

By: Senator(s) Wiggins, Thompson

To: Judiciary, Division A

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2391

1 AN ACT TO ENACT THE UNIFORM CIVIL REMEDIES FOR UNAUTHORIZED
2 DISCLOSURE OF INTIMATE IMAGES ACT; TO DEFINE TERMS; TO CREATE A
3 CIVIL CAUSE OF ACTION; TO PROVIDE THAT A DEPICTED INDIVIDUAL
4 SUFFERS HARM FROM A PERSON'S INTENTIONAL DISCLOSURE OR THREATENED
5 DISCLOSURE OF AN INTIMATE IMAGE HAS A CAUSE OF ACTION AGAINST THE
6 PERSON IF THE DEPICTED INDIVIDUAL DID NOT CONSENT TO THE
7 DISCLOSURE, THE INTIMATE IMAGE WAS PRIVATE, AND THE DEPICTED
8 INDIVIDUAL WAS IDENTIFIABLE; TO PROVIDE CERTAIN EXCEPTIONS TO
9 CIVIL LIABILITY; TO PROVIDE CERTAIN PRIVACY PROTECTIONS FOR A
10 PLAINTIFF FILING A CAUSE OF ACTION AUTHORIZED BY THIS ACT; TO
11 PROVIDE THAT A PLAINTIFF SHALL BE ENTITLED TO (1) THE GREATER OF
12 ECONOMIC AND NONECONOMIC DAMAGES OR STATUTORY DAMAGES NOT TO
13 EXCEED A CERTAIN SUM, (2) AN AMOUNT EQUAL TO ANY MONETARY GAIN
14 MADE BY THE DEFENDANT FROM DISCLOSURE OF THE INTIMATE IMAGE, AND
15 (3) PUNITIVE DAMAGES UNDER SECTION 11-1-65; TO AUTHORIZE THE AWARD
16 OF ATTORNEY'S FEES TO A PREVAILING PLAINTIFF UNDER THIS ACT; TO
17 PRESCRIBE A PERIOD OF LIMITATION FOR THE CAUSE OF ACTION
18 AUTHORIZED IN THIS ACT; TO PROVIDE THAT THIS ACT MUST BE CONSTRUED
19 CONSISTENTLY WITH CERTAIN FEDERAL LAW; TO PROVIDE THAT IN APPLYING
20 AND CONSTRUING THIS UNIFORM ACT, CONSIDERATION MUST BE GIVEN TO
21 THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT TO ITS
22 SUBJECT MATTER AMONG STATES THAT ENACT IT; AND FOR RELATED
23 PURPOSES.

24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

25 **SECTION 1. Short title.** This act shall be known as and may
26 be cited as the "Uniform Civil Remedies for Unauthorized
27 Disclosure of Intimate Images Act."



28 **SECTION 2. Definitions.** As used in this act, the following
29 words shall have the meaning herein ascribed:

30 (a) "Consent" means affirmative, conscious, and
31 voluntary authorization by an individual with legal capacity to
32 give authorization.

33 (b) "Depicted individual" means an individual whose
34 body is shown in whole or in part in an intimate image.

35 (c) "Disclosure" means transfer, publication or
36 distribution to another person. "Disclose" has a corresponding
37 meaning.

38 (d) "Identifiable" means recognizable by a person other
39 than the depicted individual:

40 (i) From an intimate image itself; or

41 (ii) From an intimate image and identifying
42 characteristic displayed in connection with the intimate image.

43 (e) "Identifying characteristic" means information that
44 may be used to identify a depicted individual.

45 (f) "Individual" means a human being.

46 (g) "Intimate image" means a photograph, film, video
47 recording, or other similar medium that shows:

48 (i) The uncovered genitals, pubic area, anus, or
49 female post-pubescent nipple of a depicted individual; or

50 (ii) A depicted individual engaging in or being
51 subjected to sexual conduct.



52 (h) "Person" means an individual, estate, business or
53 nonprofit entity, public corporation, government or governmental
54 subdivision, agency, or instrumentality, or other legal entity.

55 (i) "Sexual conduct" includes:

56 (i) Masturbation;

57 (ii) Genital, anal, or oral sex;

58 (iii) Sexual penetration of, or with, an object;

59 (iv) Bestiality; or

60 (v) The transfer of semen onto a depicted

61 individual.

62 **SECTION 3. Civil action.** (1) In this section:

63 (a) "Harm" includes physical harm, economic harm and
64 emotional distress whether or not accompanied by physical or
65 economic harm.

66 (b) "Private" means:

67 (i) Created or obtained under circumstances in
68 which a depicted individual had a reasonable expectation of
69 privacy; or

70 (ii) Made accessible through computer fraud,
71 extortion, fraud, false pretenses, false personation, identity
72 theft, larceny, voyeurism or any other related crime.

