



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

HB4658

Introduced 2/5/2020, by Rep. Deanne M. Mazzochi

#### SYNOPSIS AS INTRODUCED:

740 ILCS 190/5  
740 ILCS 190/10  
740 ILCS 190/15  
740 ILCS 190/20  
740 ILCS 190/25  
740 ILCS 190/30

Amends the Civil Remedies for Nonconsensual Dissemination of Private Sexual Images Act. Provides that a depicted individual may reasonably expect to suffer actual harm (rather than only suffer harm) from the intentional dissemination or threatened dissemination of a private sexual image. Provides that any interactive computer service that disseminates or threatens to disseminate content provided by another person that constitutes a private sexual image is prohibited. Provides that an individual depicted in a private sexual image has an individual interest or in determining the right to license, sell, transmit, profit, or otherwise set terms to permit or exclude access to the private sexual image. Provides that if an interactive computer service fails to remove a private sexual image at the request of an individual who holds an intellectual property image right to the private sexual image, the interactive computer service is subject to appropriate remedies or at least \$1,000 per day for each day that the request to remove the private sexual image is not honored, whichever is greater. Provides additional liability exceptions. Provides that the statutory damages a plaintiff may recover shall be at least \$500 per occurrence (rather than shall not exceed \$10,000). Provides that the voluntary removal of private sexual images or the failure to proceed on a threatened dissemination of private sexual images shall reduce the statutory damages by 50%. Provides that the punitive damages a plaintiff may recover shall be for extraordinary, willful, and wanton behavior, litigation misconduct during enforcement proceedings, or both. Changes the statute of limitations. Makes other changes.

LRB101 17420 LNS 66829 b

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 5. The Civil Remedies for Nonconsensual  
5 Dissemination of Private Sexual Images Act is amended by  
6 changing Sections 5, 10, 15, 20, 25, and 30 as follows:

7 (740 ILCS 190/5)

8 Sec. 5. Definitions. As used in this Act:

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

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

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

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

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

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

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

1 (B) from a private sexual image and identifying  
2 characteristic displayed in connection with the image.

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

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

6 (8.5) "Intellectual property image right" means a property  
7 interest in the content of a private sexual image.

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

10 (10) "Private" means:

11 (A) created or obtained under circumstances in which a  
12 depicted individual had a reasonable expectation of  
13 privacy; or

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

17 (11) "Person" means an individual, business or nonprofit  
18 entity, public corporation, government or governmental  
19 subdivision, agency, or other legal entity.

20 (12) "Sexual conduct" includes:

21 (A) masturbation;

22 (B) genital sex, anal sex, oral sex, or sexual  
23 activity; or

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

25 "Sexual conduct" includes sexual acts as defined by 18  
26 U.S.C. 2246.

1 (13) "Sexual activity" means any:

2 (A) knowing touching or fondling by the depicted  
3 individual or another person, either directly or through  
4 clothing, of the sex organs, anus, or breast of the  
5 depicted individual or another person for the purpose of  
6 sexual gratification or arousal;

7 (B) transfer or transmission of semen upon any part of  
8 the clothed or unclothed body of the depicted individual,  
9 for the purpose of sexual gratification or arousal of the  
10 depicted individual or another person;

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

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

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

14 (F) animal-related sexual activity.

15 "Sexual activity" includes sexual acts as defined by 18  
16 U.S.C. 2246.

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

19 (A) the fully unclothed, partially unclothed, or  
20 transparently clothed genitals, pubic area, anus, or  
21 female post-pubescent nipple, partially or fully exposed,  
22 of a depicted individual; or

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

25 "Sexual image" includes depictions of sexual acts as  
26 defined by 18 U.S.C. 2246.

1 (Source: P.A. 101-556, eff. 1-1-20.)

2 (740 ILCS 190/10)

3 Sec. 10. Civil action.

4 (a) Except as otherwise provided in Section 15, if a  
5 depicted individual is identifiable to a reasonable person and  
6 suffers or reasonably expects to suffer actual harm from the  
7 intentional dissemination or threatened dissemination by a  
8 person over the age of 18 of a private sexual image without the  
9 depicted individual's consent, the depicted individual has a  
10 cause of action against the person if the person knew:

11 (1) the depicted individual did not consent to the  
12 actual or threatened dissemination;

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

14 (3) the depicted individual was identifiable.

15 (b) The following conduct by a depicted individual does not  
16 establish by itself that the individual consented to the  
17 nonconsensual dissemination of a private sexual image that is  
18 the subject of an action under this Act or that the individual  
19 lacked a reasonable expectation of privacy:

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

21 (2) previous consensual disclosure of the image,  
22 unless that consent has been revoked.

23 (c) ~~Any~~ ~~Nothing in this Act shall be construed to impose~~  
24 ~~liability on an~~ interactive computer service, as defined in 47  
25 U.S.C. 230(f)(2), that disseminates or threatens to

1 disseminate for content provided by another person that  
2 constitutes a private sexual image is prohibited.

3 (d) It is presumed that an individual depicted in a private  
4 sexual image has an intellectual property right. An individual  
5 depicted in a private sexual image has an individual interest  
6 or, if more than one person is depicted, a joint interest in  
7 determining the right to license, sell, transmit, profit, or  
8 otherwise set terms to permit or exclude access to the private  
9 sexual image. Any agreement seeking to eliminate, transfer,  
10 sell, license, or otherwise limit a depicted individual's  
11 intellectual property image right is not enforceable unless it  
12 is in writing.

13 If an interactive computer service fails to remove a  
14 private sexual image at the request of an individual who holds  
15 an intellectual property image right to the private sexual  
16 image, the interactive computer service is subject to the  
17 appropriate remedies under Section 25 or at least \$1,000 per  
18 day for each day that the request to remove the private sexual  
19 image is not honored, whichever is greater.

