

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Civil  
5 Remedies for Nonconsensual Dissemination of Private Sexual  
6 Images Act.

7 Section 5. Definitions. As used in this Act:

8 (1) "Child" means an unemancipated individual who is less  
9 than 18 years of age.

10 (2) "Consent" means affirmative, conscious, and voluntary  
11 authorization by an individual with legal capacity to give  
12 authorization.

13 (3) "Depicted individual" means an individual whose body is  
14 shown, in whole or in part, in a private sexual image.

15 (4) "Dissemination" or "disseminate" means publication or  
16 distribution to another person with intent to disclose.

17 (5) "Harm" means physical harm, economic harm, or emotional  
18 distress whether or not accompanied by physical or economic  
19 harm.

20 (6) "Identifiable" means recognizable by a person other  
21 than the depicted individual:

22 (A) from a private sexual image itself; or

23 (B) from a private sexual image and identifying

1 characteristic displayed in connection with the image.

2 (7) "Identifying characteristic" means information that  
3 may be used to identify a depicted individual.

4 (8) "Individual" means a human being.

5 (9) "Parent" means an individual recognized as a parent  
6 under laws of this State.

7 (10) "Private" means:

8 (A) created or obtained under circumstances in which a  
9 depicted individual had a reasonable expectation of  
10 privacy; or

11 (B) made accessible through theft, bribery, extortion,  
12 fraud, voyeurism, or exceeding authorized access to an  
13 account, message, file, device, resource, or property.

14 (11) "Person" means an individual, business or nonprofit  
15 entity, public corporation, government or governmental  
16 subdivision, agency, or other legal entity.

17 (12) "Sexual conduct" includes:

18 (A) masturbation;

19 (B) genital sex, anal sex, oral sex, or sexual  
20 activity; or

21 (C) sexual penetration of or with an object.

22 (13) "Sexual activity" means any:

23 (A) knowing touching or fondling by the depicted  
24 individual or another person, either directly or through  
25 clothing, of the sex organs, anus, or breast of the  
26 depicted individual or another person for the purpose of

1 sexual gratification or arousal;

2 (B) transfer or transmission of semen upon any part of  
3 the clothed or unclothed body of the depicted individual,  
4 for the purpose of sexual gratification or arousal of the  
5 depicted individual or another person;

6 (C) act of urination within a sexual context;

7 (D) bondage, fetish, sadism, or masochism;

8 (E) sadomasochistic abuse in any sexual context; or

9 (F) animal-related sexual activity.

10 (14) "Sexual image" means a photograph, film, videotape,  
11 digital recording, or other similar medium that shows:

12 (A) the fully unclothed, partially unclothed, or  
13 transparently clothed genitals, pubic area, anus, or  
14 female post-pubescent nipple, partially or fully exposed,  
15 of a depicted individual; or

16 (B) a depicted individual engaging in or being  
17 subjected to sexual conduct or activity.

18 Section 10. Civil action.

19 (a) Except as otherwise provided in Section 15, if a  
20 depicted individual is identifiable to a reasonable person and  
21 suffers harm from the intentional dissemination or threatened  
22 dissemination by a person over the age of 18 of a private  
23 sexual image without the depicted individual's consent, the  
24 depicted individual has a cause of action against the person if  
25 the person knew:

1 (1) the depicted individual did not consent to the  
2 dissemination;

3 (2) the image was a private sexual image; and

4 (3) the depicted individual was identifiable.

5 (b) The following conduct by a depicted individual does not  
6 establish by itself that the individual consented to the  
7 nonconsensual dissemination of a private sexual image that is  
8 the subject of an action under this Act or that the individual  
9 lacked a reasonable expectation of privacy:

10 (1) consent to creation of the image; or

11 (2) previous consensual disclosure of the image.

12 (c) Nothing in this Act shall be construed to impose  
13 liability on an interactive computer service, as defined in 47  
14 U.S.C. 230(f) (2), for content provided by another person.

