



THE UNIFORM CIVIL REMEDIES FOR UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES ACT

- A Summary -

The disclosure of private images of nudity or sexual conduct without consent and for no legitimate purpose can cause severe and often irreversible harm. Intimate images are disclosed without the depicted individual's consent for a variety of reasons. Some are disclosed for recreation or profit, without any purpose to harm the depicted individual. Others are disclosed as part of an effort to control, punish, extort, or otherwise inflict harm on current or former intimate partners. Once an intimate image of a victim is made available on a website or social media platform, it can become accessible to anyone with internet access, any of whom could download, forward, share, and copy it. Incidents of disclosing intimate images without consent are increasing nationally.

Most states have adopted criminal laws to address this issue; however, most states do not have civil laws providing the victim a civil remedy. The few civil statutes that do exist differ considerably in their definitions, scope, effectiveness, and remedies. This lack of uniformity creates confusion and inefficiency and leaves victims without a clear means to stop the harm or seek redress. The Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act will provide victims and disclosers with a uniform remedy and defense.

Section 3 of the Act creates a cause of action for the unauthorized disclosure of intimate images. The basic elements of this cause of action are:

- (1) an intentional disclosure or threat to disclose;
- (2) a private;
- (3) intimate image;
- (4) of an identifiable individual;
- (5) without the consent of the depicted individual;
- (6) by a person who has the requisite awareness that:
 - (a) the depicted individual did not consent to the disclosure,
 - (b) the intimate image was private, and
 - (c) the depicted individual was identifiable; and
- (7) the disclosure harms the depicted individual.

Two options for the requisite awareness that may give rise to civil liability are offered in the Act: (1) the discloser knew or (2) the discloser knew or acted with reckless disregard.

Section 4 provides for exceptions to liability for disclosures made in good faith in law enforcement, legal proceedings, medical education or treatment, or reporting or investigation of unlawful or unwelcome conduct. Section 4 also provides exceptions to liability for disclosures related to a matter of public concern or public interest, or reasonably intended to assist the depicted individual. Section 4 further provides that a discloser who is a child's parent, legal

guardian, or individual with legal custody of the child, is not liable under the Act for the disclosure or threatened disclosure of an intimate image, unless the disclosure was prohibited by law other than this Act or made for the purpose of sexual arousal, sexual gratification, humiliation, degradation, or monetary or commercial gain.

Section 5 protects the privacy of a plaintiff. This section allows the plaintiff to use a pseudonym and otherwise protect his or her identity. Section 5 further permits the court to exclude or redact other identifying characteristics of the plaintiff from all pleadings and documents filed in the action. To exercise this right, a plaintiff must file with the court a confidential information form that includes the plaintiff's real name and other information and serve a copy of this form on a defendant.

Section 6 provides various remedies for victims. A prevailing plaintiff may recover actual damages, statutory damages, and, where appropriate, punitive damages, and attorney's fees. A plaintiff may also recover an amount equal to the gain made by the defendant from disclosure of the intimate image if applicable. Section 6 does not affect a right or remedy available under other law.

Section 7 addresses statutes of limitations. Under this section, an action for the unauthorized disclosure of intimate images must be brought no later than four years from the date the unauthorized disclosure was discovered or should have been discovered with the exercise of reasonable diligence. Actions brought under the Act for a threat to disclose an intimate image must be brought no later than four years from the date of the threat to disclose. The Act also incorporates relevant state tolling statutes. For actions brought by individuals who are minors, this section provides states with an optional provision allowing the statute of limitations to begin running on the date the depicted individual attains the age of majority. This section is drafted to allow states to choose a different period of limitation if desired.

Section 8 provides that the Act must be construed consistently with federal law, which exempts interactive computer service providers from liability for material disclosed by users. This section also provides that the Act does not alter state law on sovereign or governmental immunity.

For further information about this uniform act, please contact Legislative Program Director Kaitlin Wolff at (312) 450-6615 or kwolff@uniformlaws.org.