



ARIZONA STATE SENATE
Fifty-Fifth Legislature, Second Regular Session

FACT SHEET FOR S.B. 1624

unauthorized disclosure; intimate images; remedies

Purpose

Outlines when a person is civilly liable for intentionally disclosing or threatening to disclose an intimate image and what a prevailing plaintiff may recover after an instance of disclosure or threatened disclosure. Establishes a four-year statute of limitations from the threat to disclose, actual disclosure or reasonable discovery of disclosure with exceptions for minors.

Background

It is unlawful to intentionally disclose an image of another person who is identifiable from the image itself or from information displayed in connection with the image if: 1) the person in the image is depicted in a state of nudity or is engaged in specific sexual activities; 2) the depicted person has a reasonable expectation of privacy; or 3) the image is disclosed with the intent to harm, harass, intimidate, threaten or coerce the depicted person. Evidence that a person has sent an image to another person using an electronic device does not, on its own, remove the person's reasonable expectation of privacy for that image. Unlawful distribution of images is classified as a class 5 felony unless the image is disclosed by electronic means, which is classified as a class 4 felony, or a person threatens to disclose but does not disclose an image that if disclosed would be a violation, which is classified as a class 1 misdemeanor ([A.R.S. § 13-1425](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

Liability and Liability Exclusions

1. States that a person is liable in a civil action, if the depicted individual suffers harm from the disclosure or threatened disclosure, for intentionally disclosing or threatening to disclose an intimate image of another individual if the person knew or should have known:
 - a) the depicted individual did not consent to the disclosure;
 - b) the intimate image was private; and
 - c) the depicted individual is identifiable from the image itself or from information that is displayed in connection with the image.
2. States that consent to the disclosure of an intimate image or that the depicted individual lacked a reasonable expectation of privacy is not established by evidence that the depicted individual:
 - a) consented to the creation of the image; or
 - b) previously consented to the disclosure of the image.

3. States that a depicted individual retains a reasonable expectation of privacy, even if the image was created when the depicted individual was in a public place, if the depicted individual does not consent to the specific sexual activities or state of nudity depicted in an intimate image.
4. Excludes from liability a person who proves that disclosing or threatening to disclose the intimate image was:
 - a) made in good faith in law enforcement;
 - b) made in good faith in a legal proceeding;
 - c) made in good faith in medical education or treatment;
 - d) made in good faith in reporting or investigating unlawful conduct;
 - e) made in good faith in reporting or investigating unsolicited and unwelcome conduct;
 - f) related to a matter of public concern or public interest;
 - g) reasonably intended to assist the depicted individual; or
 - h) made by a parent, legal guardian or individual with legal custody of a child and the depicted individual is the child unless the image is disclosed with the intent to harm the depicted individual.
5. Maintains liability for when the plaintiff proves the disclosure was prohibited by law or made for the purpose of sexual arousal, sexual gratification, humiliation, degradation or monetary or commercial gain.
6. Stipulates that, in the instance the depicted individual is a public figure, disclosing or threatening to disclose an intimate image is not a matter of public concern or public interest.
7. Allows the court, if the plaintiff files with the court and serves on the defendant a confidential information form that includes the excluded or redacted plaintiff's name and other identifying characteristics, to exclude or redact from all pleadings and documents filed in the action other identifying characteristics of the plaintiff and make further orders as necessary to protect the identity and privacy of a plaintiff.

Recovering Damages

8. Allows a prevailing plaintiff to recover the greater of:
 - a) economic and noneconomic damages that are proximately caused by the defendant's disclosure or threatened disclosure, including damages for emotional distress whether or not accompanied by other damages; or
 - b) statutory damages of not more than \$10,000 against each defendant found liable for all of the defendant's disclosures and threatened disclosures that the plaintiff knew or reasonably should have known when filing the action or that became known during the pendency of the action.
9. Allows a prevailing plaintiff, in addition to economic or statutory damages, to recover:
 - a) an amount equal to any monetary gain made by the defendant from disclosing or threatening to disclose the intimate image;
 - b) punitive damages;
 - c) reasonable attorney fees and costs; and
 - d) additional relief, including injunctive relief.

10. States that, in determining the amount of statutory damages, consideration must be given to:
- 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; and
 - d) other exacerbating or mitigating factors.

Statute of Limitations

11. Prohibits a civil action from being brought later than four years after the date that:
- a) an unauthorized disclosure was discovered or should have been discovered with the exercise of reasonable diligence; or
 - b) a threat to disclose occurred.
12. Stipulates that the statute of limitations, in a civil action brought by a depicted individual who was a minor on the date of the disclosure or threat to disclose, does not begin until the depicted individual attains the age of majority.

Definitions

13. Defines *consent* as affirmative, conscious and voluntary authorization by an individual with legal capacity to give authorization.
14. Defines *depicted individual* as an individual whose body is shown in whole or in part in an intimate image.
15. Defines *disclose* or *disclosure* as displaying, distributing, publishing, advertising or offering.
16. Defines *harm* as physical harm, economic harm and emotional distress whether or not accompanied by physical or economic harm.
17. Defines *intimate image* as a photograph, film, videotape, digital recording or other similar medium that shows a state of nudity or specific sexual activities.
18. Defines *private* as either:
- a) created or obtained under circumstances in which a depicted individual had a reasonable expectation of privacy; or
 - b) made accessible through theft, bribery, extortion, fraud, false pretenses, voyeurism or exceeding authorized access to an account, message, file, device, resource or property.
19. Defines *specific sexual activities* as:
- a) human genitals in a state of sexual stimulation or arousal;
 - b) sex acts, normal or perverted, actual or simulated, including acts of human masturbation, sexual intercourse, oral copulation or sodomy;
 - c) fondling or other erotic touching of the human genitals, pubic region, buttocks, anus or female breast; or
 - d) excretory functions as part of or in connection with any other sexual activity.
20. Defines *state of nudity* as the appearance of a human anus, genitals or a female breast below a point immediately above the top of the areola.

Miscellaneous

21. Becomes effective on the general effective date.

Prepared by Senate Research

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ZD/HW/sr