

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 680

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

Read first time January 23, 2019

Committee:

- 1 A BILL FOR AN ACT relating to privacy; to adopt the Uniform Civil
- 2 Remedies for Unauthorized Disclosure of Intimate Images Act; to
- 3 provide for applicability and construction; and to provide
- 4 severability.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 9 of this act shall be known and may be
2 cited as the Uniform Civil Remedies for Unauthorized Disclosure of
3 Intimate Images Act.

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

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

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

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

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

14 (A) from an intimate image itself; or

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

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

19 (6) Individual means a human being.

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

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

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

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

29 (9) Sexual conduct includes:

30 (A) masturbation;

31 (B) genital, anal, or oral sex;

- 1 (C) sexual penetration of, or with, an object;
- 2 (D) bestiality; or
- 3 (E) the transfer of semen onto a depicted individual.

4 Sec. 3. (a) In this section:

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

7 (2) Private means:

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

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

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

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

20 (2) the intimate image was private; and

21 (3) the depicted individual was identifiable.

22 (c) The following conduct by a depicted individual does not
23 establish by itself that the individual consented to the disclosure of
24 the intimate image which is the subject of an action under this act or
25 that the individual lacked a reasonable expectation of privacy:

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

27 (2) previous consensual disclosure of the image.

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

1 Sec. 4. (a) In this section:

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

4 (2) Parent means an individual recognized as a parent under law of
5 this state other than the Uniform Civil Remedies for Unauthorized
6 Disclosure of Intimate Images Act.

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

9 (1) made in good faith in:

10 (A) law enforcement;

11 (B) a legal proceeding; or

12 (C) medical education or treatment;

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

14 (A) unlawful conduct; or

15 (B) unsolicited and unwelcome conduct;

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

17 (4) reasonably intended to assist the depicted individual.

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

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

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

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

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

1 Sec. 5. In an action under the Uniform Civil Remedies for
2 Unauthorized Disclosure of Intimate Images Act, a plaintiff may proceed
3 using a pseudonym in place of the true name of the plaintiff under
4 section 10 of this act.

5 In an action under the Uniform Civil Remedies for Unauthorized
6 Disclosure of Intimate Images Act:

7 (1) the court may exclude or redact from all pleadings and documents
8 filed in the action other identifying characteristics of the plaintiff
9 under section 10 of this act;

10 (2) a plaintiff to whom subdivision (1) of this section applies
11 shall file with the court and serve on the defendant a confidential
12 information form that includes the excluded or redacted plaintiff's name
13 and other identifying characteristics; and

14 (3) the court may make further orders as necessary to protect the
15 identity and privacy of a plaintiff.

16 Sec. 6. (a) In an action under the Uniform Civil Remedies for
17 Unauthorized Disclosure of Intimate Images Act, a prevailing plaintiff
18 may recover:

19 (1) the greater of:

20 (A) economic and noneconomic damages proximately caused by the
21 defendant's disclosure or threatened disclosure, including damages for
22 emotional distress whether or not accompanied by other damages; or

23 (B) statutory damages not to exceed ten thousand dollars against
24 each defendant found liable under the act for all disclosures and
25 threatened disclosures by the defendant of which the plaintiff knew or
26 reasonably should have known when filing the action or which became known
27 during the pendency of the action. In determining the amount of statutory
28 damages under subdivision (a)(1)(B) of this section, consideration must
29 be given to the age of the parties at the time of the disclosure or
30 threatened disclosure, the number of disclosures or threatened
31 disclosures made by the defendant, the breadth of distribution of the

1 image by the defendant, and other exacerbating or mitigating factors; and
2 (2) an amount equal to any monetary gain made by the defendant from
3 disclosure of the intimate image.

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

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

7 (2) additional relief, including injunctive relief.

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

10 Sec. 7. (a) An action under subsection (b) of section 3 of this act
11 for:

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

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

17 (b) Except as otherwise provided in subsection (c) of this section,
18 this section is subject to section 25-213.

19 (c) In an action under subsection (b) of section 3 of this act by a
20 depicted individual who was a minor on the date of the disclosure or
21 threat to disclose, the time specified in subsection (a) of this section
22 does not begin to run until the depicted individual attains the age of
23 majority.

24 Sec. 8. (a) The Uniform Civil Remedies for Unauthorized Disclosure
25 of Intimate Images Act must be construed to be consistent with the
26 Communications Decency Act of 1996, 47 U.S.C. 230.

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

29 Sec. 9. In applying and construing the Uniform Civil Remedies for
30 Unauthorized Disclosure of Intimate Images Act, consideration must be
31 given to the need to promote uniformity of the law with respect to its

1 subject matter among states that enact it.

2 Sec. 10. In any action brought pursuant to the Uniform Civil
3 Remedies for Unauthorized Disclosure of Intimate Images Act, a plaintiff
4 may request to use a pseudonym instead of his or her legal name in all
5 court proceedings and records. Upon finding that the use of a pseudonym
6 is proper, the court shall ensure that the pseudonym is used in all court
7 proceedings and records.

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