



Rep. Mary Edly-Allen

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1 AMENDMENT TO SENATE BILL 1507

2 AMENDMENT NO. _____. Amend Senate Bill 1507 by replacing
3 everything after the enacting clause with the following:

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.

1 (5) "Harm" means physical harm, economic harm, or emotional
2 distress whether or not accompanied by physical or economic
3 harm.

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

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

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

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

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

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

14 (10) "Private" means:

15 (A) created or obtained under circumstances in which a
16 depicted individual had a reasonable expectation of
17 privacy; or

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

21 (11) "Person" means an individual, business or nonprofit
22 entity, public corporation, government or governmental
23 subdivision, agency, or other legal entity.

24 (12) "Sexual conduct" includes:

25 (A) masturbation;

26 (B) genital sex, anal sex, oral sex, or sexual

1 activity; or

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

3 (13) "Sexual activity" means any:

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

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

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

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

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

16 (F) animal-related sexual activity.

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 Section 10. Civil action.

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

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

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

11 (3) the depicted individual was identifiable.

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

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

18 (2) previous consensual disclosure of the image.

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

22 Section 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) in a legal proceeding; or

4 (C) for medical education or treatment;

5 (2) made in good faith in the reporting or
6 investigation of:

7 (A) unlawful conduct; or

8 (B) unsolicited and unwelcome conduct; or

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

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 solely
23 because the depicted individual is a public figure.

24 Section 20. Privacy of parties.

25 (a) In an action under this Act:

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

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

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

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

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

18 Section 25. Remedies.

19 (a) In an action under this Act, a prevailing plaintiff may
20 recover:

21 (1) the greater of:

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

1 or

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

15 (2) an amount equal to any monetary gain made by the
16 defendant from dissemination of the private sexual image;
17 and

18 (3) punitive damages.

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

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

22 (2) additional relief, including injunctive relief.

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

25 Section 30. Statute of limitations.

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

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

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

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

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

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