



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

SB2538

Introduced 1/28/2020, by Sen. Michael E. Hastings

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Civil Remedies for Nonconsensual Dissemination of Altered Sexual Images Act. Provides that a depicted individual has a cause of action against a person who: creates and intentionally discloses sexually explicit material and the person knows or reasonably should have known the depicted individual in the material did not consent to its creation or disclosure; or intentionally discloses sexually explicit material that the person did not create and the person knows the depicted individual in that material did not consent to the creation of the sexually explicit material. Provides exceptions. Provides that a disclaimer in the sexually explicit material that communicates that the inclusion of the depicted individual was unauthorized or the depicted individual did not participate in the creation or development of the material is not a defense. Provides remedies. Provides that an action shall be commenced no later than 3 years from the date the unauthorized creation, development, or disclosure was discovered or should have been discovered.

LRB101 15928 LNS 65288 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 Altered Sexual  
6 Images Act.

7 Section 5. Definitions. As used in this Act:

8 "Altered depiction" means a performance that was actually  
9 performed by the depicted individual but was subsequently  
10 altered to be in violation of this Act.

11 "Authorized representative" means an attorney, talent  
12 agent, or personal manager authorized to represent a depicted  
13 individual if the depicted individual is represented.

14 "Consent" means an agreement written in plain language  
15 signed knowingly and voluntarily by the depicted individual  
16 that includes a general description of the sexually explicit  
17 material and the audiovisual work in which it will be  
18 incorporated.

19 "Depicted individual" means an individual who appears, as a  
20 result of digitization, to be giving a performance he or she  
21 did not actually perform in an altered depiction.

22 "Despicable conduct" means conduct that is so vile, base,  
23 or contemptible that it would be looked down on and despised by

1 a reasonable person.

2 "Digitization" means to realistically depict:

3 (1) the nude body parts of another human being as the  
4 nude body parts of the depicted individual;

5 (2) computer-generated nude body parts as the nude body  
6 parts of the depicted individual; or

7 (3) the depicted individual engaging in sexual conduct  
8 in which the depicted individual did not engage.

9 "Disclose" means to publish, make available, or distribute  
10 to the public.

11 "Individual" means a natural person.

12 "Malice" means that the defendant acted with intent to  
13 cause harm to the plaintiff or engaged in despicable conduct  
14 that was done with a willful and knowing disregard of the  
15 rights of the plaintiff. A person acts with knowing disregard  
16 if the person is aware of the probable harmful consequences of  
17 his or her conduct and deliberately fails to avoid those  
18 consequences.

19 "Nude" means visible genitals, pubic area, anus, or a  
20 female's post-pubescent nipple or areola.

21 "Person" means a human being or legal entity.

22 "Plaintiff" includes cross-plaintiff.

23 "Sexual conduct" means:

24 (1) masturbation;

25 (2) sexual intercourse, including genital, oral, or  
26 anal, whether between persons regardless of sex or gender

1 or between humans and animals;

2 (3) sexual penetration of the vagina or rectum by, or  
3 with, an object;

4 (4) the transfer of semen by means of sexual conduct  
5 from the penis directly onto the depicted individual as a  
6 result of ejaculation; or

7 (5) sadomasochistic abuse involving the depicted  
8 individual.

9 "Sexually explicit material" means any portion of an  
10 audiovisual work that shows the depicted individual performing  
11 in the nude or appearing to engage in, or being subject to,  
12 sexual conduct.

13 Section 10. Cause of action.

14 (a) A depicted individual has a cause of action against a  
15 person who:

16 (1) creates and intentionally discloses sexually  
17 explicit material and the person knows or reasonably should  
18 have known the depicted individual in the material did not  
19 consent to its creation or disclosure; or

20 (2) intentionally discloses sexually explicit material  
21 that the person did not create and the person knows the  
22 depicted individual in that material did not consent to the  
23 creation of the sexually explicit material.

24 (b) A depicted individual may rescind consent previously  
25 given by delivering written notice within 3 business days from

1 the date consent was given to the person in whose favor consent  
2 was made, unless:

3 (1) the depicted individual is given at least 72 hours  
4 to review the terms of the agreement before signing it; or

5 (2) the depicted individual's authorized  
6 representative provides written approval of the signed  
7 agreement.

8 Section 15. Exceptions. A person is not liable under this  
9 Act if:

10 (1) the person discloses the sexually explicit  
11 material in the course of:

12 (i) reporting unlawful activity;

13 (ii) exercising the person's law enforcement  
14 duties; or

15 (iii) a hearing, trial, or other legal proceeding;

16 or

17 (2) the material is:

18 (i) a matter of legitimate public concern;

19 (ii) a work of political or newsworthy value or  
20 similar work; or

21 (iii) commentary, criticism, or a disclosure that  
22 is otherwise protected by the Illinois Constitution or  
23 the United States Constitution.

24 For purposes of this Section, sexually explicit material is  
25 not of newsworthy value solely because the depicted individual

1 is a public figure.

2 Section 20. Disclaimer not a defense. It is not a defense  
3 to an action under this Act that there is a disclaimer included  
4 in the sexually explicit material that communicates that the  
5 inclusion of the depicted individual in the sexually explicit  
6 material was unauthorized or that the depicted individual did  
7 not participate in the creation or development of the material.

8 Section 25. Remedies.

9 (a) A prevailing plaintiff who suffers harm as a result of  
10 a violation of this Act may recover:

11 (1) An amount equal to the monetary gain made by the  
12 defendant from the creation, development, or disclosure of  
13 the sexually explicit material.

14 (2) One of the following:

15 (i) economic and noneconomic damages proximately  
16 caused by the disclosure of the sexually explicit  
17 material, including damages for emotional distress; or

18 (ii) upon request of the plaintiff at any time  
19 before the final judgment is rendered, an award of  
20 statutory damages for all unauthorized acts involved  
21 in the action, with respect to any one work, as  
22 follows:

23 (A) a sum not less than \$1,500 but not more  
24 than \$30,000; or

1                   (B) if the unlawful act was committed with  
2                   malice, up to a maximum of \$150,000.

3                   (3) Punitive damages.

4                   (4) Reasonable attorney's fees and costs.

5                   (5) Any other available relief, including, but not  
6                   limited to, injunctive relief.

7                   (b) The remedies provided by this Section are cumulative  
8                   and shall not be construed as restricting a remedy that is  
9                   available under any other law.

10                  Section 30. Limitations. An action under this Act shall be  
11                  commenced no later than 3 years from the date the unauthorized  
12                  creation, development, or disclosure was discovered or should  
13                  have been discovered with the exercise of reasonable diligence.

14                  Section 97. Severability. The provisions of this Act are  
15                  severable under Section 1.31 of the Statute on Statutes.