15 Section 15. Exceptions to liability.

16 (a) A person is not liable under this Act if the person  
17 proves that the dissemination of or a threat to disseminate a  
18 private sexual image was:

19 (1) made in good faith:

20 (A) by law enforcement;

21 (B) in a legal proceeding; or

22 (C) for medical education or treatment;

23 (2) made in good faith in the reporting or  
24 investigation of:

25 (A) unlawful conduct; or

1 (B) unsolicited and unwelcome conduct; or

2 (3) related to a matter of public concern.

3 (b) Subject to subsection (c), a defendant who is a parent,  
4 legal guardian, or individual with legal custody of a child is  
5 not liable under this Act for a dissemination or threatened  
6 dissemination of an intimate private sexual image of the child.

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

10 (1) prohibited by a law other than this Act; or

11 (2) made for the purpose of sexual arousal, sexual  
12 gratification, humiliation, degradation, or monetary or  
13 commercial gain.

14 (d) The dissemination of or a threat to disseminate a  
15 private sexual image is not a matter of public concern solely  
16 because the depicted individual is a public figure.

17 Section 20. Privacy of parties.

18 (a) In an action under this Act:

19 (1) a plaintiff may proceed by using a pseudonym in  
20 place of the true name of the plaintiff under Section 2-401  
21 of the Code of Civil Procedure; and

22 (2) the court may exclude or redact from all pleadings  
23 and documents filed in the action other identifying  
24 characteristics of the plaintiff.

25 (b) A plaintiff to whom paragraph (2) of subsection (a)

1 applies shall file with the court and serve on the defendant a  
2 confidential information form that includes the excluded or  
3 redacted plaintiff's name and other identifying  
4 characteristics.

5 (c) The court may make further orders as necessary to  
6 protect the identity and privacy of a plaintiff.

7 (d) If a plaintiff is granted privacy protections under  
8 this Section, a defendant may file a motion with the court to  
9 receive the same privacy protections. The court may deny or  
10 grant the motion at its discretion.

11 Section 25. Remedies.

12 (a) In an action under this Act, a prevailing plaintiff may  
13 recover:

14 (1) the greater of:

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

20 (B) statutory damages, not to exceed \$10,000,  
21 against each defendant found liable under this Act for  
22 all disseminations and threatened disseminations by  
23 the defendant of which the plaintiff knew or reasonably  
24 should have known when filing the action or that became  
25 known during the pendency of the action. In determining

1           the amount of statutory damages under this subsection,  
2           consideration shall be given to the age of the parties  
3           at the time of the disseminations or threatened  
4           disseminations, the number of disseminations or  
5           threatened disseminations made by the defendant, the  
6           breadth of distribution of the image by the defendant,  
7           and other exacerbating or mitigating factors;

8           (2) an amount equal to any monetary gain made by the  
9           defendant from dissemination of the private sexual image;  
10          and

11          (3) punitive damages.

12          (b) In an action under this Act, the court may award a  
13          prevailing plaintiff:

14                 (1) reasonable attorney's fees and costs; and

15                 (2) additional relief, including injunctive relief.

16          (c) This Act does not affect a right or remedy available  
17          under any other law of this State.

18          Section 30. Statute of limitations.

19          (a) An action under subsection (b) of Section 10 for:

20                 (1) a nonconsensual dissemination may not be brought  
21                 later than 2 years from the date the dissemination was  
22                 discovered or should have been discovered with the exercise  
23                 of reasonable diligence; and

24                 (2) a threat to disseminate may not be brought later  
25                 than 2 years from the date of the threat to disseminate.

1           (b) Except as otherwise provided in subsection (c), this  
2 Section is subject to the tolling statutes of this State.

3           (c) In an action under subsection (a) of Section 10 by a  
4 depicted individual who was a minor on the date of the  
5 dissemination or threat to disseminate, the time specified in  
6 subsection (a) of this Section does not begin to run until the  
7 depicted individual attains the age of majority.

8           Section 35. Severability. If any provision of this Act or  
9 its application to any person or circumstance is held invalid,  
10 the invalidity does not affect other provisions or applications  
11 of this Act that can be given effect without the invalid  
12 provision or application, and to this end, the provisions of  
13 this Act are severable.