

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

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By
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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, publication, or distribution 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 an 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) a 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 a depicted individual.

SECTION 3. CIVIL ACTION.

(a) In this section:

(1) “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 a 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 an account, message, file, device, resource, or property].

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

- (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 which is the subject of an action under this [act] 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 the sexual conduct or uncovering of the part of the body depicted in an 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: A state should insert appropriate terms under state statutes 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 disclosure of, or a threat to disclose, an 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 parent, legal guardian, or [individual with legal custody] of a 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 does not apply if the plaintiff proves 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) Disclosure of, or a 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: In subsection (c), a state should insert the appropriate term for an individual with legal custody other than a parent.

SECTION 5. PLAINTIFF'S PRIVACY.

Alternative A

In an action under this [act] a plaintiff may proceed using a pseudonym in place of the true name of the plaintiff under [applicable state law or procedural rule].

Alternative B

In an action under this [act]:

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

(2) a plaintiff to whom paragraph (1) 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

(3) the court may make further orders as necessary to protect the identity and privacy of a plaintiff].

End of Alternatives

Legislative Note: If a state's rules of civil procedure do not provide for the possibility of a plaintiff to use a pseudonym in a civil action, use Alternative B.

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 disclosure or threatened disclosure, 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 and threatened disclosures by the defendant of which the plaintiff knew or reasonably should have known when filing the action or which became known during the pendency of the action. In determining the amount of statutory damages under subsection (a)(1)(B), consideration must 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 any monetary gain made by the defendant from disclosure of the intimate image; and

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

(b) In an action under this [act], the court may 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: A state should include the reference to costs in subsection (c)(1) if other state law does not provide for recovery of costs.

SECTION 7. STATUTE OF LIMITATIONS.

(a) An action under Section 3(b) for:(1) an unauthorized disclosure may not be brought later than [four] years from the date the disclosure was discovered or should have been discovered with the exercise of reasonable diligence; and

(2) a threat to disclose may not be brought later than [four] years from the date of the threat to disclose.

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

[(c) In an action under Section 3(b) by a depicted individual who was a minor on the date of the disclosure or threat to disclose, the time specified in subsection (a) does not begin to run until the depicted individual attains the age of majority.]

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

SECTION 8. CONSTRUCTION.

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

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

Legislative Note: If a state includes subsection (b), a state that requires a statutory reference to sovereign immunity or governmental immunity should include the reference.

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