

SENATE BILL REPORT

SHB 1165

As of March 9, 2023

Title: An act relating to civil remedies for unauthorized disclosure of intimate images.

Brief Description: Concerning civil remedies for unauthorized disclosure of intimate images.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Orwall, Reeves, Wylie and Davis; by request of Uniform Law Commission).

Brief History: Passed House: 2/2/23, 98-0.

Committee Activity: Law & Justice: 3/09/23.

Brief Summary of Bill

- Repeals the current statute imposing civil liability for wrongful disclosure of intimate images and replaces it with the Uniform Civil Remedies for the Unauthorized Disclosure of Intimate Images Act.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Joe McKittrick (786-7287)

Background: Civil Liability for Disclosure of Intimate Images. A person is liable for distributing an intimate image of another if the person intentionally and without consent distributes an intimate image that:

- was obtained under circumstances in which a reasonable person would know or understand that the image was to remain private; or
- was knowingly obtained by the distributing person without authorization or by exceeding authorized access to the depicted person's property, accounts, messages, files, or resources.

An intimate image is any image or recording of an identifiable person taken in a private

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setting, is not a matter of public concern, and that depicts sexual activity or a person's intimate body parts.

Whether a reasonable person would know or understand that the image was to remain private include, but are not limited to, the nature of the relationship between the parties, the circumstances under which the intimate image was taken, and the circumstances under which the intimate image was distributed.

It is an affirmative defense to an allegation of disclosure of intimate images that the defendant is a family member of a minor and did not intend any harm or harassment in disclosing the images of the minor to other family or friends of the defendant.

An interactive computer service, as defined in the federal Communications Decency Act, may not be held liable for content provided by another person.

In an action for distribution of intimate images, the court must inform the plaintiff as early as possible that the plaintiff may use a confidential identity in relation to the matter and maintain the records relating to the action in a manner that protects the confidentiality of the plaintiff.

A person who violates the law against distributing intimate images is liable for actual damages, including pain and suffering, emotional distress, economic damages, and lost earnings, as well as reasonable attorneys' fees and costs. The court may also grant injunctive relief it deems necessary.

Criminal Liability for Disclosure of Intimate Images. A person commits the crime of disclosing an intimate image when the person knowingly discloses an intimate image of another person and the person disclosing the image:

- obtained it under circumstances in which a reasonable person would know or understand that the image was to remain private;
- knows or should have known that the depicted person has not consented to the disclosure; and
- knows or reasonably should know that disclosure would cause harm to the depicted person.

It is an affirmative defense that the defendant is a family member of a minor and did not intend harm or harassment in disclosing images of the minor to the defendant's family or friends.

The crime of disclosing intimate images does not apply to images involving voluntary exposure in public or commercial settings or disclosures made in the public interest.

Uniform Civil Remedies for the Unauthorized Disclosure of Intimate Images Act. In 2018, the Uniform Law Commission (ULC) promulgated the Uniform Civil Remedies for the

Unauthorized Disclosure of Intimate Images Act (UCRUDIIA) which addresses the disclosure of private images of nudity or sexual conduct without consent. UCRUDIIA creates a civil cause of action for the unauthorized disclosure of intimate images, specifies exceptions to liability, sets forth provisions to address victims' privacy, and provides various remedies, including punitive damages.

Summary of Bill: The current law imposing civil liability for wrongful disclosure of intimate images is repealed and replaced with UCRUDIIA.

Cause of Action for Unauthorized Disclosure. A depicted individual who is identifiable in a private intimate image, and who suffers harm from a person's intentional disclosure or threatened disclosure of the image without the depicted person's consent has a cause of action against the disclosing person if that person knew or acted with reckless disregard for whether:

- the depicted individual did not consent to the disclosure;
- the intimate image was private; and
- the depicted individual was identifiable.

A person is not liable under UCRUDIIA if the disclosure of an intimate image was:

- made in good faith in law enforcement activities, legal proceedings, or medical education or treatment;
- made in good faith in reporting or investigating unlawful conduct or unsolicited and unwelcome conduct;
- related to a matter of public concern or public interest; or
- reasonably intended to assist the depicted individual.

Disclosure of intimate images is not a matter of public concern or public interest solely because the depicted individual is a public figure.

A defendant who is a parent, legal guardian, or individual with legal custody of a child is not liable for disclosure of an intimate image of the child. This exception does not apply if the disclosure was prohibited by law other than UCRUDIIA, or made for the purpose of sexual arousal, sexual gratification, humiliation, degradation, or monetary or commercial gain.

Subject to applicable state law and procedural rules, a plaintiff may use a pseudonym in place of the plaintiff's true name in actions under UCRUDIIA.

A prevailing plaintiff may recover the greater of:

- 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
- statutory damages not to exceed \$10,000 against each liable defendant for all disclosures or threatened disclosures.

When determining the amount of statutory damages, consideration must be given to the age of the parties at the time of the disclosure or threatened disclosure, the breadth of distribution of the image by the defendant, and other exacerbating or mitigating factors.

A prevailing plaintiff may also recover an amount equal to any monetary gain made by the defendant from disclosure of the intimate image and punitive damages. The court may award reasonable attorneys' fees and costs, and additional relief, including injunctive relief, to a prevailing plaintiff.

An action for the unauthorized disclosure of intimate images must be brought no later than four years from the date the disclosure was discovered or should have been discovered with the exercise of reasonable diligence. An action for a threat to disclose an intimate image must be brought no later than four years from the date of the threat to disclose. Actions under UCRUDIIA are subject to tolling statutes except that in an action by a depicted individual who was a minor on the date of the disclosure or threat to disclose, the period of limitations provided in UCRUDIIA does not begin until the depicted individual attains the age of majority.

Miscellaneous Provisions. UCRUDIIA must be construed to be consistent with the federal Communications Decency Act, which provides interactive computer service providers with broad immunity from liability for content posted by third parties.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This has been adopted in seven states plus Guam. This bill will build upon Washington's already strong foundation in this subject matter. It will modernize the civil statute that is already in place by expanding the scope of the statute to include remedies if there is a threatened disclosure. Current law provides actual damages, reasonable attorney's fees, and costs. This bill will provide remedies such as the amount equal to the monetary gain made by the defendant for posting an image without consent. This bill contains clear exceptions going beyond what is already provided in Washington's civil statute.

Persons Testifying: PRO: Kaitlin Wolff, Uniform Law Commission.

Persons Signed In To Testify But Not Testifying: No one.