HOUSE FILE 233
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 31)

(As Amended and Passed by the House February 8, 2021)

[= New Language by the House

* = Language Stricken by the House

A BILL FOR

An Act creating a civil remedy for the disclosure of private, sexually explicit images without consent of the depicted individual.

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

Section 1. NEW SECTION. **659A.1 Short title.**

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

Sec. 2. NEW SECTION. **659A.2 Definitions.**

As used in this chapter, unless the context otherwise requires:

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 any 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 all of the following:

a. Masturbation[, which means the same as "*masturbate*" as defined in section 709.9, subsection 2, paragraph "*c*".]

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.

Sec. 3. NEW SECTION. **659A.3 Civil action.**

1. As used in this section, unless the context otherwise requires:

a. *"Harm"* includes physical harm, economic harm, and emotional distress whether or not accompanied by physical or economic harm.

b. *"Private"* means any of the following:

(1) Created or obtained under circumstances in which a depicted individual had a reasonable expectation of privacy.

(2) Made accessible through theft, bribery, extortion, fraud, false pretenses, voyeurism, or exceeding authorized access to an account, message, file, device, resource, or property.

2. Except as otherwise provided in section 659A.4, 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 regarding, all of the following:

a. The depicted individual did not consent to the disclosure.

b. The intimate image was private.

c. The depicted individual was identifiable.

3. 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:

a. Consent to creation of the image.

b. Previous consensual disclosure of the image.

4. 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.

Sec. 4. NEW SECTION. **659A.4 Exceptions to liability.**

1. As used in this section, unless the context otherwise requires:

a. "Child" means an unemancipated individual who is less than eighteen years of age.

b. "Parent" means an individual recognized as a parent under law of this state other than this chapter.

2. A person is not liable under this chapter if the person proves that disclosure of, or a threat to disclose, an intimate image was any of the following:

a. Made in good faith in any of the following circumstances:

(1) Law enforcement.

(2) A legal proceeding.

(3) Medical education or treatment.

b. Made in good faith in the reporting or investigation of any of the following:

(1) Unlawful conduct.

(2) Unsolicited and unwelcome conduct.

c. Related to a matter of public concern or public interest.

d. Reasonably intended to assist the depicted individual.

3. Subject to subsection 4, a defendant who is a person responsible for the care of a child as defined in section 232.68 is not liable under this chapter for a disclosure or threatened disclosure of an intimate image, as defined in section 659A.2, subsection 7, paragraph *"a"*, of the child.

4. If a defendant asserts an exception to liability under subsection 3, the exception does not apply if the plaintiff proves the disclosure was any of the following:

a. Prohibited by law other than this chapter.

b. Made for the purpose of sexual arousal, sexual

gratification, humiliation, degradation, or monetary or commercial gain.

5. 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.

Sec. 5. NEW SECTION. **659A.5 Plaintiff's privacy.**

In an action under this chapter all of the following are true:

* [1. Identifying characteristics of the plaintiff shall be redacted from all pleadings and documents filed in the action under rule of civil procedure 1.422, without court order.

2. A plaintiff to whom subsection 1 applies shall file with the court and serve on the defendant a protected information form, pursuant to rule of electronic procedure 16.606, 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.

Sec. 6. NEW SECTION. **659A.6 Remedies.**

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

a. The greater of the following:

(1) 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.

(2) Statutory damages not to exceed ten thousand dollars 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 this subparagraph, consideration shall be given to all of the following:

(a) The age of the parties at the time of the disclosure or

threatened disclosure.

(b) The number of disclosures or threatened disclosures made by the defendant.

(c) The breadth of distribution of the image by the defendant.

(d) Other exacerbating or mitigating factors.

b. An amount equal to any monetary gain made by the defendant from disclosure of the intimate image.

c. Punitive damages as allowed under chapter 668A.

2. In an action under this chapter, the court may award a prevailing plaintiff all of the following:

a. Reasonable attorney fees and costs.

b. Additional relief, including injunctive relief.

3. This chapter does not affect a right or remedy available under law of this state other than this chapter.

Sec. 7. NEW SECTION. **659A.7 Statute of limitations.**

1. An action under section 659A.3, subsection 2, for:

a. An unauthorized disclosure shall 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. A threat to disclose shall not be brought later than four years from the date of the threat to disclose.

2. This section is subject to section 614.8.

Sec. 8. NEW SECTION. **659A.8 Construction.**

This chapter shall be construed to be consistent with the Communications Decency Act of 1996, 47 U.S.C. §230.

Sec. 9. NEW SECTION. **659A.9 Uniformity of application and construction.**

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

Sec. 10. Section 614.8, subsection 2, Code 2021, is amended to read as follows:

2. Except as provided in section 614.1, subsection 9, the

times limited for actions in this chapter, or chapter 216, 659A, 669, or 670, except those brought for penalties and forfeitures, are extended in favor of minors, so that they shall have one year from and after attainment of majority within which to file a complaint pursuant to chapter 216, to make a claim pursuant to chapter 669, or to otherwise commence an action.