

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4603

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THOMPSON, KESSINGER, AND STEELE

[Introduced February 9, 2022; Referred
to the Committee on the Judiciary]

1 A BILL to amend the code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §55-20-1, §55-20-2, §55-20-3, §55-20-4, §55-20-5, §55-20-6, §55-20-7, §55-
3 20-8, §55-20-9, and §55-20-10, all relating to permitting civil remedies for the unauthorized
4 disclosure of intimate images; providing for a short title; defining terms; providing for a civil
5 action; providing exceptions to liability; providing for plaintiff's privacy; providing for
6 remedies; creating a statute of limitations; providing for construction; providing for
7 uniformity of application and construction; and addressing the effective date.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 20. CIVIL REMEDIES FOR UNAUTHORIZED DISCLOSURE OF INTIMATE
IMAGES.**

§55-20-1. Short title.

1 This article shall be known and may be cited as the Uniform Civil Remedies for
2 Unauthorized Disclosure of Intimate Images Act.

§55-20-2. Definitions.

1 For the purposes of this article:

2 (1) "Child" means an unemancipated individual who is less than 18 years of age.

3 (2) "Consent" means affirmative, conscious, and voluntary authorization by an individual
4 with legal capacity to give authorization.

5 (3) "Depicted individual" means the individual whose body is shown, in whole or in part, in
6 an intimate image.

7 (4) "Disclosure" means transfer, publication, or distribution to another person.

8 (5) "Harm" means physical harm, economic harm, and emotional distress whether, or not
9 accompanied by physical or economic harm.

10 (6) "Identifiable" means recognizable by a person other than the depicted individual:

11 (A) From an intimate image itself; or

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

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

(8) "Individual" means a human being.

(9) "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.

(10) "Parent" means an individual recognized as a parent under the laws of this state other than this article.

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

(12) "Private" means:

(A) Created or obtained under circumstances in which the 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.

(13) "Sexual conduct" means any act set forth below but is not limited to this list:

(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.

§55-20-3. Civil action.

1 (a) Except as otherwise provided in §55-20-4 of this code, a depicted individual who is
2 identifiable and who suffers harm from a person's intentional disclosure or threatened disclosure
3 of an intimate image that was private without the depicted individual's consent has a cause of
4 action against the person if the person knew or acted with reckless disregard for whether:

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

6 (2) The intimate image was private; and

7 (3) The depicted individual was identifiable.

8 (b) The following conduct by a depicted individual does not establish, by itself, that the
9 individual consented to the disclosure of the intimate image which is the subject of an action under
10 this article or that the individual lacked a reasonable expectation of privacy:

11 (1) Consent to creation of the image; or

12 (2) Previous consensual disclosure of the image.

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

§55-20-4. Exceptions to liability.

1 (a) A person is not liable under this article if the person proves the disclosure of, or threat
2 to disclose, an intimate image was:

3 (1) Made in good faith:

4 (A) To law enforcement;

5 (B) For a legal proceeding; or

6 (C) For medical education or treatment.

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

8 (A) Unlawful conduct; or

9 (B) Unsolicited and unwelcome conduct.

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

11 (4) Reasonably intended to assist the depicted individual.

12 (b) Subject to this section, a defendant who is a parent, legal guardian, or individual with
13 legal custody of a child is not liable under this article for a disclosure or threatened disclosure of
14 an intimate image, as defined in this article, of the child.

15 (c) If a defendant asserts an exception to liability under §55-20-4(b) of this code, the
16 exception does not apply if the plaintiff proves the disclosure was:

17 (1) Prohibited by law other than this article; or

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

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

§55-20-5. Plaintiff's privacy.

1 In an action under this article, a plaintiff may file a motion to seal with the initial pleading
2 or any other motion as necessary to protect the identity and privacy of the plaintiff. The court may
3 make further orders as necessary to protect the identity and privacy of a plaintiff.

§55-20-6. Remedies.

1 (a) In an action under this article, a prevailing plaintiff may recover:

2 (1) The greater of:

3 (A) Economic and noneconomic damages proximately caused by the defendant's
4 disclosure or threatened disclosure, including damages for emotional distress, whether or not
5 accompanied by other damages; or

6 (B) Statutory damages not to exceed \$10,000 against each defendant found liable under
7 this article for all disclosure and threatened disclosures by the defendant of which the plaintiff
8 knew or reasonably should have known when filing the action or which became known during the
9 pendency of the action. In determining the amount, if any, of statutory damages under §55-20-
10 6(a)(1)(B) of this code, consideration shall be given to the age of the parties at the time of

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;

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

(3) Punitive damages as allowed under the law of this state other than this article.

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

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

(2) Additional relief, including injunctive relief.

§55-20-7. Statute of limitations.

(a) Any action under this article for:

(1) An unauthorized disclosure may not be brought later than four years from the date:

(A) The disclosure was discovered; or

(B) Should have been discovered with the exercise of reasonable diligence.

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

(b) Except as otherwise provided in §55-20-7(c) of this code, this section is subject to the tolling of statutes of this state.

(c) In an action under §55-20-3(a) of this code by a depicted individual who was a minor on the date of the disclosure or threat to disclose, the time specified in §55-20-7(a) of this code does not begin to run until the depicted individual attains the age of majority.

§55-20-8. Construction.

(a) This article shall be construed to be consistent with the Communications Decency Act of 1996, 47 U.S.C., Section 230.

(b) This article may not be construed to alter the law of this state on sovereign immunity.

§55-20-9. Uniformity of application and construction.

- 1 In applying and construing this act, consideration must be given to the need to promote
2 uniformity of the law with respect to this subject matter among states that enact it.

§55-20-10. Effective date.

- 1 This article shall apply to any cause of action, subject to this article, accruing on, or after,
2 the effective date of the article.

NOTE: The purpose of this bill is to permit a civil action for the unauthorized disclosure of an intimate image. The bill permits civil remedies for the unauthorized disclosure of intimate images. The bill provides for a short title. The bill creates definitions. The bill provides for a civil action. The bill provides exceptions to liability. The bill provides for plaintiff's privacy. The bill provides for remedies. The bill creates a statute of limitations. The bill provides for construction. The bill provides for uniformity of application and construction. Finally, the bill creates an effective date.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.