



Sen. Mary Edly-Allen

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10300HB2123sam001

LRB103 28426 LNS 57890 a

1 AMENDMENT TO HOUSE BILL 2123

2 AMENDMENT NO. _____. Amend House Bill 2123 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Civil Remedies for Nonconsensual
5 Dissemination of Private Sexual Images Act is amended by
6 changing Sections 5, 10, 15, and 25 as follows:

7 (740 ILCS 190/5)

8 Sec. 5. Definitions. As used in this Act:

9 (1) "Child" means an unemancipated individual who is less
10 than 18 years of age.

11 (2) "Consent" means affirmative, conscious, and voluntary
12 authorization by an individual with legal capacity to give
13 authorization.

14 (3) "Depicted individual" means an individual whose body
15 is shown, in whole or in part, in a private sexual image.

16 (4) "Dissemination" or "disseminate" means publication or

1 distribution to another person with intent to disclose.

2 (5) "Harm" means physical harm, economic harm, or
3 emotional distress whether or not accompanied by physical or
4 economic harm.

5 (6) "Identifiable" means recognizable by a person other
6 than the depicted individual:

7 (A) from a private sexual image itself; or

8 (B) from a private sexual image and identifying
9 characteristic displayed in connection with the image.

10 (7) "Identifying characteristic" means information that
11 may be used to identify a depicted individual.

12 (8) "Individual" means a human being.

13 (9) "Parent" means an individual recognized as a parent
14 under laws of this State.

15 (10) "Private" means:

16 (A) created or obtained under circumstances in which a
17 depicted individual had a reasonable expectation of
18 privacy; or

19 (B) made accessible through theft, bribery, extortion,
20 fraud, voyeurism, or exceeding authorized access to an
21 account, message, file, device, resource, or property.

22 (11) "Person" means an individual, business or nonprofit
23 entity, public corporation, government or governmental
24 subdivision, agency, or other legal entity.

25 (12) "Sexual conduct" includes:

26 (A) masturbation;

1 (B) genital sex, anal sex, oral sex, or sexual
2 activity; or

3 (C) sexual penetration of or with an object.

4 (13) "Sexual activity" means any:

5 (A) knowing touching or fondling by the depicted
6 individual or another person, either directly or through
7 clothing, of the sex organs, anus, or breast of the
8 depicted individual or another person for the purpose of
9 sexual gratification or arousal;

10 (B) transfer or transmission of semen upon any part of
11 the clothed or unclothed body of the depicted individual,
12 for the purpose of sexual gratification or arousal of the
13 depicted individual or another person;

14 (C) act of urination within a sexual context;

15 (D) bondage, fetish, sadism, or masochism;

16 (E) sadomasochistic abuse in any sexual context; or

17 (F) animal-related sexual activity.

18 (14) "Sexual image" means a photograph, film, videotape,
19 digital recording, or other similar medium that shows or
20 falsely appears to show:

21 (A) the fully unclothed, partially unclothed, or
22 transparently clothed genitals, pubic area, anus, or
23 female post-pubescent nipple, partially or fully exposed,
24 of a depicted individual; or

25 (B) a depicted individual engaging in or being
26 subjected to sexual conduct or activity.

1 (Source: P.A. 101-556, eff. 1-1-20.)

2 (740 ILCS 190/10)

3 Sec. 10. Civil action.

4 (a) Except as otherwise provided in Section 15, if a
5 depicted individual is identifiable to a reasonable person and
6 suffers harm from the intentional dissemination or threatened
7 dissemination by a person over the age of 18 of a private or
8 intentionally digitally altered sexual image without the
9 depicted individual's consent, the depicted individual has a
10 cause of action against the person if the person knew or
11 recklessly disregarded the possibility that:

12 (1) the depicted individual did not consent to the
13 dissemination;

14 (2) the image was a private or intentionally digitally
15 altered sexual image; and

16 (3) the depicted individual was identifiable.

17 (b) The following conduct by a depicted individual does
18 not establish by itself that the individual consented to the
19 nonconsensual dissemination of a private sexual image that is
20 the subject of an action under this Act or that the individual
21 lacked a reasonable expectation of privacy:

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

23 (2) previous consensual disclosure of the image.

24 (c) In the case of digitally altered sexual images,
25 disclosing that the images were digitally altered shall not be

1 a defense to liability. ~~Nothing in this Act shall be construed~~
2 ~~to impose liability on an interactive computer service, as~~
3 ~~defined in 47 U.S.C. 230(f)(2), for content provided by~~
4 ~~another person.~~

5 (Source: P.A. 101-556, eff. 1-1-20.)

6 (740 ILCS 190/15)

7 Sec. 15. Exceptions to liability.

8 (a) A person is not liable under this Act if the person
9 proves that the dissemination of or a threat to disseminate a
10 private sexual image was:

11 (1) made in good faith:

12 (A) by law enforcement;

13 (B) in a legal proceeding; or

14 (C) for medical education or treatment;

15 (2) made in good faith in the reporting or
16 investigation of:

17 (A) unlawful conduct; or

18 (B) unsolicited and unwelcome conduct; or

19 (3) related to a matter of public concern.

20 (b) Subject to subsection (c), a defendant who is a
21 parent, legal guardian, or individual with legal custody of a
22 child is not liable under this Act for a dissemination or
23 threatened dissemination of an intimate private sexual image
24 of the child.

25 (c) If a defendant asserts an exception to liability under

1 subsection (b), the exception does not apply if the plaintiff
2 proves the disclosure was:

3 (1) prohibited by a law other than this Act; or

4 (2) made for the purpose of sexual arousal, sexual
5 gratification, humiliation, degradation, or monetary or
6 commercial gain.

7 (d) The dissemination of or a threat to disseminate a
8 private sexual image is not a matter of public concern solely
9 because the depicted individual is a public figure or the
10 image is accompanied by a political message.

11 (Source: P.A. 101-556, eff. 1-1-20.)

12 (740 ILCS 190/25)

13 Sec. 25. Remedies.

14 (a) In an action under this Act, a prevailing plaintiff
15 may recover:

16 (1) the greater of:

17 (A) economic and noneconomic damages proximately
18 caused by the defendant's dissemination or threatened
19 dissemination, including damages for emotional
20 distress whether or not accompanied by other damages;
21 or

22 (B) statutory damages, not to exceed \$10,000,
23 against each defendant found liable under this Act for
24 all disseminations and threatened disseminations by
25 the defendant of which the plaintiff knew or

1 reasonably should have known when filing the action or
2 that became known during the pendency of the action.
3 In determining the amount of statutory damages under
4 this subsection, consideration shall be given to the
5 age of the parties at the time of the disseminations or
6 threatened disseminations, the number of
7 disseminations or threatened disseminations made by
8 the defendant, the breadth of distribution of the
9 image by the defendant, and other exacerbating or
10 mitigating factors;

11 (2) an amount equal to any monetary gain made by the
12 defendant from dissemination of the private sexual image;
13 and

14 (3) punitive damages.

15 (b) In an action under this Act, the court may award a
16 prevailing plaintiff:

17 (1) reasonable attorney's fees and costs; and

18 (2) additional relief, including equitable injunctive
19 relief such as a temporary restraining order, preliminary
20 injunction, or permanent injunction ordering the defendant
21 to cease the display or disclosure of the image.

22 (c) This Act does not affect a right or remedy available
23 under any other law of this State.

24 (Source: P.A. 101-556, eff. 1-1-20.)"