



SPONSOR: Sen. Hansen & Rep. Griffith & Rep. Bennett &
Rep. Dorsey Walker
Sens. Brown, Cloutier, Delcollo, Ennis, Hocker, Lawson,
Lockman, Lopez, McBride, McDowell, Paradee,
Pettyjohn, Poore, Richardson, Sokola, Sturgeon,
Townsend, Walsh, Wilson; Reps. Brady, Briggs King,
Osienski, Michael Smith

DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL NO. 169
AS AMENDED BY
SENATE AMENDMENT NO. 1

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:

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

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

§ 7801. Short title.

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

§ 7802. Definitions.

For purposes of this chapter:

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

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

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

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

a. An intimate image itself.

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

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

(6) “Individual” means a human being.

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

- a. The uncovered genitals, pubic area, anus, or female post-pubescent nipple of a depicted individual.
- b. A depicted individual engaging in or being subjected to sexual conduct.

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

(9) "Sexual conduct" includes any of the following:

- a. Masturbation.
- b. Genital, anal, or oral sex.
- c. Sexual penetration of, or with, an object.
- d. Bestiality.
- e. The transfer of semen onto a depicted individual.

§ 7803. Civil action.

(a) In this section:

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

(2) "Private" means 1 or more of the following:

- a. Created or obtained under circumstances in which a depicted individual had a reasonable expectation of privacy.
- b. Made accessible through theft, bribery, extortion, fraud, false pretenses, sexual exploitation of a minor, violation of privacy, or computer-related offenses.

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

- (1) The depicted individual did not consent to the disclosure.
- (2) The intimate image was private.
- (3) The depicted individual was identifiable.

(c) 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 chapter or that the individual lacked a reasonable expectation of privacy:

(1) Consent to creation of the image.

(2) Previous consensual disclosure of the image.

(d) 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.

§ 7804. Exceptions to liability.

(a) In this section:

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

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

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

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

a. Law enforcement.

b. A legal proceeding.

c. Medical education or treatment.

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

a. Unlawful conduct.

b. Unsolicited and unwelcome conduct.

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

(4) Reasonably intended to assist the depicted individual.

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

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

(1) Prohibited by law other than this chapter.

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

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

§ 7805. Plaintiff's privacy.

In an action under this chapter:

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

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

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

§ 7806. Remedies.

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

(1) The greater of either of the following:

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

b. Statutory damages not to exceed \$10,000 against each defendant found liable under this chapter for all disclosures and threatened 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. In determining the amount of statutory damages under paragraph (a)(1)b. of this section, consideration must be given to the age of the parties at the time of the 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.

(3) Punitive damages.

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

(1) Reasonable attorney's fees and costs.

(2) Additional relief, including injunctive relief.

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

§ 7807. Statute of Limitations.

(a) An action under § 7803(b) of this title for:

(1) An unauthorized disclosure may not be brought later than 4 years from the date the disclosure was discovered or should have been discovered with the exercise of reasonable diligence.

(2) A threat to disclose may not be brought later than 4 years from the date of the threat to disclose.

(b) In an action under § 7803(b) of this title by a depicted individual who was a minor on the date of the disclosure or threat to disclose, the time specified in subsection (a) of this section does not begin to run until the depicted individual attained 18 years of age.

§ 7808. Construction.

(a)(1) This chapter must be construed to be consistent with the Communications Decency Act of 1996, 47 U.S.C. Section 230.

(2) Nothing in this chapter may be construed to impose liability on an interactive computer service, as defined in the Communications Decency Act of 1996, 47 U.S.C. Section 230(f)(2), for content provided by another person.

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

§ 7809. Uniformity of Application and Construction.

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