

1 "Disclosure" means transfer, publication, or distribution
2 to another person. "Disclose" has a corresponding meaning.

3 "Harm" includes physical harm, economic harm, and emotional
4 distress whether or not accompanied by physical or economic
5 harm.

6 "Identifiable" means recognizable by a person other than
7 the depicted individual:

8 (1) From an intimate image itself; or

9 (2) From an intimate image and identifying characteristic
10 displayed in connection with the intimate image.

11 "Identifying characteristic" means information that may be
12 used to identify a depicted individual.

13 "Individual" means a natural person.

14 "Intimate image" means any digital image, photograph, or
15 video that depicts a person in a state of undress; nude as
16 defined in section 712-1210; or engaged in sexual conduct as
17 defined in section 712-1210.

18 "Person" means an individual; estate; business or nonprofit
19 entity; public corporation; government or governmental
20 subdivision, agency, or instrumentality; or other legal entity.

21 "Private" means:



1 (1) Created or obtained under circumstances in which a
2 depicted individual had a reasonable expectation of
3 privacy; or

4 (2) Made accessible through theft, bribery, extortion,
5 fraud, false pretenses, voyeurism, or exceeding
6 authorized access to an account, message, file,
7 device, resource, or property.

8 § -3 **Disclosure of intimate images; civil action.** (a)

9 Except as otherwise provided in section -4, a depicted
10 individual who is identifiable and who suffers harm from a
11 person's intentional disclosure or threatened disclosure of a
12 private intimate image without the depicted individual's consent
13 has a cause of action against the person if the person knew or
14 acted with reckless disregard for whether:

15 (1) The depicted individual did not consent to the
16 disclosure;

17 (2) The intimate image was private; and

18 (3) The depicted individual was identifiable.

19 (b) The following conduct by a depicted individual shall
20 not establish by itself that the depicted individual consented
21 to the disclosure of the intimate image which is the subject of



1 an action under this chapter or that the depicted individual
2 lacked a reasonable expectation of privacy:

3 (1) Consent to creation of the image; or

4 (2) Previous consensual disclosure of the image.

5 (c) A depicted individual who does not consent to the
6 sexual conduct or uncovering of the part of the body depicted in
7 an intimate image of the individual shall retain a reasonable
8 expectation of privacy even if the image was created when the
9 individual was in a public place.

10 § -4 **Liability; exceptions.** (a) A person shall not be
11 liable under this chapter if the person proves that disclosure
12 of, or a threat to disclose, an intimate image was:

13 (1) Made in good faith as part of:

14 (A) Law enforcement activity;

15 (B) A legal proceeding; or

16 (C) Medical education or treatment;

17 (2) Made in good faith in the reporting or investigation
18 of:

19 (A) Unlawful conduct; or

20 (B) Unsolicited and unwelcome conduct;



1 (3) Related to a matter of public concern or public
2 interest; or

3 (4) Reasonably intended to assist the depicted individual.

4 (b) Subject to subsection (c), a defendant who is a
5 parent, legal guardian, or individual with legal custody of a
6 child shall not be liable under this chapter for a disclosure or
7 threatened disclosure of an intimate image of the child.

8 (c) If a defendant asserts an exception to liability under
9 subsection (b), the exception shall not apply if the plaintiff
10 proves the disclosure was:

11 (1) Prohibited by law other than as provided this chapter;
12 or

13 (2) Made for the purpose of sexual arousal, sexual
14 gratification, humiliation, degradation, or monetary
15 or commercial gain.

16 (d) Disclosure of, or a threat to disclose, an intimate
17 image shall not be a matter of public concern or public interest
18 solely because the depicted individual is a public figure.

19 (e) For the purposes of this section:

20 "Child" means an unemancipated individual who is less than
21 eighteen years of age.



1 "Parent" means a biological, foster, or adoptive parent, a
2 parent-in-law, a stepparent, a grandparent, or a
3 grandparent-in-law.

4 § -5 **Plaintiff's privacy.** In an action under this
5 chapter:

6 (1) The court may exclude or redact from all pleadings and
7 documents filed other identifying characteristics of
8 the plaintiff under applicable state law or procedural
9 rule;

10 (2) A plaintiff to whom paragraph (1) applies shall file
11 with the court and serve on the defendant a
12 confidential information form that includes the
13 excluded or redacted plaintiff's name and other
14 identifying characteristics; and

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

17 § -6 **Disclosure of intimate images; civil remedies.** (a)
18 In an action under this chapter, a prevailing plaintiff may
19 recover:

20 (1) The greater of:



