



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

SB1507

Introduced 2/15/2019, by Sen. Melinda Bush

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Civil Remedies for Nonconsensual Dissemination of Private Sexual Images Act. Defines terms. Provides that a depicted individual who is identifiable and who suffers harm from a person's intentional dissemination or threatened dissemination of a private sexual image without the depicted individual's consent has a cause of action under specified circumstances. Provides that a person is not liable under the Act if the person proves that the dissemination of, or a threat to disseminate, a private sexual image was made in good faith in certain cases. Provides that a defendant who is a parent, legal guardian, or individual with legal custody of a child is not liable under the Act for a dissemination or threatened dissemination of intimate private sexual image of the child. Provides that the dissemination of, or a threat to disseminate, a private sexual image is not a matter of public concern or public interest solely because the depicted individual is a public figure. Provides that, in an action under the Act, a plaintiff may use a pseudonym or the court may exclude or redact the plaintiff's name and other identifying characteristics from all pleadings and documents filed. Provides remedies. Provides that an action for a nonconsensual dissemination may not be brought later than 4 years from the date the dissemination was discovered or should have been discovered with the exercise of reasonable diligence. Provides that for an action for a threat to disseminate may not be brought later than 4 years from the date of the threat to disseminate. Provides that an action brought depicting an individual who was a minor on the date of the dissemination or threat to disseminate, the 4-year limitation is tolled until the depicted individual attains the age of majority. Provides that if any provision of the Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application.

LRB101 09526 LNS 54624 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 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" of "disseminate" means transfer,  
16 publication, or distribution to another person.

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, false pretenses, voyeurism, or exceeding authorized  
13 access to an account, message, file, device, resource, or  
14 property.

15 (11) "Private sexual image" means a photograph, film,  
16 videotape, digital recording, or other similar medium that  
17 shows:

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

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

24 (12) "Person" means an individual, estate, business or  
25 nonprofit entity, public corporation, government or  
26 governmental subdivision, agency, instrumentality, or other

1 legal entity.

2 (13) "Sexual conduct" includes:

3 (A) masturbation;

4 (B) genital sex, anal sex, oral sex, or sexual  
5 activity; or

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

7 (14) "Sexual activity" means any:

8 (A) knowing touching or fondling by the depicted  
9 individual, another person, or animal, either directly or  
10 through clothing, of the sex organs, anus, or breast of the  
11 depicted individual, another person, or animal for the  
12 purpose of sexual gratification or arousal;

13 (B) transfer or transmission of semen upon any part of  
14 the clothed or unclothed body of the depicted individual,  
15 for the purpose of sexual gratification or arousal of the  
16 depicted individual or another person;

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

18 (D) bondage, fetter, sadism, or masochism; or

19 (E) sadomasochistic abuse in any sexual context.

20 Section 10. Civil action.

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

1 the person if the person knew or acted with reckless disregard  
2 for whether:

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

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

6 (3) the depicted individual was identifiable.

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

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

13 (2) previous consensual disclosure of the image.

14 (c) A depicted individual who does not consent to the  
15 sexual conduct or uncovering of the part of the body depicted  
16 in a sexual image of the individual retains a reasonable  
17 expectation of privacy even if the image was created when the  
18 individual was in a public place.

19 Section 15. Exceptions to liability.

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

23 (1) made in good faith:

24 (A) by law enforcement;

25 (B) in a legal proceeding; or

- 1 (C) for medical education or treatment;
- 2 (2) made in good faith in the reporting or  
3 investigation of:
- 4 (A) unlawful conduct; or  
5 (B) unsolicited and unwelcome conduct;
- 6 (3) related to a matter of public concern or public  
7 interest; or  
8 (4) reasonably intended to assist the depicted  
9 individual.

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

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

- 17 (1) prohibited by a law other than this Act; or  
18 (2) made for the purpose of sexual arousal, sexual  
19 gratification, humiliation, degradation, or monetary or  
20 commercial gain.

21 (d) The dissemination of or a threat to disseminate a  
22 private sexual image is not a matter of public concern or  
23 public interest solely because the depicted individual is a  
24 public figure.

25 Section 20. Plaintiff's privacy.

1 (a) In an action under this Act:

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

5 (2) the court may exclude or redact from all pleadings  
6 and documents filed in the action other identifying  
7 characteristics of the plaintiff.

8 (b) A plaintiff to whom paragraph (2) of subsection (a)  
9 applies shall file with the court and serve on the defendant a  
10 confidential information form that includes the excluded or  
11 redacted plaintiff's name and other identifying  
12 characteristics.

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

15 Section 25. Remedies.

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

18 (1) the greater of:

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

24 (B) statutory damages not to exceed \$10,000  
25 against each defendant found liable under this Act for

1 all disseminations and threatened disseminations by  
2 the defendant of which the plaintiff knew or reasonably  
3 should have known when filing the action or that became  
4 known during the pendency of the action. In determining  
5 the amount of statutory damages under this subsection,  
6 consideration shall be given to the age of the parties  
7 at the time of the disseminations or threatened  
8 disseminations, the number of disseminations or  
9 threatened disseminations made by the defendant, the  
10 breadth of distribution of the image by the defendant,  
11 and other exacerbating or mitigating factors;

12 (2) an amount equal to any monetary gain made by the  
13 defendant from dissemination of the private sexual image;  
14 and

15 (3) punitive damages.

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

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

19 (2) additional relief, including injunctive relief.

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

22 Section 30. Statute of limitations.

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

24 (1) a nonconsensual dissemination may not be brought  
25 later than 4 years from the date the dissemination was



1 discovered or should have been discovered with the exercise  
2 of reasonable diligence; and

3 (2) a threat to disseminate may not be brought later  
4 than 4 years from the date of the threat to disseminate.

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

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

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