Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

HOUSE BILL 1645

By: Representative Dalby
By: Senator B. Ballinger

For An Act To Be Entitled

AN ACT TO ADOPT THE UNIFORM CIVIL REMEDIES FOR UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES ACT; AND FOR OTHER PURPOSES.

Subtitle

TO ADOPT THE UNIFORM CIVIL REMEDIES FOR UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES ACT.

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

SECTION 1. Arkansas Code Title 16, is amended to add an additional chapter to read as follows:

Chapter 129

Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act

16-129-101. Short title.

This chapter may be cited as the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act.

16-129-102. Definitions.

In 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:

(A) from an intimate image itself; or

(B) from 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:

(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.

(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:

(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.

16-129-103. 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:

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

(B) made accessible through an unlawful act.

(b) Except as otherwise provided in § 16-129-104, a depicted individual who is identifiable and who suffers harm from a person's

intentional 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 whether:

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

(2) the intimate image was private; and

(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; or

(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.

16-129-104. 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 an intimate image was:

(1) made in good faith in:

(A) law enforcement;

(B) a legal proceeding; or

(C) medical education or treatment;

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

(A) unlawful conduct; or

(B) unsolicited and unwelcome conduct;

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

(4) reasonably intended to assist the depicted individual.

(c) Subject to subsection (d), a defendant who is a parent, legal guardian, or individual with legal custody of a child is not liable under

this chapter for a disclosure of an intimate image, as defined in § 16-129-102(7)(A), of the child.

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

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

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

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

16-129-105. Plaintiff's privacy.

In an action under this chapter, a plaintiff may proceed using a pseudonym in place of the true name of the plaintiff under applicable state law or court rules.

16-129-106. Remedies.

(a) In an action under this chapter, a prevailing plaintiff 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 $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. In determining the amount of statutory damages under subsection (a)(1)(B), consideration must be given to the age of the parties at the time of the disclosure, the number of 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.

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

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

(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.

16-129-107. Statute of limitations.

(a) An action under 16-129-103(b) for an unauthorized disclosure may not be brought later than four years from the date the disclosure was discovered or should have been discovered with the exercise of reasonable diligence.

(b) Except as otherwise provided in subsection (c), this section is subject to the tolling statutes of this state.

(c) In an action under 16-129-103(b) by a depicted individual who was a minor on the date of the disclosure, the time specified in subsection (a) does not begin to run until the depicted individual attains the age of majority.

16-129-108. Construction.

(a) This chapter must be construed to be consistent with the Communications Decency Act of 1996, 47 U.S.C. Section 230, as it existed on January 1, 2021.

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

16-129-109. 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.