

REFERENCE TITLE: unauthorized disclosure; intimate images; remedies

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

SB 1624

Introduced by
Senator Mesnard

AN ACT

AMENDING TITLE 12, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING
ARTICLE 14; RELATING TO PROCEEDINGS BROUGHT BY INDIVIDUAL PERSONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 12, chapter 6, Arizona Revised Statutes, is
3 amended by adding article 14, to read:

4 ARTICLE 14. UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES

5 12-741. Unauthorized disclosure of intimate images; civil
6 action; exceptions; confidential information form;
7 remedies; statute of limitation; definitions

8 A. A PERSON IS LIABLE IN A CIVIL ACTION FOR INTENTIONALLY
9 DISCLOSING OR THREATENING TO DISCLOSE AN INTIMATE IMAGE OF ANOTHER
10 INDIVIDUAL IF THE DEPICTED INDIVIDUAL SUFFERS HARM FROM THE DISCLOSURE OR
11 THREATENED DISCLOSURE AND THE PERSON KNEW OR SHOULD HAVE KNOWN ALL OF THE
12 FOLLOWING:

13 1. THE DEPICTED INDIVIDUAL DID NOT CONSENT TO THE DISCLOSURE.

14 2. THE INTIMATE IMAGE WAS PRIVATE.

15 3. THE DEPICTED INDIVIDUAL WAS IDENTIFIABLE FROM THE IMAGE ITSELF
16 OR FROM INFORMATION THAT IS DISPLAYED IN CONNECTION WITH THE IMAGE.

17 B. EVIDENCE THAT THE DEPICTED INDIVIDUAL CONSENTED TO THE CREATION
18 OF THE IMAGE OR THAT THE DEPICTED INDIVIDUAL PREVIOUSLY CONSENTED TO THE
19 DISCLOSURE OF THE IMAGE DOES NOT BY ITSELF ESTABLISH THAT THE DEPICTED
20 INDIVIDUAL CONSENTED TO THE DISCLOSURE OF THE INTIMATE IMAGE OR THAT THE
21 DEPICTED INDIVIDUAL LACKED A REASONABLE EXPECTATION OF PRIVACY.

22 C. A DEPICTED INDIVIDUAL WHO DOES NOT CONSENT TO THE SPECIFIC
23 SEXUAL ACTIVITIES OR STATE OF NUDITY DEPICTED IN AN INTIMATE IMAGE OF THE
24 INDIVIDUAL RETAINS A REASONABLE EXPECTATION OF PRIVACY EVEN IF THE IMAGE
25 WAS CREATED WHEN THE DEPICTED INDIVIDUAL WAS IN A PUBLIC PLACE.

26 D. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, A PERSON IS NOT
27 LIABLE UNDER THIS SECTION IF THE PERSON PROVES THAT DISCLOSING OR
28 THREATENING TO DISCLOSE THE INTIMATE IMAGE WAS ANY OF THE FOLLOWING:

29 1. MADE IN GOOD FAITH IN ANY OF THE FOLLOWING:

30 (a) LAW ENFORCEMENT.

31 (b) A LEGAL PROCEEDING.

32 (c) MEDICAL EDUCATION OR TREATMENT.

33 2. MADE IN GOOD FAITH IN REPORTING OR INVESTIGATING ANY OF THE
34 FOLLOWING:

35 (a) UNLAWFUL CONDUCT.

36 (b) UNSOLICITED AND UNWELCOME CONDUCT.

37 3. RELATED TO A MATTER OF PUBLIC CONCERN OR PUBLIC INTEREST.

38 4. REASONABLY INTENDED TO ASSIST THE DEPICTED INDIVIDUAL.

39 5. MADE BY A PARENT, LEGAL GUARDIAN OR INDIVIDUAL WITH LEGAL
40 CUSTODY OF A CHILD AND THE DEPICTED INDIVIDUAL IS THE CHILD UNLESS THE
41 IMAGE IS DISCLOSED WITH THE INTENT TO HARM THE DEPICTED INDIVIDUAL.

42 E. SUBSECTION D OF THIS SECTION DOES NOT APPLY IF THE PLAINTIFF
43 PROVES THE DISCLOSURE WAS PROHIBITED BY LAW OR MADE FOR THE PURPOSE OF
44 SEXUAL AROUSAL, SEXUAL GRATIFICATION, HUMILIATION, DEGRADATION OR MONETARY
45 OR COMMERCIAL GAIN.

1 F. DISCLOSING OR THREATENING TO DISCLOSE AN INTIMATE IMAGE IS NOT A
2 MATTER OF PUBLIC CONCERN OR PUBLIC INTEREST SOLELY BECAUSE THE DEPICTED
3 INDIVIDUAL IS A PUBLIC FIGURE.

4 G. IF THE PLAINTIFF FILES WITH THE COURT AND SERVES ON THE
5 DEFENDANT A CONFIDENTIAL INFORMATION FORM THAT INCLUDES THE EXCLUDED OR
6 REDACTED PLAINTIFF'S NAME AND OTHER IDENTIFYING CHARACTERISTICS, THE COURT
7 MAY EXCLUDE OR REDACT FROM ALL PLEADINGS AND DOCUMENTS FILED IN THE ACTION
8 OTHER IDENTIFYING CHARACTERISTICS OF THE PLAINTIFF. THE COURT MAY MAKE
9 FURTHER ORDERS AS NECESSARY TO PROTECT THE IDENTITY AND PRIVACY OF A
10 PLAINTIFF.