73 (2) Except as otherwise provided in Section 4 of this act, a
74 depicted individual who is identifiable and who suffers harm from
75 a person's intentional disclosure or threatened disclosure of an
76 intimate image that was private without the depicted individual's



77 consent has a cause of action against the person if the person
78 knew or acted with reckless disregard for whether:

79 (a) The depicted individual did not consent to the
80 disclosure;

81 (b) The intimate image was private; and

82 (c) The depicted individual was identifiable.

83 (3) The following conduct by a depicted individual does not
84 establish by itself that the individual consented to the
85 disclosure of the intimate image which is the subject of an action
86 under this act or that the individual lacked a reasonable
87 expectation of privacy:

88 (a) Consent to creation of the image; or

89 (b) Previous consensual disclosure of the image.

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

95 **SECTION 4. Exceptions to liability.** (1) In this section:

96 (a) "Child" means an unemancipated individual who is
97 less than eighteen (18) years of age.

98 (b) "Parent" means an individual recognized as a parent
99 under law of this state other than this act.



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

103 (a) Made in good faith in:

104 (i) Law enforcement;

105 (ii) A legal proceeding; or

106 (iii) Medical education or treatment;

107 (b) Made in good faith in the reporting or
108 investigation of:

109 (i) Unlawful conduct; or

110 (ii) Unsolicited and unwelcome conduct;

111 (c) Related to a matter of public concern or public
112 interest; or

113 (d) Reasonably intended to assist the depicted
114 individual.

115 (3) Subject to subsection (4) of this section, a defendant
116 who is a parent or legal guardian of a child is not liable under
117 this act for a disclosure or threatened disclosure of an intimate
118 image, as defined in Section 2(g)(i) of this act, of the child.

119 (4) If a defendant asserts an exception to liability under
120 subsection (3) of this section, the exception does not apply if
121 the plaintiff proves the disclosure was:

122 (a) Prohibited by law other than this act; or



123 (b) Made for the purpose of sexual arousal, sexual
124 gratification, humiliation, degradation, or monetary or commercial
125 gain.

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

129 **SECTION 5. Plaintiff's privacy.** In an action under this
130 act:

131 (a) The court may exclude or redact from all pleadings
132 and documents filed in the action the plaintiff's name and other
133 identifying characteristics of the plaintiff;

134 (b) A plaintiff to whom paragraph (a) of this section
135 applies shall file with the court and serve on the defendant a
136 confidential information form that includes the excluded or
137 redacted plaintiff's name and other identifying characteristics;
138 and

139 (c) the court may make further orders as necessary to
140 protect the identity and privacy of a plaintiff and may promulgate
141 the necessary rules to effectuate the purposes of this section.

142 **SECTION 6. Remedies.** (1) In an action under this act, a
143 prevailing plaintiff may recover:

144 (a) The greater of:

145 (i) Economic and noneconomic damages proximately
146 caused by the defendant's disclosure or threatened disclosure,



147 including damages for emotional distress whether or not

148 accompanied by other damages; or

149 (ii) Statutory damages not to exceed Ten Thousand
150 Dollars (\$10,000.00) against each defendant found liable under
151 this act for all disclosures and threatened disclosures by the
152 defendant of which the plaintiff knew or reasonably should have
153 known when filing the action or which became known during the
154 pendency of the action. In determining the amount of statutory
155 damages under this subparagraph (ii), consideration must be given
156 to the age of the parties at the time of the disclosure or
157 threatened disclosure, the number of disclosures or threatened
158 disclosures made by the defendant, the breadth of distribution of
159 the image by the defendant, and other exacerbating or mitigating
160 factors;

161 (b) An amount equal to any monetary gain made by the
162 defendant from disclosure of the intimate image; and

163 (c) Punitive damages under Section 11-1-65.

164 (2) In an action under this act, the court may award a
165 prevailing plaintiff:

166 (a) Reasonable attorney's fees; and

167 (b) Additional relief, including injunctive relief.

168 (3) This act does not affect a right or remedy available
169 under law of this state other than this act.

170 **SECTION 7. Statute of limitations.** (1) An action under
171 Section 3(2) of this act for:



172 (a) An unauthorized disclosure may not be brought later
173 than three (3) years from the date the disclosure was discovered
174 or should have been discovered with the exercise of reasonable
175 diligence; and

176 (b) A threat to disclose may not be brought later than
177 four (4) years from the date of the threat to disclose.

178 (2) This section is subject to any tolling provisions
179 provided by law of this state.

180 **SECTION 8. Construction.** This act must be construed to be
181 consistent with the Communications Decency Act of 1996, 47 USC
182 Section 230.

183 **SECTION 9. Uniformity of application and construction.** In
184 applying and construing this uniform act, consideration must be
185 given to the need to promote uniformity of the law with respect to
186 its subject matter among states that enact it.

187 **SECTION 10.** This act shall take effect and be in force from
188 and after July 1, 2024.

