
HOUSE BILL 1165

State of Washington

68th Legislature

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By Representatives Orwall, Reeves, Wylie, and Davis; by request of
Uniform Law Commission

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on Civil Rights & Judiciary.

1 AN ACT Relating to civil remedies for unauthorized disclosure of
2 intimate images; adding a new chapter to Title 7 RCW; creating a new
3 section; repealing RCW 4.24.795; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** This act may be known and cited as the
6 uniform civil remedies for unauthorized disclosure of intimate images
7 act.

8 NEW SECTION. **Sec. 2.** The definitions in this section apply
9 throughout this chapter unless the context clearly requires
10 otherwise.

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

14 (2) "Depicted individual" means an individual whose body is shown
15 in whole or in part in an intimate image.

16 (3) "Disclosing" has the same meaning as provided in RCW
17 9A.86.010. "Disclosure" has the same meaning as "disclosing."

18 (4) "Identifiable" means recognizable by a person other than the
19 depicted individual:

20 (a) From an intimate image itself; or

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

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

5 (6) "Individual" means a human being.

6 (7) "Intimate image" has the same meaning as provided in RCW
7 9A.86.010.

8 (8) "Person" means an individual, estate, business or nonprofit
9 entity, public corporation, government or governmental subdivision,
10 agency or instrumentality, or other legal entity.

11 NEW SECTION. **Sec. 3.** (1) For the purposes of this section:

12 (a) "Harm" includes physical harm, economic harm, and emotional
13 distress whether or not accompanied by physical or economic harm.

14 (b) "Private" means:

15 (i) Created or obtained under circumstances in which a depicted
16 individual had a reasonable expectation of privacy; or

17 (ii) Made accessible through theft, bribery, extortion, fraud,
18 false pretenses, voyeurism, or exceeding authorized access to an
19 account, message, file, device, resource, or property.

20 (2) Except as otherwise provided in section 4 of this act, a
21 depicted individual who is identifiable and who suffers harm from a
22 person's intentional disclosure or threatened disclosure of an
23 intimate image that was private without the depicted individual's
24 consent has a cause of action against the person if the person knew
25 or acted with reckless disregard for whether:

26 (a) The depicted individual did not consent to the disclosure;

27 (b) The intimate image was private; and

28 (c) The depicted individual was identifiable.

29 (3) The following conduct by a depicted individual does not
30 establish by itself that the individual consented to the disclosure
31 of the intimate image which is the subject of an action under this
32 act or that the individual lacked a reasonable expectation of
33 privacy:

34 (a) Consent to creation of the image; or

35 (b) Previous consensual disclosure of the image.

36 (4) A depicted individual who does not consent to the uncovering
37 of the part of the body depicted in an intimate image of the
38 individual retains a reasonable expectation of privacy even if the
39 image was created when the individual was in a public place.

1 NEW SECTION. **Sec. 4.** (1) For the purposes of this section:

2 (a) "Child" means an unemancipated individual who is less than 18
3 years of age.

4 (b) "Parent" has the same meaning as provided in RCW 26.26A.010.

5 (2) A person is not liable under this act if the person proves
6 that disclosure of, or a threat to disclose, an intimate image was:

7 (a) Made in good faith in:

8 (i) Law enforcement;

9 (ii) A legal proceeding; or

10 (iii) Medical education or treatment;

11 (b) Made in good faith in the reporting or investigation of:

12 (i) Unlawful conduct; or

13 (ii) Unsolicited and unwelcome conduct;

14 (c) Related to a matter of public concern or public interest; or

15 (d) Reasonably intended to assist the depicted individual.

16 (3) Subject to subsection (4) of this section, a defendant who is
17 a parent, legal guardian, or individual with legal custody of a child
18 is not liable under this act for a disclosure or threatened
19 disclosure of an intimate image, as defined in section 2(7) of this
20 act, of the child.

