

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 406

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO THE UNIFORM CIVIL REMEDIES FOR UNAUTHORIZED DISCLOSURE OF IN-  
2 TIMATE IMAGES ACT; AMENDING TITLE 6, IDAHO CODE, BY THE ADDITION OF A  
3 NEW CHAPTER 35, TITLE 6, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DE-  
4 FINE TERMS, TO PROVIDE FOR A CIVIL ACTION, TO PROVIDE EXCEPTIONS TO LI-  
5 ABILITY, TO PROVIDE FOR A PLAINTIFF'S PRIVACY, TO PROVIDE FOR REMEDIES,  
6 TO PROVIDE A STATUTE OF LIMITATIONS, TO PROVIDE FOR STATUTORY CONSTRUC-  
7 TION, TO PROVIDE FOR UNIFORMITY OF APPLICATION AND CONSTRUCTION, AND TO  
8 PROVIDE SEVERABILITY.  
9

10 Be It Enacted by the Legislature of the State of Idaho:

11 SECTION 1. That Title 6, Idaho Code, be, and the same is hereby amended  
12 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
13 ter 35, Title 6, Idaho Code, and to read as follows:

14 CHAPTER 35

15 UNIFORM CIVIL REMEDIES FOR UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES ACT

16 6-3501. SHORT TITLE. This chapter shall be known and may be cited as  
17 the "Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images  
18 Act."

19 6-3502. DEFINITIONS. As used in this chapter:

20 (1) "Consent" means affirmative, conscious, and voluntary authoriza-  
21 tion by an individual with legal capacity to give authorization.

22 (2) "Depicted individual" means an individual whose body is shown in  
23 whole or in part in an intimate image.

24 (3) "Disclosure" means transfer, publication, or distribution to an-  
25 other person. "Disclose" has a corresponding meaning.

26 (4) "Identifiable" means recognizable by a person other than the de-  
27 picted individual:

28 (a) From an intimate image itself; or

29 (b) From an intimate image and identifying characteristic displayed in  
30 connection with the intimate image.

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

33 (6) "Individual" means a human being.

34 (7) "Intimate image" means a photograph, film, video recording, or  
35 other similar medium that shows:

36 (a) The uncovered genitals, pubic area, anus, or female postpubescent  
37 nipple of a depicted individual; or

38 (b) A depicted individual engaging in or being subjected to sexual con-  
39 duct.

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

4 (9) "Sexual conduct" includes:

- 5 (a) Masturbation;  
6 (b) Genital, anal, or oral sex;  
7 (c) Sexual penetration of, or with, an object;  
8 (d) Bestiality; or  
9 (e) The transfer of semen onto a depicted individual.

10 6-3503. CIVIL ACTION. (1) As used in this section:

11 (a) "Harm" includes physical harm, economic harm, and emotional dis-  
12 tress whether or not accompanied by physical or economic harm.

13 (b) "Private" means:

- 14 (i) Created or obtained under circumstances in which a depicted  
15 individual had a reasonable expectation of privacy; or  
16 (ii) Made accessible through theft, bribery, extortion, fraud,  
17 false pretenses, voyeurism, or exceeding authorized access to an  
18 account, message, file, device, resource, or property.

19 (2) Except as otherwise provided in section 6-3504, Idaho Code, a de-  
20 picted individual who is identifiable and who suffers harm from a person's  
21 intentional disclosure or threatened disclosure of an intimate image that  
22 was private without the depicted individual's consent has a cause of action  
23 against the person if the person knew or acted with reckless disregard for  
24 whether:

- 25 (a) The depicted individual did not consent to the disclosure;  
26 (b) The intimate image was private; and  
27 (c) The depicted individual was identifiable.

28 (3) The following conduct by a depicted individual does not establish  
29 by itself that the individual consented to the disclosure of the intimate im-  
30 age that is the subject of an action under this chapter or that the individual  
31 lacked a reasonable expectation of privacy:

- 32 (a) Consent to creation of the image; or  
33 (b) Previous consensual disclosure of the image.

34 (4) A depicted individual who does not consent to the sexual conduct or  
35 uncovering of the part of the body depicted in an intimate image of the indi-  
36 vidual retains a reasonable expectation of privacy even if the image was cre-  
37 ated when the individual was in a public place.

38 6-3504. EXCEPTIONS TO LIABILITY. (1) As used in this section:

39 (a) "Child" means an unemancipated individual who is less than eighteen  
40 (18) years of age.

