

UNIFORM CIVIL REMEDIES FOR UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES ACT*

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM CIVIL REMEDIES FOR UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) “Consent” means affirmative, conscious, and voluntary authorization by an individual with legal capacity to give authorization.

(2) “Depicted individual” means an individual whose body is shown in whole or in part in an intimate image.

(3) “Disclosure” means transfer, publish, or distribute to another person. “Disclose” has a corresponding meaning.

(4) “Identifiable” means recognizable by a person other than the depicted individual:

(A) from an intimate image itself; or

(B) from the intimate image and identifying characteristic displayed in connection with the intimate image.

(5) “Identifying characteristic” means information that may be used to identify a depicted individual.

(6) “Individual” means a human being.

(7) “Intimate image” means a photograph, film, video recording, or other similar medium that shows:

(A) the uncovered genitals, pubic area, anus, or female post-pubescent nipple of a depicted individual; or

(B) the depicted individual engaging in or being subjected to sexual conduct.

(8) “Person” means an individual, estate, business or nonprofit entity, public corporation,

government or governmental subdivision, agency, or instrumentality, or other legal entity.

(9) “Sexual conduct” includes:

- (A) masturbation;
- (B) genital, anal, or oral sex;
- (C) sexual penetration of, or with, an object;
- (D) bestiality; or
- (E) the transfer of semen onto the depicted individual.

SECTION 3. CIVIL ACTION.

(a) (1) In this section, “harm” includes physical harm, economic harm, and emotional distress whether or not accompanied by physical or economic harm.

(2) “Private” means:

- (A) created or obtained under circumstances in which the depicted individual had a reasonable expectation of privacy; or
- (B) made accessible through theft, bribery, extortion, fraud, false pretenses, voyeurism, or exceeding authorized access to property or to an account, message, file, device, or resource.

(b) Except as otherwise provided in Section 4, a depicted individual who is identifiable and who has suffered harm from a person’s intentional disclosure or threatened disclosure of a private, intimate image without the depicted individual’s consent has a cause of action against that person if the person [knew or acted with reckless disregard for whether] [knew]:

- (1) the depicted individual did not consent to the disclosure;
- (2) the intimate image was private; and
- (3) the depicted individual was identifiable.

(c) The following conduct by a depicted individual does not establish by itself that the individual consented to the disclosure of the intimate image that is the subject of the action or that the individual lacked a reasonable expectation of privacy:

- (1) consent to creation of the image; or
- (2) previous consensual disclosure of the image.

(d) A depicted individual who does not consent to sexual conduct or the uncovering of the part of the body depicted in the intimate image of the individual retains a reasonable expectation of privacy even if the image was created when the individual was in a public place.

Legislative Note: *The state should insert appropriate state law for the terms in subsection (a)(2)(B).*

SECTION 4. EXCEPTIONS TO LIABILITY.

(a) In this section:

- (1) “Child” means an unemancipated individual who is less than [18] years of age.
- (2) “Parent” means an individual recognized as a parent under law of this state

other than this [act].

(b) A person is not liable under this [act] if the person proves that the disclosure of, or threat to disclose, the intimate image was:

- (1) made in good faith in:
 - (A) law enforcement;
 - (B) a legal proceeding; or
 - (C) medical education or treatment;
- (2) made in good faith in the reporting or investigation of:
 - (A) unlawful conduct; or
 - (B) unsolicited and unwelcome conduct;

(3) related to a matter of public concern or public interest; or

(4) reasonably intended to assist the depicted individual.

(c) Subject to subsection (d), a defendant who is a child's parent or legal guardian [or individual with legal custody of the child] is not liable under this [act] for a disclosure or threatened disclosure of an intimate image, as defined in Section 2(7)(A), of the child.

(d) If a defendant asserts an exception to liability under subsection (c), the exception shall be rendered inapplicable if the plaintiff proves that the disclosure was:

(1) prohibited by law other than this [act]; or

(2) made for the purpose of sexual arousal, sexual gratification, humiliation, degradation, or monetary or commercial gain.