21 (4) If a defendant asserts an exception to liability under
22 subsection (3) of this section, the exception does not apply if the
23 plaintiff proves the disclosure was:

24 (a) Prohibited by law other than this act; or

25 (b) Made for the purpose of sexual arousal, sexual gratification,
26 humiliation, degradation, or monetary or commercial gain.

27 (5) Disclosure of, or a threat to disclose, an intimate image is
28 not a matter of public concern or public interest solely because the
29 depicted individual is a public figure.

30 NEW SECTION. **Sec. 5.** In an action under this act a plaintiff
31 may proceed using a pseudonym in place of the true name of the
32 plaintiff under applicable state law or procedural rule.

33 NEW SECTION. **Sec. 6.** (1) In an action under this act, a
34 prevailing plaintiff may recover:

35 (a) The greater of:

36 (i) Economic and noneconomic damages proximately caused by the
37 defendant's disclosure or threatened disclosure, including damages

1 for emotional distress whether or not accompanied by other
2 damages; or

3 (ii) Statutory damages not to exceed \$10,000 against each
4 defendant found liable under this act for all disclosures and
5 threatened disclosures by the defendant of which the plaintiff knew
6 or reasonably should have known when filing the action or which
7 became known during the pendency of the action. In determining the
8 amount of statutory damages under this subsection (1)(a)(ii),
9 consideration must be given to the age of the parties at the time of
10 the disclosure or threatened disclosure, the number of disclosures or
11 threatened disclosures made by the defendant, the breadth of
12 distribution of the image by the defendant, and other exacerbating or
13 mitigating factors;

14 (b) An amount equal to any monetary gain made by the defendant
15 from disclosure of the intimate image; and

16 (c) Punitive damages in an amount not to exceed three times the
17 amount of damages under (a) of this subsection.

18 (2) In an action under this act, the court may award a prevailing
19 plaintiff:

20 (a) Reasonable attorneys' fees and costs; and

21 (b) Additional relief, including injunctive relief.

22 (3) This act does not affect a right or remedy available under
23 law of this state other than this act.

24 NEW SECTION. **Sec. 7.** (1) An action under section 3(2) of this
25 act for:

26 (a) An unauthorized disclosure may not be brought later than four
27 years from the date the disclosure was discovered or should have been
28 discovered with the exercise of reasonable diligence; and

29 (b) A threat to disclose may not be brought later than four years
30 from the date of the threat to disclose.

31 (2) Except as otherwise provided in subsection (3) of this
32 section, this section is subject to the tolling statutes of this
33 state.

34 (3) In an action under section 3(2) of this act by a depicted
35 individual who was a minor on the date of the disclosure or threat to
36 disclose, the time specified in subsection (1)(a) of this section
37 does not begin to run until the depicted individual attains the age
38 of majority.

1 NEW SECTION. **Sec. 8.** This act must be construed to be
2 consistent with the communications decency act of 1996, 47 U.S.C.
3 Sec. 230.

4 NEW SECTION. **Sec. 9.** In applying and construing this uniform
5 act, consideration must be given to the need to promote uniformity of
6 the law with respect to its subject matter among states that enact
7 it.

8 NEW SECTION. **Sec. 10.** If any provision of this act or its
9 application to any person or circumstance is held invalid, the
10 remainder of the act or the application of the provision to other
11 persons or circumstances is held invalid.

12 NEW SECTION. **Sec. 11.** RCW 4.24.795 (Distribution of intimate
13 images—Liability for damages, other civil penalties—Confidentiality
14 of the plaintiff) and 2015 2nd sp.s. c 8 s 1 are each repealed.

15 NEW SECTION. **Sec. 12.** The repeal in section 11 of this act does
16 not affect any existing right acquired or liability or obligation
17 incurred under RCW 4.24.795 or under any rule or order adopted under
18 that section, nor does it affect any proceeding instituted under that
19 section.

20 NEW SECTION. **Sec. 13.** Sections 1 through 9 of this act
21 constitute a new chapter in Title 7 RCW.

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