimate image itself or information  
19 or text displayed in connection with the intimate  
20 image who has attained 18 years of age at the time  
21 the intimate visual depiction is created and—

22           “(A) who is depicted engaging in sexually  
23 explicit conduct; or

24           “(B) whose genitals, anus, pubic area, or  
25 female nipple are unclothed and visible.

1           “(4) VISUAL DEPICTION OF A NUDE MINOR.—

2           The term ‘visual depiction of a nude minor’ means  
3           any visual depiction (as that term is defined in sec-  
4           tion 2256(5)) of an individual who is recognizable by  
5           an individual other than the depicted individual from  
6           the intimate image itself or information or text dis-  
7           played in connection with the intimate image who  
8           was under the age of 18 at the time the visual depic-  
9           tion was created in which the actual anus, genitals,  
10          or pubic area, or post-pubescent female nipple, of  
11          the minor are unclothed, visible, and displayed in a  
12          manner that does not constitute sexually explicit  
13          conduct.

14           “(4) SEXUALLY EXPLICIT CONDUCT.—The term  
15          ‘sexually explicit conduct’ has the meaning given  
16          that term in section 2256(2)(A).

17          “(b) OFFENSE.—

18           “(1) IN GENERAL.—Except as provided in sub-  
19          section (d), it shall be unlawful to knowingly mail,  
20          or to distribute using any means or facility of inter-  
21          state or foreign commerce or affecting interstate or  
22          foreign commerce, an intimate visual depiction of an  
23          individual—

1           “(A) with knowledge of or reckless dis-  
2           regard for the lack of consent of the individual  
3           to the distribution; and

4           “(B) where what is depicted was not volun-  
5           tarily exposed by the individual in a public or  
6           commercial setting; and

7           “(C) where what is depicted is not a mat-  
8           ter of public concern.

9           For purposes of this section, the fact that the sub-  
10          ject of the depiction consented to the creation of the  
11          depiction shall not establish that that person con-  
12          sented to its distribution.

13          “(2) EXCEPTION.—Except as provided in sub-  
14          section (d), it shall be unlawful to knowingly mail,  
15          or to distribute using any means or facility of inter-  
16          state or foreign commerce or affecting interstate or  
17          foreign commerce, a visual depiction of a nude minor  
18          with intent to abuse, humiliate, harass, or degrade  
19          the minor, or to arouse or gratify the sexual desire  
20          of any person.

21          “(c) PENALTY.—

22          “(1) IN GENERAL.—Any person who violates  
23          subsection (b), or attempts or conspires to do so,  
24          shall be fined under this title, imprisoned not more  
25          than 5 years, or both.

1           “(2) FORFEITURE.—

2                   “(A) The court, in imposing a sentence on  
3 any person convicted of a violation involving in-  
4 timate visual depictions or visual depictions of  
5 a nude minor under this subchapter, or con-  
6 victed of a conspiracy of a violation involving  
7 intimate visual depictions or visual depictions of  
8 a nude minor under this subchapter, shall  
9 order, in addition to any other sentence im-  
10 posed and irrespective of any provision of State  
11 law, that such person forfeit to the United  
12 States—

13                           “(i) any material distributed in viola-  
14 tion of this chapter;

15                           “(ii) such person’s interest in prop-  
16 erty, real or personal, constituting or de-  
17 rived from any gross proceeds of such vio-  
18 lation, or any property traceable to such  
19 property, obtained or retained directly or  
20 indirectly as a result of such violation; and

21                           “(iii) any property, real or personal,  
22 used or intended to be used to commit or  
23 to facilitate the commission of such of-  
24 fense.

1           “(B) Section 413 of the Controlled Sub-  
2           stances Act (21 U.S.C. 853), with the exception  
3           of subsections (a) and (d), applies to the crimi-  
4           nal forfeiture of property pursuant to sub-  
5           section (1).

6           “(3) RESTITUTION.—Restitution shall be avail-  
7           able as provided in chapter 110A of title 18, United  
8           States Code, section 2264.

9           “(d) EXCEPTIONS.—

10           “(1) LAW ENFORCEMENT, LAWFUL REPORTING,  
11           AND OTHER LEGAL PROCEEDINGS.—This section—

12           “(A) does not prohibit any lawfully author-  
13           ized investigative, protective, or intelligence ac-  
14           tivity of a law enforcement agency of the  
15           United States, a State, or a political subdivision  
16           of a State, or of an intelligence agency of the  
17           United States;

18           “(B) shall not apply in the case of an indi-  
19           vidual acting in good faith to report unlawful  
20           activity or in pursuance of a legal or profes-  
21           sional or other lawful obligation; and

22           “(C) shall not apply in the case of a docu-  
23           ment production or filing associated with a legal  
24           proceeding.

1           “(2) SERVICE PROVIDERS.—This section shall  
2           not apply to any provider of a communications serv-  
3           ice with regard to content provided by another infor-  
4           mation content provider unless the provider of the  
5           communications service intentionally solicits, or  
6           knowingly and predominantly distributes, such con-  
7           tent.

8           “(e) THREATS.—Any person who threatens to com-  
9           mit an offense under subsection (b) shall be punished as  
10          provided in subsection (c).

11          “(f)           EXTRATERRITORIALITY.—There           is  
12          extraterritorial Federal jurisdiction over an offense under  
13          this section if the defendant or the depicted individual is  
14          a citizen or permanent resident of the United States.

15          “(g) CIVIL FORFEITURE.—

16                 “(1) The following shall be subject to forfeiture  
17                 to the United States in accordance with provisions  
18                 of chapter 46 and no property right shall exist in  
19                 them:

20                         “(A) Any material distributed in violation  
21                         of this chapter.

22                         “(B) Any property, real or personal, that  
23                         was used, in any manner, to commit or to facili-  
24                         tate the commission of a violation involving inti-  
25                         mate visual depictions or visual depictions of a

1 nude minor under this subchapter or a con-  
2 spiracy of a violation involving intimate visual  
3 depictions or visual depictions of a nude minor  
4 under this subchapter.

5 “(C) Any property, real or personal, con-  
6 stituting, or traceable to the gross proceeds ob-  
7 tained or retained in connection with or as a re-  
8 sult of a violation involving intimate visual de-  
9 pications or visual depictions of a nude minor  
10 under this subchapter, a conspiracy of a viola-  
11 tion involving intimate visual depictions or vis-  
12 ual depictions of a nude minor under this sub-  
13 chapter.”.

14 (b) CLERICAL AMENDMENT.—The table of sections  
15 of chapter 88 of title 18, United States Code, is amended  
16 by inserting after the item relating to section 1801 the  
17 following:

“1802. Certain activities relating to intimate visual depictions.”.