11 H. THE PREVAILING PLAINTIFF MAY RECOVER:

12 1. THE GREATER OF:

13 (a) ECONOMIC AND NONECONOMIC DAMAGES THAT ARE PROXIMATELY CAUSED BY
14 THE DEFENDANT'S DISCLOSURE OR THREATENED DISCLOSURE, INCLUDING DAMAGES FOR
15 EMOTIONAL DISTRESS WHETHER OR NOT ACCOMPANIED BY OTHER DAMAGES.

16 (b) STATUTORY DAMAGES OF NOT MORE THAN \$10,000 AGAINST EACH
17 DEFENDANT FOUND LIABLE UNDER THIS SECTION FOR ALL OF THE DEFENDANT'S
18 DISCLOSURES AND THREATENED DISCLOSURES THAT THE PLAINTIFF KNEW OR
19 REASONABLY SHOULD HAVE KNOWN WHEN FILING THE ACTION OR THAT BECAME KNOWN
20 DURING THE PENDENCY OF THE ACTION. IN DETERMINING THE AMOUNT OF STATUTORY
21 DAMAGES UNDER THIS SUBDIVISION, CONSIDERATION MUST BE GIVEN TO THE AGE OF
22 THE PARTIES AT THE TIME OF THE DISCLOSURE OR THREATENED DISCLOSURE, THE
23 NUMBER OF DISCLOSURES OR THREATENED DISCLOSURES MADE BY THE DEFENDANT, THE
24 BREADTH OF DISTRIBUTION OF THE IMAGE BY THE DEFENDANT AND OTHER
25 EXACERBATING OR MITIGATING FACTORS.

26 2. AN AMOUNT EQUAL TO ANY MONETARY GAIN MADE BY THE DEFENDANT FROM
27 DISCLOSING OR THREATENING TO DISCLOSE THE INTIMATE IMAGE.

28 3. PUNITIVE DAMAGES.

29 4. REASONABLE ATTORNEY FEES AND COSTS.

30 5. ADDITIONAL RELIEF, INCLUDING INJUNCTIVE RELIEF.

31 I. A CIVIL ACTION FOR AN UNAUTHORIZED DISCLOSURE MAY NOT BE BROUGHT
32 LATER THAN FOUR YEARS AFTER THE DATE THAT THE DISCLOSURE WAS DISCOVERED OR
33 SHOULD HAVE BEEN DISCOVERED WITH THE EXERCISE OF REASONABLE DILIGENCE
34 EXCEPT THAT A THREAT TO DISCLOSE MAY NOT BE BROUGHT LATER THAN FOUR YEARS
35 AFTER THE DATE OF THE THREAT TO DISCLOSE.

36 J. IN A CIVIL ACTION BROUGHT BY A DEPICTED INDIVIDUAL WHO WAS A
37 MINOR ON THE DATE OF THE DISCLOSURE OR THREAT TO DISCLOSE, THE TIME
38 SPECIFIED IN SUBSECTION I OF THIS SECTION DOES NOT BEGIN TO RUN UNTIL THE
39 DEPICTED INDIVIDUAL ATTAINS THE AGE OF MAJORITY.

40 K. FOR THE PURPOSES OF THIS SECTION:

41 1. "CONSENT" MEANS AFFIRMATIVE, CONSCIOUS AND VOLUNTARY
42 AUTHORIZATION BY AN INDIVIDUAL WITH LEGAL CAPACITY TO GIVE AUTHORIZATION.

43 2. "DEPICTED INDIVIDUAL" MEANS AN INDIVIDUAL WHOSE BODY IS SHOWN IN
44 WHOLE OR IN PART IN AN INTIMATE IMAGE.

1 3. "DISCLOSE" OR "DISCLOSURE" MEANS TO DISPLAY, DISTRIBUTE,
2 PUBLISH, ADVERTISE OR OFFER.

3 4. "HARM" INCLUDES PHYSICAL HARM, ECONOMIC HARM AND EMOTIONAL
4 DISTRESS WHETHER OR NOT ACCOMPANIED BY PHYSICAL OR ECONOMIC HARM.

5 5. "INTIMATE IMAGE" MEANS A PHOTOGRAPH, FILM, VIDEOTAPE, DIGITAL
6 RECORDING OR OTHER SIMILAR MEDIUM THAT SHOWS A STATE OF NUDITY OR SPECIFIC
7 SEXUAL ACTIVITIES.

8 6. "PRIVATE" MEANS EITHER OF THE FOLLOWING:

9 (a) CREATED OR OBTAINED UNDER CIRCUMSTANCES IN WHICH A DEPICTED
10 INDIVIDUAL HAD A REASONABLE EXPECTATION OF PRIVACY.

11 (b) MADE ACCESSIBLE THROUGH THEFT, BRIBERY, EXTORTION, FRAUD, FALSE
12 PRETENSES, VOYEURISM OR EXCEEDING AUTHORIZED ACCESS TO AN ACCOUNT,
13 MESSAGE, FILE, DEVICE, RESOURCE OR PROPERTY.

14 7. "SPECIFIC SEXUAL ACTIVITIES" HAS THE SAME MEANING PRESCRIBED IN
15 SECTION 11-811.

16 8. "STATE OF NUDITY" HAS THE SAME MEANING PRESCRIBED IN SECTION
17 11-811, SUBSECTION E, PARAGRAPH 14, SUBDIVISION (a).