

# LEGISLATIVE BILL 680

Approved by the Governor May 30, 2019

Introduced by DeBoer, 10; Cavanaugh, 6; Hunt, 8.

A BILL FOR AN ACT relating to privacy; to amend section 25-213, Reissue Revised Statutes of Nebraska; to adopt the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act; to provide for applicability, construction, and tolling of statutes of limitation; to provide severability; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 8 of this act shall be known and may be cited as the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act.

Sec. 2. In the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act:

(1) Consent means affirmative, conscious, and voluntary authorization by an individual with legal capacity to give authorization.

(2) Depicted individual means an individual whose body is shown in whole or in part in an intimate image.

(3) Disclosure means transfer, publication, or distribution to another person. Disclose has a corresponding meaning.

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

(A) from an intimate image itself; or

(B) from an intimate image and identifying characteristic displayed in connection with the intimate image.

(5) Identifying characteristic means information that may be used to identify a depicted individual.

(6) Individual means a human being.

(7) Intimate image means a photograph, film, video recording, or other similar medium that shows:

(A) the uncovered genitals, pubic area, anus, or female post-pubescent nipple of a depicted individual; or

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

(8) Person means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(9) Sexual conduct includes:

(A) masturbation;

(B) genital, anal, or oral sex;

(C) sexual penetration of, or with, an object;

(D) bestiality; or

(E) the transfer of semen onto a depicted individual.

Sec. 3. (a) In this section:

(1) Harm includes physical harm, economic harm, and emotional distress whether or not accompanied by physical or economic harm.

(2) Private means:

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

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

(b) Except as otherwise provided in section 4 of this act, a depicted individual who is identifiable and who suffers harm from a person's intentional disclosure or threatened disclosure of an intimate image that was private without the depicted individual's consent has a cause of action against the person if the person knew or acted with reckless disregard for whether:

(1) the depicted individual did not consent to the disclosure;

(2) the intimate image was private; and

(3) the depicted individual was identifiable.

(c) The following conduct by a depicted individual does not establish by itself that the individual consented to the disclosure of the intimate image which is the subject of an action under the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act or that the individual lacked a reasonable expectation of privacy:

(1) consent to creation of the image; or

(2) previous consensual disclosure of the image.

(d) A depicted individual who does not consent to the sexual conduct or uncovering of the part of the body depicted in an intimate image of the individual retains a reasonable expectation of privacy even if the image was created when the individual was in a public place.

Sec. 4. (a) In this section:

(1) Child means an unemancipated individual who is less than nineteen years of age.

(2) Parent means an individual recognized as a parent under law of this state other than the Uniform Civil Remedies for Unauthorized Disclosure of

Intimate Images Act.

(b) A person is not liable under the act if the person proves that disclosure of, or a threat to disclose, an intimate image was:

- (1) made in good faith in:
  - (A) law enforcement;
  - (B) a legal proceeding; or
  - (C) medical education or treatment;

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

- (A) unlawful conduct; or
- (B) unsolicited and unwelcome conduct;

(3) related to a matter of public concern or public interest; or

(4) reasonably intended to assist the depicted individual.

(c) Subject to subsection (d) of this section, a defendant who is a parent, legal guardian, or individual with legal custody of a child is not liable under the act for a disclosure or threatened disclosure of an intimate image, as defined in subdivision (7)(A) of section 2 of this act, of the child.

(d) If a defendant asserts an exception to liability under subsection (c) of this section, the exception does not apply if the plaintiff proves the disclosure was:

(1) prohibited by law other than the act; or

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

(e) Disclosure of, or a threat to disclose, an intimate image is not a matter of public concern or public interest solely because the depicted individual is a public figure.

Sec. 5. (a) In an action under the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, a prevailing plaintiff may recover as compensation:

(1)(A) 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

(B) if the actual damages are incapable of being quantified or difficult to quantify, presumed damages not to exceed ten thousand dollars against each defendant in an amount that bears a reasonable relationship to the probable damages incurred by the prevailing plaintiff. In determining the amount of presumed damages under subdivision (a)(1)(B) of this section, consideration must be given to the age of the parties at the time of the disclosure or threatened disclosure, the number of disclosures or threatened disclosures made by the defendant, the breadth of distribution of the image by the defendant, and other exacerbating or mitigating factors; and

(2) an amount equal to any monetary gain made by the defendant from disclosure of the intimate image.

(b) In an action under the act, the court may award a prevailing plaintiff:

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

(2) additional relief, including injunctive relief.

(c) The act does not affect a right or remedy available under law of this state other than the act.

Sec. 6. (a) An action under subsection (b) of section 3 of this act for:

(1) an unauthorized disclosure may not be brought later than four years from the date the disclosure was discovered or should have been discovered with the exercise of reasonable diligence; and

(2) a threat to disclose may not be brought later than four years from the date of the threat to disclose.

(b) This section is subject to section 25-213.

Sec. 7. (a) In an action brought under the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, no provider or user of an interactive computer service shall be treated as a person disclosing any information provided by another information content provider unless the provider or user of such interactive computer service is responsible, in whole or in part, for the creation or development of the information provided through the Internet or any other interactive service.

(b) No provider or user of an interactive computer service shall be held liable under the act on account of:

(1) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(2) any action taken to enable or make available to any information content provider or others the technical means to restrict access to material described in subdivision (b)(1) of this section.

(c) Nothing in the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act shall be construed to impose liability on an interactive computer service for content provided by another person.

(d) The Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act must be construed to be consistent with 47 U.S.C. 230, as such section existed on January 1, 2019.

(e) The act may not be construed to alter the law of this state on sovereign immunity.

(f) For purposes of this section, information content provider and interactive computer service have the same meanings as in 47 U.S.C. 230, as such section existed on January 1, 2019.

Sec. 8. In applying and construing the Uniform Civil Remedies for

Unauthorized Disclosure of Intimate Images Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 9. In any action brought pursuant to the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, a plaintiff may request to use a pseudonym instead of his or her legal name in all court proceedings and records. Upon finding that the use of a pseudonym is proper, the court shall ensure that the pseudonym is used in all court proceedings and records.

Sec. 10. Section 25-213, Reissue Revised Statutes of Nebraska, is amended to read:

25-213 Except as provided in sections 76-288 to 76-298, if a person entitled to bring any action mentioned in Chapter 25, the Political Subdivisions Tort Claims Act, the Nebraska Hospital-Medical Liability Act, the State Contract Claims Act, the State Tort Claims Act, or the State Miscellaneous Claims Act, or the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, except for a penalty or forfeiture, for the recovery of the title or possession of lands, tenements, or hereditaments, or for the foreclosure of mortgages thereon, is, at the time the cause of action accrued, within the age of twenty years, a person with a mental disorder, or imprisoned, every such person shall be entitled to bring such action within the respective times limited by Chapter 25 after such disability is removed. For the recovery of the title or possession of lands, tenements, or hereditaments or for the foreclosure of mortgages thereon, every such person shall be entitled to bring such action within twenty years from the accrual thereof but in no case longer than ten years after the termination of such disability. Absence from the state, death, or other disability shall not operate to extend the period within which actions in rem are to be commenced by and against a nonresident or his or her representative.

Sec. 11. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 12. Original section 25-213, Reissue Revised Statutes of Nebraska, is repealed.