

DRAFT
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UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

March 3-4, 2017 Drafting Committee Meeting

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ON UNIFORM STATE LAWS

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February 27, 2017

UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES ACT

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1 **UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES ACT**

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

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

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

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

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

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

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

21 (6) “Identifying characteristics” include, but are not limited to, name or any part thereof,
22 address or any part thereof, city or unincorporated area of residence, age, marital status,
23 relationship to defendant, and race or ethnic background.

1 **SECTION 3. PROTECTION OF PRIVATE VISUAL MATERIAL.**

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

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

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

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

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

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

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

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

21 (2) The image was photographed, filmed, videotaped, recorded, or otherwise
22 reproduced in a public place and under circumstances in which the person depicted had no
23 reasonable expectation of privacy; or

1 (3) The disclosure of the image is made in the public interest, or for the lawful
2 and common practices of law enforcement, criminal reporting, legal proceedings, medical
3 treatment, or scientific or educational activities.

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

6 **SECTION 4. CIVIL ACTION.**

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

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

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

19 (3) Punitive damages; and

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

21 (b) A plaintiff in a civil proceeding pursuant to subdivision (a), may proceed using a
22 pseudonym, either John Doe, Jane Doe, or Doe, for the true name of the plaintiff and may
23 exclude or redact from all pleadings and documents filed in the action other identifying

1 characteristics of the plaintiff. The court shall inform the plaintiff of the option to proceed under
2 pseudonym at the earliest possible point. A plaintiff who proceeds using a pseudonym and
3 excluding or redacting identifying characteristics as provided in this section shall file with the
4 court and serve upon the defendant a confidential information form for this purpose that includes
5 the plaintiff's name and other identifying characteristics excluded or redacted. The court shall
6 keep the plaintiff's name and excluded or redacted characteristics confidential.

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

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

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

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

20 **SECTION 5. LIMITATIONS.**

21 (a) Nothing in this section shall be construed to alter or negate any rights, obligations, or
22 immunities of an interactive computer service provider under Section 230 of Title 47 of the
23 United States Code.

1 (b) Nothing in this section shall be construed to limit or preclude a plaintiff from securing
2 or recovering any other available remedy.

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

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