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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December 29, 2016
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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
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UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the 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) “Image” includes a photograph, film, videotape, recording, digital, or other reproduction;

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

(4) “Sexual conduct” 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.

(5) “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, and screenshots related to the cause of action;

(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

(1) Disclose or threaten to disclose an image of another person without consent if
(A) The depicted person’s intimate parts are exposed or the person is engaged in sexual conduct; and

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

(C) The 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

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

(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 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;

(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) 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.

(2) 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 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 disclosure or threatened disclosure.

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