20 (Source: P.A. 101-556, eff. 1-1-20.)

21 (740 ILCS 190/15)

22 Sec. 15. Exceptions to liability.

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

- 1 (1) made in good faith:
- 2 (A) by law enforcement;
- 3 (B) pursuant to a threatened, anticipated, or  
4 actual dissemination in a legal proceeding; ~~or~~
- 5 (C) for medical education or treatment;
- 6 (D) pursuant to a release;
- 7 (E) in defense to an accusation of sexual assault  
8 or rape by a depicted individual; or
- 9 (F) by such other circumstances as a court may find  
10 reasonable and just.

11 (2) made in good faith in the reporting or  
12 investigation of:

- 13 (A) unlawful conduct; or
- 14 (B) unsolicited and unwelcome conduct; or
- 15 (3) related to a matter of public concern.

16 (b) Subject to subsection (c), a defendant who is a parent,  
17 legal guardian, or individual with legal custody of a minor  
18 child is not liable under this Act for a dissemination or  
19 threatened dissemination of an intimate private sexual image of  
20 the minor child if made with consent. A parent, legal guardian,  
21 or individual with legal custody of a minor child may bring an  
22 action on behalf of the minor child at any time.

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

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

1           (2) made for the purpose of sexual arousal, sexual  
2 gratification, humiliation, degradation, or monetary or  
3 commercial gain.

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

7 (Source: P.A. 101-556, eff. 1-1-20.)

8           (740 ILCS 190/20)

9           Sec. 20. Privacy of parties.

10          (a) In an action under this Act:

11           (1) a plaintiff may proceed by using a pseudonym for  
12 both the plaintiff and defendant in place of the true name  
13 of the plaintiff and defendant under Section 2-401 of the  
14 Code of Civil Procedure; and

15           (2) the court may exclude or redact from all pleadings  
16 and documents filed in the action other identifying  
17 characteristics of the plaintiff and defendant.

18          (b) A plaintiff to whom paragraph (2) of subsection (a)  
19 applies shall file with the court and serve on the defendant a  
20 confidential information form that includes the excluded or  
21 redacted plaintiff's name and other identifying  
22 characteristics.

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

25          (d) If a plaintiff is granted privacy protections under



1 this Section, a defendant may file a motion with the court to  
2 receive the same privacy protections. The court may deny or  
3 grant the motion at its discretion. The court shall ensure that  
4 disclosure is not being used to the advantage or disadvantage  
5 of one party over the other prior to the decision on the  
6 merits.

7 (e) At the conclusion of an action brought under this Act,  
8 the court shall ascertain what record evidence, if any,  
9 necessitates public disclosure in the interests of justice,  
10 unless the parties can otherwise reach an agreement. A party  
11 has an automatic right to a stay and interlocutory appeal  
12 regarding any issues of disclosure of a private sexual image  
13 arising under this Act.

14 (Source: P.A. 101-556, eff. 1-1-20.)

15 (740 ILCS 190/25)

16 Sec. 25. Remedies.

17 (a) In an action under this Act, a prevailing plaintiff may  
18 recover:

19 (1) the greater of:

20 (A) economic and noneconomic damages proximately  
21 caused by the defendant's dissemination or threatened  
22 dissemination, including damages for emotional  
23 distress whether or not accompanied by other damages;

24 or

25 (B) statutory damages of at least \$500 per

1           ~~occurrence, not to exceed \$10,000,~~ against each  
2           defendant found liable under this Act for all  
3           disseminations and threatened disseminations by the  
4           defendant of which the plaintiff knew or reasonably  
5           should have known when filing the action or that became  
6           known during the pendency of the action. In determining  
7           the amount of statutory damages under this subsection,  
8           consideration shall be given to the age of the parties  
9           at the time of the disseminations or threatened  
10          disseminations, the number of disseminations or  
11          threatened disseminations made by the defendant, the  
12          breadth of distribution of the image by the defendant,  
13          and other exacerbating or mitigating factors. The  
14          voluntary removal of private sexual images or the  
15          failure to proceed on a threatened dissemination of  
16          private sexual images shall reduce the statutory  
17          damages by 50%;

18           (2) an amount equal to any monetary gain made by the  
19          defendant from dissemination of the private sexual image;  
20          and

21           (3) punitive damages for extraordinary, willful, and  
22          wanton behavior, litigation misconduct during enforcement  
23          proceedings in connection with an action under this Act, or  
24          both.

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

- 1 (1) reasonable attorney's fees and costs; and  
2 (2) additional relief, including injunctive relief.  
3 (c) This Act does not affect a right or remedy available  
4 under any other law of this State.  
5 (Source: P.A. 101-556, eff. 1-1-20.)

6 (740 ILCS 190/30)  
7 Sec. 30. Statute of limitations.

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

9 (1) a nonconsensual dissemination may not be brought  
10 later than 2 years from the date the dissemination was  
11 discovered or should have been discovered with the exercise  
12 of reasonable diligence; and

13 (2) a threat to disseminate may not be brought later  
14 than 2 years from the date ~~of~~ the threat to disseminate is  
15 made to the individual depicted in the private sexual image  
16 or the recipient of the threat.

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

19 (c) In an action under subsection (a) of Section 10 by a  
20 depicted individual who was a minor on the date of the  
21 dissemination or threat to disseminate, the time specified in  
22 subsection (a) of this Section does not begin to run until the  
23 depicted individual attains the age of majority. This  
24 subsection does not prevent a parent, legal guardian, or  
25 individual with legal custody of a minor child from bringing an

1 action prior to the depicted individual attaining the age of  
2 majority.

3 (Source: P.A. 101-556, eff. 1-1-20.)