



March 26, 2019

ENGROSSED SENATE BILL No. 192

DIGEST OF SB 192 (Updated March 25, 2019 6:50 pm - DI 133)

Citations Affected: IC 34-6; IC 34-21.5.

Synopsis: Nonconsensual pornography. Defines "intimate image" and creates a civil cause of action against a person who discloses an intimate image without the consent of the individual depicted in the intimate image. Provides that a prevailing plaintiff may recover the greater of: (1) economic and noneconomic damages; or (2) statutory damages not to exceed \$10,000; plus attorney's fees, court costs, and other relief, including injunctive relief. Establishes criteria to be used by the trier of fact in determining damages. Provides that an interactive computer service may not be liable for disclosing nonconsensual pornography.

Effective: July 1, 2019.

**Bohacek, Freeman, Alting,
Randolph Lonnie M**

(HOUSE SPONSORS — NEGELE, TORR, KLINKER)

January 3, 2019, read first time and referred to Committee on Judiciary.
February 7, 2019, amended, reported favorably — Do Pass.
February 11, 2019, read second time, ordered engrossed. Engrossed.
February 12, 2019, read third time, passed. Yeas 47, nays 1.

HOUSE ACTION

February 26, 2019, read first time and referred to Committee on Courts and Criminal Code.
March 12, 2019, reassigned to Committee on Judiciary.
March 25, 2019, reported — Do Pass.

ES 192—LS 6420/DI 106



March 26, 2019

First Regular Session of the 121st General Assembly (2019)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

ENGROSSED SENATE BILL No. 192

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-6-2-34.1 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2019]: **Sec. 34.1. "Disclosure", for purposes of IC 34-21.5, has**
4 **the meaning set forth in IC 34-21.5-2-1.**

5 SECTION 2. IC 34-6-2-34.2 IS ADDED TO THE INDIANA CODE
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2019]: **Sec. 34.2. "Distribute", for purposes of IC 34-21.5, has the**
8 **meaning set forth in IC 34-21.5-2-1.**

9 SECTION 3. IC 34-6-271.5 IS ADDED TO THE INDIANA CODE
10 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
11 1, 2019]: **Sec. 71.5. "Intimate image", for purposes of IC 34-21.5,**
12 **has the meaning set forth in IC 34-21.5-2-1.**

13 SECTION 4. IC 34-21.5 IS ADDED TO THE INDIANA CODE AS
14 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
15 2019]:

16 **ARTICLE 21.5. CAUSES OF ACTION: NONCONSENSUAL**
17 **PORNOGRAPHY**

ES 192—LS 6420/DI 106



- 1 **Chapter 1. Application**
- 2 **Sec. 1. (a) Except as provided in sections 2 and 3 of this chapter,**
- 3 **this article does not apply to the following:**
- 4 **(1) A photograph, digital image, or video that is disclosed in**
- 5 **good faith:**
- 6 **(A) to report a possible criminal act;**
- 7 **(B) in connection with a criminal investigation;**
- 8 **(C) under a court order;**
- 9 **(D) by a news reporting or an entertainment medium (as**
- 10 **defined in IC 32-36-1-4); or**
- 11 **(E) as a matter of public concern or public interest.**
- 12 **(2) The disclosure of an intimate image of a child by the**
- 13 **child's parent, legal guardian, or legal custodian.**
- 14 **Sec. 2. The exceptions provided in section 1 of this chapter do**
- 15 **not apply if a plaintiff provides that the disclosure was:**
- 16 **(1) prohibited by law other than this article; or**
- 17 **(2) made for the purpose of sexual arousal, sexual**
- 18 **gratification, humiliation, degradation, or monetary or**
- 19 **commercial gain.**
- 20 **Sec. 3. The disclosure of an intimate image is not a matter of**
- 21 **public concern or public interest under section 1 of this chapter**
- 22 **solely because the depicted individual is a public figure.**
- 23 **Chapter 2. Definitions**
- 24 **Sec. 1. The following definitions apply throughout this article:**
- 25 **(1) "Disclosure" means display, transfer, publication, or**
- 26 **distribution to another person.**
- 27 **(2) "Distribute" means to transfer to another person in, or by**
- 28 **means of, any medium, forum, telecommunications device or**
- 29 **network, or Internet web site.**
- 30 **(3) "Harm" includes:**
- 31 **(A) physical harm;**
- 32 **(B) economic harm; and**
- 33 **(C) emotional distress, whether or not accompanied by**
- 34 **physical or economic harm.**
- 35 **(4) "Identifiable" means recognizable by a person other than**
- 36 **the depicted individual:**
- 37 **(A) from an intimate image itself; or**
- 38 **(B) from an intimate image and identifying characteristic**
- 39 **disclosed in connection with the intimate image.**
- 40 **(5) "Intimate image" means a photograph, digital image, or**
- 41 **video that depicts:**
- 42 **(A) an individual engaging in sexual intercourse;**



- 1 (B) an individual engaging in other sexual conduct (as
- 2 defined in IC 35-31.5-2-221.5); or
- 3 (C) the exhibition of the uncovered buttocks, genitals, or
- 4 female breast of an individual.

