

1 "Identifiable" means recognizable by a person other than
2 the depicted individual:

3 (1) From an intimate image itself; or

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

6 "Identifying characteristic" means information that may be
7 used to identify a depicted individual.

8 "Individual" means a natural person.

9 "Intimate image" means any digital image, photograph, live
10 or recorded video, or computer-generated image or video that
11 depicts an individual in a state of undress; in the nude as
12 defined in section 712-1210; or engaged in sexual conduct.

13 "Person" means an individual; estate; business or nonprofit
14 entity; public corporation; government or governmental
15 subdivision, agency, or instrumentality; or other legal entity.

16 "Private" means:

17 (1) Created or obtained under circumstances in which a
18 depicted individual had a reasonable expectation of
19 privacy; or

20 (2) Made accessible through theft, bribery, extortion,
21 fraud, false pretenses, voyeurism, or exceeding



1 authorized access to an account, message, file,
2 device, resource, or property.

3 "Sexual conduct" has the same meaning as in section
4 712-1210.

5 § -2 Disclosure of intimate images; civil action. (a)

6 Except as otherwise provided in section -3, a depicted
7 individual who is identifiable and who suffers harm from a
8 person's intentional disclosure or threatened disclosure of a
9 private intimate image without the depicted individual's consent
10 has a cause of action against the person if the person knew or
11 reasonably should have known that the depicted individual had a
12 reasonable expectation that the intimate image would remain
13 private.

14 (b) The following conduct by a depicted individual shall
15 not establish by itself that the depicted individual consented
16 to the disclosure of the intimate image that is the subject of
17 an action under this chapter or that the depicted individual
18 lacked a reasonable expectation of privacy:

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

20 (2) Previous consensual disclosure of the image.



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

6 § -3 **Liability; exceptions.** (a) A person shall not be
7 liable under this chapter if the person proves that disclosure
8 of, or a threat to disclose, an intimate image was:

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

10 (A) Law enforcement activity;

11 (B) A legal proceeding; or

12 (C) Medical education or treatment;

13 (2) Made in good faith in the reporting or investigation
14 of:

15 (A) Unlawful conduct; or

16 (B) Unsolicited and unwelcome conduct;

17 (3) Related to a matter of public concern or public
18 interest; or

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

20 (b) Subject to subsection (c), a defendant who is a
21 parent, legal guardian, or individual with legal custody of a



1 child shall not be liable under this chapter for a disclosure or
2 threatened disclosure of an intimate image of the child.

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

6 (1) Prohibited by law other than as provided in this
7 chapter; or

8 (2) Made for the purpose of sexual arousal, sexual
9 gratification, humiliation, degradation, or monetary
10 or commercial gain.

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

14 (e) As used in this section:

15 "Child" means an unemancipated individual who is under
16 eighteen years of age.

17 "Parent" means a biological, foster, or adoptive parent, a
18 parent-in-law, a stepparent, a grandparent, or a grandparent-in-
19 law.

20 § -4 **Plaintiff's privacy.** In an action under this
21 chapter:



1 (1) The court may exclude or redact other identifying
2 characteristics of the plaintiff from all pleadings
3 and documents filed, under applicable state law or
4 procedural rule;

5 (2) A plaintiff to whom paragraph (1) applies shall file
6 with the court and serve on the defendant a
7 confidential information form that includes the
8 excluded or redacted plaintiff's name and other
9 identifying characteristics; and

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

12 § -5 Disclosure of intimate images; civil remedies. (a)

13 In an action under this chapter, a prevailing plaintiff may
14 recover:

15 (1) The greater of:

16 (A) Economic and noneconomic damages proximately
17 caused by the defendant's disclosure or
18 threatened disclosure, including damages for
19 emotional distress whether or not accompanied by
20 other damages; or



- 1 (B) Statutory damages not to exceed \$10,000 against
2 each defendant found liable under this chapter
3 for all disclosures and threatened disclosures by
4 the defendant of which the plaintiff knew or
5 reasonably should have known when filing the
6 action or which became known during the pendency
7 of the action; provided that in determining the
8 amount of statutory damages under this
9 subparagraph, consideration shall be given to the
10 age of the parties at the time of the disclosure
11 or threatened disclosure, the number of
12 disclosures or threatened disclosures made by the
13 defendant, the breadth of the distribution of the
14 intimate image by the defendant, and other
15 exacerbating or mitigating factors;
- 16 (2) An amount equal to any monetary gain made by the
17 defendant from disclosure of the intimate image;
- 18 (3) An amount equal to any actual costs incurred by the
19 plaintiff in retrieving and requesting removal of
20 distributed intimate images; and



1 (4) Punitive damages as allowed under any state law other
2 than as provided in this chapter.

3 (b) In an action under this chapter, the court shall order
4 a non-prevailing defendant to:

5 (1) Cease and desist from further disclosing the intimate
6 image;

7 (2) Destroy or delete, or return to the prevailing
8 plaintiff, the original and all copies of the intimate
9 image in the defendant's possession, custody, or
10 control; and

11 (3) Identify all persons to whom the defendant disclosed
12 the intimate image.

13 (c) In an action under this chapter, the court may award a
14 prevailing plaintiff:

15 (1) Reasonable attorneys' fees and costs; and

16 (2) Additional relief, including injunctive relief.

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

20 § -6 Statute of limitations. (a) An action brought by
21 a depicted individual under section -2(a) for unauthorized



1 disclosure, where the depicted individual was an adult on the
2 date of disclosure, shall not be brought later than eight years
3 from the date the disclosure was discovered or should have been
4 discovered with the exercise of reasonable diligence.

5 (b) An action brought by a depicted individual under
6 section -2(a) for a threat to disclose, where the depicted
7 individual was an adult on the date of the threat to disclose,
8 shall not be brought later than eight years from the date of the
9 threat to disclose.

10 (c) Subject to section 657-1.8(a)(2), an action brought by
11 a depicted individual under section -2(a), where the depicted
12 individual was a minor on the date of the disclosure or threat
13 to disclose, shall not be brought later than:

14 (1) Thirty-two years after the eighteenth birthday of the
15 depicted individual; or

16 (2) Five years after the date the depicted individual
17 discovers or reasonably should have discovered that
18 psychological injury or illness occurring after the
19 depicted individual's eighteenth birthday was caused
20 by the unauthorized disclosure,

21 whichever occurs later.



1 § -7 **Deceased depicted individuals; rights.** (a) For a
2 depicted individual who is deceased, or upon the death of a
3 depicted individual, all rights of the depicted individual under
4 this chapter shall vest in the estate of the deceased depicted
5 individual.

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

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

14 § -8 **Construction.** (a) This chapter shall be construed
15 to be consistent with the Communications Decency Act of 1996,
16 title 47 United States Code section 230.

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

19 § -9 **Severability.** If any provision of this chapter or
20 the application thereof to any person or circumstance is held
21 invalid, the invalidity does not affect other provisions or



1 applications of the chapter that can be given effect without the
2 invalid provision or application, and to this end the provisions
3 of this chapter are severable."

4 SECTION 2. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun before its effective date.

7 SECTION 3. This Act shall take effect upon its approval.



Report Title:

Unauthorized Disclosure of Intimate Images; Civil Remedies

Description:

Establishes civil remedies for the unauthorized disclosure of intimate images. (CD1)

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