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Townsend, Walsh, Wilson; Reps. Brady, Briggs King,
Osienski, Michael Smith

DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL NO. 169

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO THE DELAWARE UNIFORM CIVIL
REMEDIES FOR UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Part IV, Title 10 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 Chapter 78. Delaware Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act.

4 § 7801. Short title.

5 This chapter may be cited as the “Delaware Uniform Civil Remedies for Unauthorized Disclosure of Intimate
6 Images Act” or “DUCRUDIIA”.

7 § 7802. Definitions.

8 For purposes of this chapter:

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

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

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

14 (4) “Identifiable” means recognizable by a person other than the depicted individual from any of the
15 following:

16 a. An intimate image itself.

17 b. An intimate image and identifying characteristic displayed in connection with the intimate image.

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

19 (6) “Individual” means a human being.

20 (7) “Intimate image” means a photograph, film, video recording, or other similar medium that shows 1 or
21 more of the following:

22 a. The uncovered genitals, pubic area, anus, or female post-pubescent nipple of a depicted individual.

23 b. A depicted individual engaging in or being subjected to sexual conduct.

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

26 (9) “Sexual conduct” includes any of the following:

27 a. Masturbation.

28 b. Genital, anal, or oral sex.

29 c. Sexual penetration of, or with, an object.

30 d. Bestiality.

31 e. The transfer of semen onto a depicted individual.

32 § 7803. Civil action.

33 (a) In this section:

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

36 (2) “Private” means 1 or more of the following:

37 a. Created or obtained under circumstances in which a depicted individual had a reasonable expectation
38 of privacy.

39 b. Made accessible through theft, bribery, extortion, fraud, false pretenses, sexual exploitation of a minor,
40 violation of privacy, or computer-related offenses.

41 (b) Except as otherwise provided under § 7804 of this title, a depicted individual who is identifiable and who
42 suffers harm from a person’s intentional disclosure or threatened disclosure of an intimate image that was private without
43 the depicted individual’s consent has a cause of action against the person if the person knew or acted with reckless
44 disregard for all of the following:

45 (1) The depicted individual did not consent to the disclosure.

46 (2) The intimate image was private.

47 (3) The depicted individual was identifiable.

48 (c) The following conduct by a depicted individual does not establish by itself that the individual consented to the
49 disclosure of the intimate image which is the subject of an action under this chapter or that the individual lacked a
50 reasonable expectation of privacy:

51 (1) Consent to creation of the image.

52 (2) Previous consensual disclosure of the image.

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

56 § 7804. Exceptions to liability.

57 (a) In this section:

58 (1) “Child” means an unemancipated individual who is less than 18 years of age.

59 (2) “Parent” means an individual recognized as a parent under law of this State other than this chapter.

60 (b) A person is not liable under this chapter if the person proves that disclosure of, or a threat to disclose, an
61 intimate image meets any of the following:

62 (1) Made in good faith in any of the following:

63 a. Law enforcement.

64 b. A legal proceeding.

65 c. Medical education or treatment.

66 (2) Made in good faith in the reporting or investigation of 1 or more of the following:

67 a. Unlawful conduct.

68 b. Unsolicited and unwelcome conduct.

69 (3) Related to a matter of public concern or public interest.

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

71 (c) Subject to subsection (d) of this section, a defendant who is a parent or guardian of a child is not liable under
72 this chapter for a disclosure or threatened disclosure of an intimate image, as defined under § 7802(7)a. of this title, of the
73 child.

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

76 (1) Prohibited by law other than this chapter.

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

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

81 § 7805. Plaintiff's privacy.

82 In an action under this chapter:

83 (1) The court may exclude or redact from all pleadings and documents filed in the action other identifying
84 characteristics of the plaintiff.

85 (2) A plaintiff to whom paragraph (1) of this section applies shall file with the court and serve on the
86 defendant a confidential information form that includes the excluded or redacted plaintiff's name and other identifying
87 characteristics.

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

89 § 7806. Remedies.

90 (a) In an action under this chapter, a prevailing plaintiff may recover all of the following:

91 (1) The greater of either of the following:

92 a. Economic and noneconomic damages proximately caused by the defendant's disclosure or threatened
93 disclosure, including damages for emotional distress whether or not accompanied by other damages.

94 b. Statutory damages not to exceed \$10,000 against each defendant found liable under this chapter for all
95 disclosures and threatened disclosures by the defendant of which the plaintiff knew or reasonably should have
96 known when filing the action or which became known during the pendency of the action. In determining the
97 amount of statutory damages under paragraph (a)(1)b. of this section, consideration must be given to the age of the
98 parties at the time of the disclosure or threatened disclosure, the number of disclosures or threatened disclosures
99 made by the defendant, the breadth of distribution of the image by the defendant, and other exacerbating or
100 mitigating factors.

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

102 (3) Punitive damages.

103 (b) In an action under this chapter, the court may award a prevailing plaintiff any of the following:

104 (1) Reasonable attorney's fees and costs.

105 (2) Additional relief, including injunctive relief.

106 (c) This chapter does not affect a right or remedy available under law of this State other than this chapter.

107 § 7807. Statute of Limitations.
108 (a) An action under § 7803(b) of this title for:
109 (1) An unauthorized disclosure may not be brought later than 4 years from the date the disclosure was
110 discovered or should have been discovered with the exercise of reasonable diligence.
111 (2) A threat to disclose may not be brought later than 4 years from the date of the threat to disclose.
112 (b) In an action under § 7803(b) of this title by a depicted individual who was a minor on the date of the disclosure
113 or threat to disclose, the time specified in subsection (a) of this section does not begin to run until the depicted individual
114 attained 18 years of age.
115 § 7808. Construction.
116 (a) This chapter must be construed to be consistent with the Communications Decency Act of 1996, 47 U.S.C.
117 Section 230.
118 (b) This chapter may not be construed to alter the law of this State on sovereign immunity.
119 § 7809. Uniformity of Application and Construction.
120 In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the
121 law with respect to its subject matter among states that enact it.

SYNOPSIS

This Act adopts the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act. This Act addresses an increasingly common form of abuse that can cause severe and often irreversible harm: the disclosure of private, sexually explicit images without consent. Much of the abuse is carried out electronically through internet websites, social media, email, or text messages, making it an interstate problem that is particularly suited for treatment by uniform state laws. This Act provides a uniform, comprehensive, clear, fair, and constitutionally sound definition of this harmful conduct and remedies for the harm it causes.

Some intimate images disclosed without consent were originally created with consent or obtained within a confidential relationship. In other cases, the images were originally created or obtained without consent through surreptitious recording devices or other forms of voyeurism, or through theft, computer hacking, coercion, bribery, fraud, or force.

Like many existing privacy laws, this Act applies only to sensitive content created or obtained under circumstances in which the individual had a reasonable expectation of privacy. Also similar to existing privacy laws, the Act includes limited exceptions for certain disclosures, including those made in the course of law enforcement, legal proceedings or education, medical treatment, or investigations of misconduct. This Act also includes an exception for disclosures relating to matters of public concern or public interest and disclosures reasonably intended to assist the victim. The Act further notes federal statutory limitations on the liability of providers and users of interactive computer services. The Act is narrowly drafted to avoid imposing liability on a discloser who lacks the requisite awareness of any of these elements: (1) that the image was created or obtained under circumstances in which the individual had a reasonable expectation of privacy or that the image was obtained through theft, bribery, false pretenses, voyeurism, or other wrongful acts, (2) that the individual shown in the image did not consent to the disclosure, or (3) that the individual shown was identifiable.

Author: Senator Hansen