5 **Chapter 3. Disclosing Nonconsensual Pornography**

6 **Sec. 1. (a) A depicted individual who is identifiable and suffered**
7 **harm may bring an action for disclosing nonconsensual**
8 **pornography against a person who:**

9 (1) creates or obtains an intimate image of the depicted
10 individual:

11 (A) under circumstances in which a reasonable person
12 would know or understand that the intimate image of the
13 depicted individual was to remain private, including but
14 not limited to an intimate image shared within the context
15 of a sexual relationship that was then disclosed beyond that
16 relationship;

17 (B) under false pretenses; or

18 (C) without authorization or by exceeding authorized
19 access to property, accounts, messages, files, devices, or
20 resources;

21 (2) discloses the intimate image depicting the individual to a
22 third party, with the intent to:

23 (A) harass;

24 (B) intimidate;

25 (C) threaten;

26 (D) coerce;

27 (E) embarrass;

28 (F) gain profit at the expense of; or

29 (G) cause physical or financial injury or serious emotional
30 distress to;

31 the depicted person; and

32 (3) knows or acts with reckless disregard for whether the
33 depicted individual:

34 (A) was identifiable in the intimate image; and

35 (B) did not consent to the disclosure of the intimate image
36 to a third party.

37 (b) The following conduct by a depicted individual does not
38 establish by itself that the individual consented to the disclosure of
39 the intimate image which is the subject of an action under this
40 section or that the individual lacked a reasonable expectation of
41 privacy:

42 (1) The individual's consent to the creation of the image.



- 1 (2) The individual's previous consensual disclosure of the
2 image.
- 3 (c) A depicted individual who does not consent to the sexual
4 conduct or uncovering of the part of the body depicted in an
5 intimate image of the individual retains a reasonable expectation
6 of privacy even if the image was created when the individual was
7 in a public place.
- 8 Sec. 2. (a) An individual who prevails in an action brought
9 under this chapter may recover:
- 10 (1) the greater of:
- 11 (A) economic and noneconomic damages proximately
12 caused by the defendant's disclosure, including damages
13 for emotional distress whether or not accompanied by
14 other damages; or
- 15 (B) statutory damages not to exceed ten thousand dollars
16 (\$10,000) against each defendant found liable under this
17 chapter for all disclosures by the defendant of which the
18 plaintiff knew or reasonably should have known when
19 filing the action or which became known during the
20 pendency of the action;
- 21 (2) an amount equal to any monetary gain made by the
22 defendant from disclosure of the intimate image; and
- 23 (3) punitive damages.
- 24 (b) In determining the amount of statutory damages under
25 subsection (a)(1)(B), the trier of fact shall consider the following:
- 26 (1) The age of the parties at the time of the disclosure.
- 27 (2) The number of persons to whom the intimate image was
28 disclosed.
- 29 (3) The breadth of distribution of the image by the defendant.
- 30 (4) Whether the person who disclosed or distributed the
31 intimate image received any compensation for the disclosure
32 or distribution.
- 33 (5) Whether, and to what extent, the disclosure or distribution
34 of the intimate image was willful.
- 35 (6) Any other circumstances surrounding the disclosure or
36 distribution of the intimate image that relate to the severity of
37 the harm suffered by the individual depicted in the intimate
38 image.
- 39 (c) In addition, an individual who prevails in an action brought
40 under this chapter is entitled to:
- 41 (1) reasonable attorney's fees;
- 42 (2) court costs; and



- 1 **(3) additional relief, including injunctive relief.**
2 **(d) Punitive damages awarded under this section are not subject**
3 **to IC 34-51-3-4, IC 34-51-3-5, or IC 34-51-3-6.**
4 **(e) This section does not affect other rights or remedies**
5 **available under the law of the state.**
6 **Sec. 3. (a) An action under section 1 of this chapter may be**
7 **brought no later than four (4) years from the date the disclosure**
8 **was discovered or should have been discovered with the exercise of**
9 **reasonable diligence.**
10 **(b) In an action under section 1 of this chapter by a depicted**
11 **individual who was a minor on the date of disclosure, the time**
12 **specified in subsection (a) does not begin to run until the depicted**
13 **individual reaches the age of majority.**
14 **Sec. 4. Nothing in this article shall be construed to impose**
15 **liability on an interactive computer service, as defined in 47 U.S.C.**
16 **230(f)(2), for content provided by another person.**



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 192, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 3, delete ""Display"," and insert ""**Disclosure**",".

Page 1, delete lines 13 through 17, begin a new paragraph and insert:

"SECTION 4. IC 34-21.5 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]:

ARTICLE 21.5. CAUSES OF ACTION: NONCONSENSUAL PORNOGRAPHY

Chapter 1. Application

Sec. 1. (a) Except as provided in sections 2 and 3 of this chapter, this article does not apply to the following:

(1) A photograph, digital image, or video that is disclosed in good faith:

(A) to report a possible criminal act;

(B) in connection with a criminal investigation;

(C) under a court order;

(D) by a news reporting or an entertainment medium (as defined in IC 32-36-1-4); or

(E) as a matter of public concern or public interest.