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

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

- 45 (a) Made in good faith in:  
46 (i) Law enforcement;  
47 (ii) A legal proceeding; or  
48 (iii) Medical education or treatment;

- 1 (b) Made in good faith in the reporting or investigation of:  
 2 (i) Unlawful conduct; or  
 3 (ii) Unsolicited and unwelcome conduct;  
 4 (c) Related to a matter of public concern or public interest; or  
 5 (d) Reasonably intended to assist the depicted individual.  
 6 (3) Subject to subsection (4) of this section, a defendant who is a par-  
 7 ent, legal guardian, or individual with legal custody of a child is not li-  
 8 able under this chapter for a disclosure or threatened disclosure of an inti-  
 9 mate image, as defined in section 6-3502, Idaho Code, of the child.  
 10 (4) If a defendant asserts an exception to liability under subsection  
 11 (3) of this section, the exception does not apply if the plaintiff proves the  
 12 disclosure was:  
 13 (a) Prohibited by law other than this chapter; or  
 14 (b) Made for the purpose of sexual arousal, sexual gratification, hu-  
 15 miliation, degradation, or monetary or commercial gain.  
 16 (5) Disclosure of, or a threat to disclose, an intimate image is not a  
 17 matter of public concern or public interest solely because the depicted in-  
 18 dividual is a public figure.

- 19 6-3505. PLAINTIFF'S PRIVACY. In an action under this chapter:  
 20 (1) The court may exclude or redact from all pleadings and documents  
 21 filed in the action other identifying characteristics of the plaintiff pur-  
 22 suant to Idaho court rules;  
 23 (2) A plaintiff to whom subsection (1) of this section applies shall  
 24 file with the court and serve on the defendant a confidential information  
 25 form that includes the excluded or redacted plaintiff's name and other iden-  
 26 tifying characteristics; and  
 27 (3) The court may make further orders as necessary to protect the iden-  
 28 tity and privacy of a plaintiff.

- 29 6-3506. REMEDIES. (1) In an action under this chapter, a prevailing  
 30 plaintiff may recover:  
 31 (a) The greater of:  
 32 (i) Economic and noneconomic damages proximately caused by the  
 33 defendant's disclosure or threatened disclosure, including dam-  
 34 ages for emotional distress whether or not accompanied by other  
 35 damages; or  
 36 (ii) Statutory damages not to exceed ten thousand dollars  
 37 (\$10,000) against each defendant found liable under this chapter  
 38 for all disclosures and threatened disclosures by the defendant  
 39 of which the plaintiff knew or reasonably should have known when  
 40 filing the action or that became known during the pendency of the  
 41 action. In determining the amount of statutory damages under this  
 42 subparagraph, consideration must be given to the age of the par-  
 43 ties at the time of the disclosure or threatened disclosure, the  
 44 number of disclosures or threatened disclosures made by the defen-  
 45 dant, the breadth of distribution of the image by the defendant,  
 46 and other exacerbating or mitigating factors;  
 47 (b) An amount equal to any monetary gain made by the defendant from dis-  
 48 closure of the intimate image; and

1 (c) Punitive damages as allowed under law of this state other than this  
2 chapter.

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

5 (a) Reasonable attorney's fees and costs; and

6 (b) Additional relief, including injunctive relief.

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

9 6-3507. STATUTE OF LIMITATIONS. (1) An action under section 6-3503,  
10 Idaho Code, for:

11 (a) An unauthorized disclosure may not be brought later than four (4)  
12 years from the date the disclosure was discovered or should have been  
13 discovered with the exercise of reasonable diligence; and

14 (b) A threat to disclose may not be brought later than four (4) years  
15 from the date of the threat to disclose.

16 (2) Except as otherwise provided in subsection (3) of this section,  
17 this section is subject to the tolling statutes of this state.

18 (3) In an action under section 6-3503, Idaho Code, by a depicted indi-  
19 vidual who was a minor on the date of the disclosure or threat to disclose,  
20 the time specified in subsection (1) of this section does not begin to run un-  
21 til the depicted individual attains the age of majority.

22 6-3508. CONSTRUCTION. (1) This chapter must be construed to be consis-  
23 tent with the communications decency act of 1996, 47 U.S.C. 230.

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

26 6-3509. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and  
27 construing this uniform act, consideration must be given to the need to pro-  
28 mote uniformity of the law with respect to its subject matter among states  
29 that enact it.

30 6-3510. SEVERABILITY. If any provision of this chapter or its applica-  
31 tion to any person or circumstance is held invalid, the invalidity does not  
32 affect other provisions or applications of this chapter that can be given ef-  
33 fect without the invalid provision or application, and to this end the provi-  
34 sions of this chapter are severable.