UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

March 3-4, 2017 Drafting Committee Meeting

Copyright © 2017
By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter’s notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

February 27, 2017
UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES ACT

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

VINCENT P. CARDI, West Virginia University College of Law, P.O. Box 6130, 101 Law Center Dr., Morgantown, WV 26506, Chair

LOUISE M. NADEAU, Connecticut General Assembly, Legislative Office Bldg., Room 5500 Hartford, CT 06106-1591, Vice Chair

MARTIN D. CARR, 2523 J St., Suite 201, Sacramento, CA 95816

JENNIFER S. CLARK, State Capitol, 600 East Blvd., Bismarck, ND 58505-0360

AMY M. ELLIOTT, Office of Attorney General, 15th Floor, Strawberry Square, Harrisburg, PA 17120

LORIE FOWLKE, 2696 N. University Ave., #220, Provo, UT 84604

PETER F. LANGROCK, P.O. Drawer 351, Middlebury, VT 05753-0351

CLAIRE LEVY, 1395 Kalmia Ave., Boulder, CO 80304

FRANK E. PEREZ, 300 Mexico Blvd., P.O. Box 3490, Brownsville, TX 78520

MICHELE L. TIMMONS, 5035 Lyndale Ave. S., Minneapolis, MN 55419

MARY ANNE FRANKS, 1311 Miller Rd, Office G385, Coral Gables, FL 33146-2300, Reporter

EX OFFICIO

RICHARD T. CASSIDY, 100 Main St., P.O. Box 1124, Burlington, VT 05402, President

NORA WINKELMAN, PA House of Representatives, Main Capitol Building, Room 620, Harrisburg, PA 17120, Division Chair

AMERICAN BAR ASSOCIATION ADVISORS

JEFFREY M. ALLEN, Graves & Allen, 436 14th St., Suite 1400, Oakland, CA 94612-2716, ABA Advisor

EXECUTIVE DIRECTOR

LIZA KARSAI, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, Executive Director

Copies of this act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

111 N. Wabash Ave., Suite 1010
Chicago, IL 60602
312/450-6600
www.uniformlaws.org
UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES ACT

TABLE OF CONTENTS

SECTION 1. SHORT TITLE. .................................................................................................................. 1
SECTION 2. DEFINITIONS .................................................................................................................. 1
SECTION 3. PROTECTION OF PRIVATE VISUAL MATERIAL. ................................................. 2
SECTION 4. CIVIL ACTION ............................................................................................................... 3
SECTION 5. LIMITATIONS .............................................................................................................. 4
SECTION 6. SEVERABILITY ............................................................................................................ 5
SECTION 7. STATUTE OF LIMITATIONS ....................................................................................... 5
UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES ACT

SECTION 1. SHORT TITLE. This act may be cited as the Uniform Unauthorized Disclosure of Intimate Images Act.

SECTION 2. DEFINITIONS. As used in this act, unless the context requires otherwise,

(1) “Disclose” includes transferring, publishing, distributing, or reproducing.

(2) “Intimate image” means a photograph, film, videotape, recording, digital, or other reproduction of the naked genitals, pubic area, anus, or female post-pubescent nipple of a person or depicts a person engaging in sexual conduct, which includes but is not limited to masturbation; genital, anal, or oral sex; sexual penetration with objects; or the transfer or transmission of semen upon any part of the depicted person’s body.

(3) “Consent” means affirmative, conscious, and voluntary agreement.

(4) “Personal information” includes, but is not limited to, name or any part thereof, address or any part thereof, age, names of family members, marital status, relationship to defendant, race or ethnic background, employer, school, or URLs, social media account usernames, online identifiers, and screenshots related to the cause of action.

(5) “Online identifiers” means access names, access codes, account names, aliases, avatars, credentials, gamer tags, display names, handles, login names, member names, online identities, pseudonyms, screen names, user accounts, user identifications/IDs, usernames or other personally identifiable information or signifiers that would tie an individual to an electronic service or Internet application, website or platform account.

(6) “Identifying characteristics” include, but are not limited to, name or any part thereof, address or any part thereof, city or unincorporated area of residence, age, marital status, relationship to defendant, and race or ethnic background.
SECTION 3. PROTECTION OF PRIVATE VISUAL MATERIAL.