(2) The disclosure of an intimate image of a child by the child's parent, legal guardian, or legal custodian.

Sec. 2. The exceptions provided in section 1 of this chapter do not apply if a plaintiff provides that the disclosure was:

(1) prohibited by law other than this article; or

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

Sec. 3. The disclosure of an intimate image is not a matter of public concern or public interest under section 1 of this chapter solely because the depicted individual is a public figure.

Chapter 2. Definitions

Sec. 1. The following definitions apply throughout this article:

(1) "Disclosure" means display, transfer, publication, or distribution to another person.

(2) "Distribute" means to transfer to another person in, or by means of, any medium, forum, telecommunications device or network, or Internet web site.



- (3) "Harm" includes:
- (A) physical harm;
 - (B) economic harm; and
 - (C) emotional distress, whether or not accompanied by physical or economic harm.
- (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 disclosed in connection with the intimate image.
- (5) "Intimate image" means a photograph, digital image, or video that depicts:
- (A) an individual engaging in sexual intercourse;
 - (B) an individual engaging in other sexual conduct (as defined in IC 35-31.5-2-221.5); or
 - (C) the exhibition of the uncovered buttocks, genitals, or female breast of an individual.

Chapter 3. Disclosing Nonconsensual Pornography

Sec. 1. (a) A depicted individual who is identifiable and suffered harm may bring an action for disclosing nonconsensual pornography against a person who:

- (1) creates or obtains an intimate image of the depicted individual:
- (A) under circumstances in which a reasonable person would know or understand that the intimate image of the depicted individual was to remain private, including but not limited to an intimate image shared within the context of a sexual relationship that was then disclosed beyond that relationship;
 - (B) under false pretenses; or
 - (C) without authorization or by exceeding authorized access to property, accounts, messages, files, devices, or resources;
- (2) discloses the intimate image depicting the individual to a third party, with the intent to:
- (A) harass;
 - (B) intimidate;
 - (C) threaten;
 - (D) coerce;
 - (E) embarrass;
 - (F) gain profit at the expense of; or
 - (G) cause physical or financial injury or serious emotional



- distress to;
 the depicted person; and
 (3) knows or acts with reckless disregard for whether the depicted individual:
 (A) was identifiable in the intimate image; and
 (B) did not consent to the disclosure of the intimate image to a third party.

(b) 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 this section or that the individual lacked a reasonable expectation of privacy:

- (1) The individual's consent to the creation of the image.
- (2) The individual's previous consensual disclosure of the image.

(c) 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. 2. (a) An individual who prevails in an action brought under this chapter may recover:

- (1) the greater of:
 - (A) economic and noneconomic damages proximately caused by the defendant's disclosure, including damages for emotional distress whether or not accompanied by other damages; or
 - (B) statutory damages not to exceed ten thousand dollars (\$10,000) against each defendant found liable under this chapter for all disclosures by the defendant of which the plaintiff knew or reasonably should have known when filing the action or which became known during the pendency of the action;
- (2) an amount equal to any monetary gain made by the defendant from disclosure of the intimate image; and
- (3) punitive damages.

(b) In determining the amount of statutory damages under subsection (a)(1)(B), the trier of fact shall consider the following:

- (1) The age of the parties at the time of the disclosure.
- (2) The number of persons to whom the intimate image was disclosed.
- (3) The breadth of distribution of the image by the defendant.



(4) Whether the person who disclosed or distributed the intimate image received any compensation for the disclosure or distribution.

(5) Whether, and to what extent, the disclosure or distribution of the intimate image was willful.

(6) Any other circumstances surrounding the disclosure or distribution of the intimate image that relate to the severity of the harm suffered by the individual depicted in the intimate image.

(c) In addition, an individual who prevails in an action brought under this chapter is entitled to:

(1) reasonable attorney's fees;

(2) court costs; and

(3) additional relief, including injunctive relief.

(d) Punitive damages awarded under this section are not subject to IC 34-51-3-4, IC 34-51-3-5, or IC 34-51-3-6.

(e) This section does not affect other rights or remedies available under the law of the state.

Sec. 3. (a) An action under section 1 of this chapter may be brought no later than four (4) years from the date the disclosure was discovered or should have been discovered with the exercise of reasonable diligence.

(b) In an action under section 1 of this chapter by a depicted individual who was a minor on the date of disclosure, the time specified in subsection (a) does not begin to run until the depicted individual reaches the age of majority."

Delete page 2.

Page 3, delete lines 1 through 5, begin a new paragraph and insert:

"Sec. 4. Nothing in this article shall be construed to impose liability on an interactive computer service, as defined in 47 U.S.C. 230(f)(2), for content provided by another person."

and when so amended that said bill do pass.

(Reference is to SB 192 as introduced.)

HEAD, Chairperson

Committee Vote: Yeas 9, Nays 1.

ES 192—LS 6420/DI 106



COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 192, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to SB 192 as printed February 8, 2019.)

TORR

Committee Vote: Yeas 8, Nays 0