(e) The disclosure of or threat to disclose an intimate image is not a matter of public concern or public interest solely because the depicted individual is a public figure.

Legislative Note: States should insert the appropriate term for individuals with legal custody other than parents.

SECTION 5. PLAINTIFF'S PRIVACY. In an action under this [act]:

[(1)] a plaintiff may proceed using a pseudonym in place of the true name of the plaintiff in accordance with [applicable state law or procedural rule];

[(2) the court may exclude or redact from all pleadings and documents filed in the action other identifying characteristics of the plaintiff [as provided by applicable state law or procedural rule];

(3) a plaintiff to whom paragraph (1) [or (2)] applies shall file with the court and serve on the defendant a confidential information form that includes the excluded or redacted plaintiff's name and other identifying characteristics; and

(4) the court may make further orders as necessary to protect the identity and privacy of a

plaintiff].

Legislative Note: *If a state's rules of civil procedure do not provide for the possibility of plaintiffs to use pseudonyms, delete the bracketed language.*

SECTION 6. REMEDIES.

(a) In an action under this [act], a prevailing plaintiff may recover:

(1) the greater of:

(A) economic and noneconomic damages proximately caused by the defendant's disclosures or threatened disclosures, including damages for emotional distress whether or not accompanied by other damages; or

(B) statutory damages not to exceed \$[10,000] against each defendant found liable under this [act] for all disclosures or threatened disclosures by the defendant of which the plaintiff had knowledge or reasonably should have had knowledge when filing the action or which became known during the pendency of the action. In determining the amount of statutory damages consideration shall be given to the age of the parties at the time of the disclosure or threatened disclosure, the number of disclosures or threatened disclosures made by the defendant, the breadth of distribution of the image by the defendant, and other exacerbating or mitigating factors;

(2) an amount equal to the gain made by the defendant from disclosure of the intimate image if applicable; and

(3) punitive damages as allowed under the law of this state other than this [act].

(b) In an action under this [act], the court may also award a prevailing plaintiff:

(1) reasonable attorney's fees [and costs]; and

(2) additional relief, including injunctive relief.

(c) This [act] does not affect a right or remedy available under law of this state other than this [act].

Legislative Note: *The committee recommends the bracketed amount of statutory damages because that amount balances the policy concerns of redress for the plaintiff and fairness to the defendant.*

SECTION 7. STATUTE OF LIMITATIONS.

(a) (1) An action under this [act] for an unauthorized disclosure must be brought not later than [four] years from the date the unauthorized disclosure was discovered or should have been discovered with the exercise of reasonable diligence.

(2) An action under this [act] for a threat to disclose must be brought not later than [four] years from the date of the threat to disclose.

(b) [Except as otherwise provided in subsection (c),] the limitations in this section are subject to [the tolling statutes of this state].

[(c) In an action by a depicted individual who was a minor on the date of the disclosure or threat to disclose, the limitations in this section shall begin to run on the date the depicted individual attains the age of majority.]

Legislative Note: *States should include subsection (c) if their state law does not provide an applicable tolling provision for minors.*

SECTION 8. CONSTRUCTION.

[(a)] This [act] shall be construed to be consistent with the Communications Decency Act of 1996, 47 U.S.C. Section 230.

[(b) This [act] shall not be construed to alter the law of this state on [sovereign] immunity.]

Legislative Note: *States that require statutory references to sovereign immunity or governmental immunity should include this provision.*

SECTION 9. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In

applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

[SECTION 10. SEVERABILITY. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]

Legislative Note: Include this section only if this state lacks a general severability statute or a decision by the highest court of this state stating a general rule of severability.

SECTION 11. REPEALS; CONFORMING AMENDMENTS.

(a)

(b)

(c)

SECTION 12. EFFECTIVE DATE. This [act] takes effect