1 (A) Economic and noneconomic damages proximately
2 caused by the defendant's disclosure or
3 threatened disclosure, including damages for
4 emotional distress whether or not accompanied by
5 other damages; or
6 (B) Statutory damages not to exceed \$10,000 against
7 each defendant found liable under this chapter
8 for all disclosures and threatened disclosures by
9 the defendant of which the plaintiff knew or
10 reasonably should have known when filing the
11 action or which became known during the pendency
12 of the action; provided that in determining the
13 amount of statutory damages under this
14 subparagraph, consideration shall be given to the
15 age of the parties at the time of the disclosure
16 or threatened disclosure, the number of
17 disclosures or threatened disclosures made by the
18 defendant, the breadth of distribution of the
19 image by the defendant, and other exacerbating or
20 mitigating factors;



- 1 (2) An amount equal to any monetary gain made by the
- 2 defendant from disclosure of the intimate image;
- 3 (3) An amount equal to any actual costs incurred by the
- 4 plaintiff in retrieving and requesting removal of
- 5 distributed images; and
- 6 (4) Punitive damages as allowed under any state law other
- 7 than as provided in this chapter.
- 8 (b) In an action under this chapter, the court shall order
- 9 a non-prevailing defendant to:
- 10 (1) Cease and desist from further disclosing the intimate
- 11 image;
- 12 (2) Destruct, delete, or return the original and all
- 13 copies of the intimate image in the defendant's
- 14 possession, custody, or control to the prevailing
- 15 plaintiff; and
- 16 (3) Identify all persons to whom the defendant disclosed
- 17 the intimate image.
- 18 (c) In an action under this chapter, the court may award a
- 19 prevailing plaintiff:
- 20 (1) Reasonable attorneys' fees and costs; and
- 21 (2) Additional relief, including injunctive relief.



1 (d) This chapter shall not affect a right or remedy
2 available under any state law other than as provided in this
3 chapter.

4 § -7 Statute of limitations. (a) An action brought by
5 a depicted individual under section -3(a) for unauthorized
6 disclosure, where the depicted individual was an adult on the
7 date of disclosure, may not be brought later than eight years
8 from the date the disclosure was discovered or should have been
9 discovered with the exercise of reasonable diligence.

10 (b) An action brought by a depicted individual under
11 section -3(a) for a threat to disclose, where the depicted
12 individual was an adult on the date of the threat to disclose,
13 may not be brought later than eight years from the date of the
14 threat to disclose.

15 (c) Subject to section 657-1.8(a)(2), an action brought by
16 a depicted individual under section -3(a), where the depicted
17 individual was a minor on the date of the disclosure or threat
18 to disclose, may not be brought later than thirty-two years
19 after the eighteenth birthday of the depicted individual or five
20 years after the date the depicted individual discovers or
21 reasonably should have discovered that psychological injury or



1 illness occurring after the depicted individual's eighteenth
2 birthday was caused by the unauthorized disclosure, whichever
3 occurs later.

4 § -8 **Deceased depicted individuals; rights.** (a) For a
5 depicted individual who is deceased, or upon the death of a
6 depicted individual, all rights of the depicted individual under
7 this chapter shall vest in the estate of the deceased depicted
8 individual.

9 (b) The rights vested in the estate pursuant to subsection
10 (a) may be exercised by the personal representative of the
11 estate in accordance with chapter 560.

12 (c) If no personal representative has been appointed, any
13 person authorized under chapter 560 to petition for appointment
14 of a personal representative may petition the court for
15 appointment for the limited purpose of exercising the rights
16 under this chapter.

17 § -9 **Construction.** (a) This chapter shall be construed
18 to be consistent with the Communications Decency Act of 1996,
19 title 47 United States Code section 230.

20 (b) This chapter shall not be construed to alter the law
21 on sovereign immunity.



1 § -10 **Uniformity of application and construction.** In
2 applying and construing this uniform act, consideration shall be
3 given to the need to promote uniformity of the law with respect
4 to its subject matter among states that enact it.

5 § -11 **Severability.** If any provision of this chapter or
6 the application thereof to any person or circumstance is held
7 invalid, the invalidity does not affect other provisions or
8 applications of the chapter which can be given effect without
9 the invalid provision or application, and to this end the
10 provisions of this chapter are severable."

11 SECTION 2. This Act does not affect rights and duties that
12 matured, penalties that were incurred, and proceedings that were
13 begun before its effective date.

14 SECTION 3. This Act shall take effect on January 1, 2077.



S.B. NO. 2448
S.D. 2

Report Title:

Unauthorized Disclosure of Intimate Images; Civil Remedies

Description:

Enacts the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act (Modified). Effective 1/1/2077. (SD2)

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