

DRAFT
FOR DISCUSSION ONLY

UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

March 3-4, 2017 Drafting Committee Meeting

Copyright © 2016
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.

December 29, 2016

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.	1
SECTION 4. CIVIL ACTION.....	3
SECTION 5. LIMITATIONS.....	4
SECTION 6. SEVERABILITY.....	4
SECTION 7. STATUTE OF LIMITATIONS.....	4
SECTION 8. EFFECTIVE DATE.....	4

1 **UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES ACT**

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

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

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

7 (2) “Image” includes a photograph, film, videotape, recording, digital, or other
8 reproduction;

9 (3) “Intimate parts” means the naked genitals, pubic area, anus, or female post-pubescent
10 nipple of the person;

11 (4) “Sexual conduct” includes but is not limited to masturbation; genital, anal, or oral sex;
12 sexual penetration with objects; or the transfer or transmission of semen upon any part of the
13 depicted person’s body.

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

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

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

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

23 (1) Disclose or threaten to disclose an image of another person without consent if

1 (A) The depicted person's intimate parts are exposed or the person is
2 engaged in sexual conduct; and

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

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

8 (D) The image was knowingly obtained the image under false pretenses,
9 without authorization, or by exceeding authorized access to property, accounts, messages, files,
10 devices, or resources.

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

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

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

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

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

1 **SECTION 4. CIVIL ACTION.**

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

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

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

14 (3) Punitive damages;

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

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

1 keep the plaintiff's name and excluded or redacted characteristics confidential.

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

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

9 **SECTION 5. LIMITATIONS.**

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

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

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

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

20 **SECTION 8. EFFECTIVE DATE.** This [act] takes effect