(a) Subject to the exceptions in subsection (b), a person may not intentionally

(1) Acquire, use, disclose, or threaten to acquire, use, or disclose an intimate
image of another person without prior consent if

(A) The depicted person is identifiable from the intimate image itself
and/or information displayed in connection with the image;

(B) The person knows that the intimate image was obtained under
circumstances in which a reasonable person would know or understand that the image was to
remain private, including but not limited to images shared within the context of a confidential
relationship; or

(C) The person knows that the intimate image was obtained by theft,
bribery, fraud, false pretenses, or by exceeding authorized access to property, accounts,
messages, files, devices, or resources.

(2) Neither silence nor lack of protest or resistance constitutes consent. The
existence of a dating relationship between the persons involved, or the fact of past sexual
relations between them, shall not by itself be assumed to be proof of consent.

(b) There shall be no liability on the part of the person distributing material under
subdivision (a) under the following circumstances:

(1) The image was created or distributed under an agreement by the person
depicted for the image’s public use and distribution; or

(2) The image was photographed, filmed, videotaped, recorded, or otherwise
reproduced in a public place and under circumstances in which the person depicted had no
reasonable expectation of privacy; or
(3) The disclosure of the image is made in the public interest, or for the lawful and common practices of law enforcement, criminal reporting, legal proceedings, medical treatment, or scientific or educational activities.

(A) The claim that the depicted person is a public figure shall not be sufficient to establish that the disclosure is made in the public interest.

SECTION 4. CIVIL ACTION.

(a) In addition to any other relief available at law, including an order by the court to destroy any image obtained or disclosed in violation of this section and to preserve discoverable information, the court may order injunctive and other equitable relief against the person violating subdivision III(a), including

(1) a temporary restraining order, or a preliminary injunction or a permanent injunction ordering the defendant to cease distribution of or destroy material. The court may grant injunctive relief maintaining the confidentiality of a plaintiff using a pseudonym as provided in subdivision (b);

(2) Actual damages, including but not limited to pain and suffering, emotional distress, economic damages, and lost earnings, to be computed at the rate of [___] per day for each day the image(s) were viewable or each instance a threat to distribute was made or an image fraudulently obtained, but not exceeding [___] for all violations caused by the same event;

(3) Punitive damages; and

(4) Reasonable attorney's fees and costs to the prevailing plaintiff.

(b) A plaintiff in a civil proceeding pursuant to subdivision (a), may proceed using a pseudonym, either John Doe, Jane Doe, or Doe, for the true name of the plaintiff and may exclude or redact from all pleadings and documents filed in the action other identifying
characteristics of the plaintiff. The court shall inform the plaintiff of the option to proceed under pseudonym at the earliest possible point. A plaintiff who proceeds using a pseudonym and excluding or redacting identifying characteristics as provided in this section shall file with the court and serve upon the defendant a confidential information form for this purpose that includes the plaintiff's name and other identifying characteristics excluded or redacted. The court shall keep the plaintiff's name and excluded or redacted characteristics confidential.

(1) In cases where the plaintiff is permitted to proceed using a pseudonym, the parties shall use this pseudonym in all pleadings, papers, at any hearings and in open court, and in other statements and documents that are matters of public record.

(2) Defendant and his or her agents, servants, employees, attorneys, and any person in active concert or participation with defendant, shall not publicly reveal the identity of plaintiff in connection with the action, including to any member of the media.

(3) All court decisions, orders, petitions, and other documents, including motions and papers filed by the parties, shall be worded so as to protect the name or other identifying characteristics of the plaintiff from public revelation.

(4) The responsibility for excluding or redacting the name or identifying characteristics of the plaintiff from all documents filed with the court rests solely with the parties and their attorneys. Nothing in this section requires the court to review pleadings or other papers for compliance with this provision.

SECTION 5. LIMITATIONS.

(a) Nothing in this section shall be construed to alter or negate any rights, obligations, or immunities of an interactive computer service provider under Section 230 of Title 47 of the United States Code.
(b) Nothing in this section shall be construed to limit or preclude a plaintiff from securing or recovering any other available remedy.

SECTION 6. SEVERABILITY. The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SECTION 7. STATUTE OF LIMITATIONS. A cause of action brought under this Act may be brought no more than four years after the last acquisition, use, or disclosure or threatened acquisition, use, or disclosure.