

SECOND REGULAR SESSION

HOUSE BILL NO. 2728

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PARKER.

5765H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 537, RSMo, by adding thereto nine new sections relating to civil remedies for unauthorized disclosure of intimate images.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 537, RSMo, is amended by adding thereto nine new sections, to
2 be known as sections 537.1300, 537.1302, 537.1304, 537.1306, 537.1308, 537.1310,
3 537.1312, 537.1314, and 537.1316, to read as follows:

537.1300. Sections 537.1300 to 537.1316 shall be known and may be cited as the
2 **"Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act".**

537.1302. As used in sections 537.1300 to 537.1316:

2 **(1) "Consent" means affirmative, conscious, and voluntary authorization by an**
3 **individual with legal capacity to give authorization;**

4 **(2) "Depicted individual" means an individual whose body is shown in whole or**
5 **in part in an intimate image;**

6 **(3) "Disclosure" means transfer, publication, or distribution to another person.**
7 **"Disclose" has a corresponding meaning;**

8 **(4) "Identifiable" means recognizable by a person other than the depicted**
9 **individual:**

10 **(a) From an intimate image itself; or**

11 **(b) From an intimate image and identifying characteristic displayed in**
12 **connection with the intimate image;**

13 **(5) "Identifying characteristic" means information that may be used to identify**
14 **a depicted individual;**

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 (6) "Individual" means a human being;

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

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

20 (b) A depicted individual engaging in or being subjected to sexual conduct;

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

24 (9) "Sexual conduct" includes:

25 (a) Masturbation;

26 (b) Genital, anal, or oral sex;

27 (c) Sexual penetration of, or with, an object;

28 (d) Bestiality; or

29 (e) The transfer of semen onto a depicted individual.

537.1304. 1. In this section:

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

4 (2) "Private" means:

5 (a) Created or obtained under circumstances in which a depicted individual had
6 a reasonable expectation of privacy; or

7 (b) Made accessible through stealing, bribery, extortion, fraud, false pretenses,
8 or exceeding authorized access to an account, message, file, device, resource, or
9 property.

10 2. Except as otherwise provided in 537.1306, a depicted individual who is
11 identifiable and who suffers harm from a person's intentional disclosure or threatened
12 disclosure of an intimate image that was private without the depicted individual's
13 consent has a cause of action against the person if the person knew or acted with
14 reckless disregard for whether:

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

16 (2) The intimate image was private; and

17 (3) The depicted individual was identifiable.

18 3. The following conduct by a depicted individual does not establish by itself that
19 the individual consented to the disclosure of the intimate image that is the subject of an
20 action under sections 537.1300 to 537.1316 or that the individual lacked a reasonable
21 expectation of privacy:

22 (1) Consent to creation of the image; or

23 (2) Previous consensual disclosure of the image.

24 4. A depicted individual who does not consent to the sexual conduct or
25 uncovering of the part of the body depicted in an intimate image of the individual
26 retains a reasonable expectation of privacy even if the image was created when the
27 individual was in a public place.

537.1306. 1. In this section:

2 (1) "Child" means an unemancipated individual who is under eighteen years of
3 age;

4 (2) "Parent" means an individual recognized as a parent under law of this state
5 other than in sections 537.1300 to 537.1316.

6 2. A person is not liable under sections 537.1300 to 537.1316 if the person proves
7 that disclosure of, or a threat to disclose, an intimate image was:

8 (1) Made in good faith in:

9 (a) Law enforcement;

10 (b) A legal proceeding; or

11 (c) Medical education or treatment;

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

13 (a) Unlawful conduct; or

14 (b) Unsolicited and unwelcome conduct;

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

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

17 3. Subject to subsection 4 of this section, a defendant who is a parent, legal
18 guardian, or individual with legal custody of a child is not liable under sections 537.1300
19 to 537.1316 for a disclosure or threatened disclosure of an intimate image of the child.

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

22 (1) Prohibited by law other than in sections 537.1300 to 537.1316; or

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

25 5. Disclosure of, or a threat to disclose, an intimate image is not a matter of
26 public concern or public interest solely because the depicted individual is a public
27 figure.

537.1308. In an action under sections 537.1300 to 537.1316:

2 (1) A plaintiff may proceed using a pseudonym in place of the true name of the
3 plaintiff;

4 (2) The court may exclude or redact from all pleadings and documents filed in
5 the action other identifying characteristics of the plaintiff;

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

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

537.1310. 1. In an action under sections 537.1300 to 537.1316, a prevailing
2 **plaintiff may recover:**

3 **(1) The greater of:**

4 **(a) Economic and noneconomic damages proximately caused by the defendant's**
5 **disclosure or threatened disclosure, including damages for emotional distress whether**
6 **or not accompanied by other damages; or**

7 **(b) Statutory damages not to exceed ten thousand dollars against each defendant**
8 **found liable under sections 537.1300 to 537.1316 for all disclosures and threatened**
9 **disclosures by the defendant of which the plaintiff knew or reasonably should have**
10 **known when filing the action or which became known during the pendency of the**
11 **action. In determining the amount of statutory damages under this paragraph,**
12 **consideration must be given to the age of the parties at the time of the disclosure or**
13 **threatened disclosure, the number of disclosures or threatened disclosures made by the**
14 **defendant, the breadth of distribution of the image by the defendant, and other**
15 **exacerbating or mitigating factors;**

16 **(2) An amount equal to any monetary gain made by the defendant from**
17 **disclosure of the intimate image; and**

18 **(3) Punitive damages as allowed under law of this state other than under sections**
19 **537.1300 to 537.1316.**

20 **2. In an action under sections 537.1300 to 537.1316, the court may award a**
21 **prevailing plaintiff:**

22 **(1) Reasonable attorney's fees and costs; and**

23 **(2) Additional relief, including injunctive relief.**

24 **3. Sections 537.1300 to 537.1316 do not affect a right or remedy available under**
25 **law of this state other than under sections 537.1300 to 537.1316.**

537.1312. 1. An action under subsection 2 of section 537.1304 for:

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

5 **(2) A threat to disclose may not be brought later than four years from the date of**
6 **the threat to disclose.**

7 **2. Except as otherwise provided in subsection 3 of this section, this section is**
8 **subject to the tolling statutes of this state.**

9 **3. In an action under subsection 2 of section 537.1304 by a depicted individual**
10 **who was a minor on the date of the disclosure or threat to disclose, the time specified in**
11 **subsection 1 of this section does not begin to run until the depicted individual attains the**
12 **age of majority.**

537.1314. Sections 537.1300 to 537.1316 must be construed to be consistent with
2 **the Communications Decency Act of 1996, 47 U.S.C. Section 230.**

537.1316. In applying and construing sections 537.1300 to 537.1316,
2 **consideration must be given to the need to promote uniformity of the law with**
3 **respect to its subject matter among states that enact it.**

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