



**WHY YOUR STATE SHOULD ADOPT THE
UNIFORM CIVIL REMEDIES FOR UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES ACT**

The Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act (UCRUDIIA) addresses an increasingly common form of abuse that can cause immediate and in many cases irreversible harm: the disclosure of private images of nudity or sexual conduct without consent. Unauthorized disclosures frequently cause emotional distress as well as depression, anxiety, difficulty maintaining intimate relationships, or post-traumatic stress disorder. Some victims have been stalked, harassed, threatened with sexual assault, terminated from employment, or expelled from their schools. Below are some of the features of the UCRUDIIA:

- ***The UCRUDIIA creates a civil cause of action.*** Most states that have addressed this issue only have a criminal statute. The uniform act creates a civil cause of action for the unauthorized disclosure of private, intimate images.
- ***The UCRUDIIA protects victims' identities.*** The fear of further notoriety or abuse deters many victims from pursuing legal remedies. Section 5 of the Act mitigates this fear by providing clear procedures allowing victims to use pseudonyms.
- ***The UCRUDIIA provides various remedies.*** Some of the potential remedies outlined in the Act include actual damages, statutory damages, punitive damages, and disgorgement of profits. The court may also grant the victim attorney's fees and other relief, such as injunctive relief.
- ***The UCRUDIIA contains clear exceptions.*** Section 4 of the Act provides limited exceptions for certain disclosures, including those made during legal proceedings, medical treatment, or investigations of misconduct. There is also an exception for disclosures relating to matters of public concern or public interest.
- ***The UCRUDIIA recognizes the federal protection of interactive computer service providers.*** Section 8 of the Act recognizes the federal protection of interactive computer service providers found in the Federal Communications Decency Act.

For further information about the UCRUDIIA, please contact ULC Legislative Counsel Kaitlin Wolff at (312) 450-6615 or kwolff@uniformlaws.org.

House Judiciary, March 6, 2023

Senate Bill No. 2041

Testimony of Jennifer Clark, Commissioner, North Dakota Commission on Uniform State Laws

UNIFORM CIVIL REMEDIES FOR UNAUTHORIZED DISCLOSURE OF
INTIMATE IMAGES ACT

- A Summary -

SECTION 1 creates NDCC Chapter 32-49.

The disclosure of private images of nudity or sexual conduct without consent and for no legitimate purpose can cause severe and often irreversible harm. Intimate images are disclosed without the depicted individual's consent for a variety of reasons. Some are disclosed for recreation or profit, without any purpose to harm the depicted individual. Others are disclosed as part of an effort to control, punish, extort, or otherwise inflict harm on current or former intimate partners. Once an intimate image of a victim is made available on a website or social media platform, it can become accessible to anyone with internet access, any of whom could download, forward, share, and copy it. Additionally, some victims find their personal safety is at heightened risk after an unauthorized disclosure is made. Incidents of disclosing intimate images without consent are increasing nationally. States had adopted criminal laws to address this issue; however, most states do not have civil laws providing the victim a civil remedy, and the existing laws differ considerably in their definitions, scope, effectiveness, and remedies. This lack of uniformity creates confusion and inefficiency and leaves victims without a clear means to stop the harm or seek redress. A uniform law will provide victims and disclosers with a uniform remedy and defense. In response to this issue, the Uniform Law Commission promulgated the Uniform Civil Remedies for the Unauthorized Disclosure of Intimate Images Act (UCRUDIIA) in 2018.

Section 32-49-02 creates a cause of action for the unauthorized disclosure of intimate images. The basic elements of this cause of action are:

- (1) an intentional disclosure or threat to disclose;
- (2) a private;
- (3) intimate image;
- (4) of an identifiable individual;
- (5) without the consent of the depicted individual;
- (6) by a person who has the requisite awareness that:
 - (a) the depicted individual did not consent to the disclosure;
 - (b) the intimate image was private; and
 - (c) the depicted individual was identifiable; and

(7) the disclosure harms the depicted individual.

The requisite awareness that may give rise to civil liability are that the discloser knew or acted with reckless disregard.

Section 32-49-03 provides for exceptions to liability for disclosures made in good faith in law enforcement, legal proceedings, medical education or treatment, or reporting or investigation of unlawful or unwelcome conduct. This section also provides exceptions to liability for disclosures related to a matter of public concern or public interest, or reasonably intended to assist the depicted individual. This section further provides that a discloser who is a child's parent, legal guardian, or individual with legal custody of the child, is not liable under the Act for the disclosure or threatened disclosure of an intimate image, unless the disclosure was prohibited by law other than this act or made for the purpose of sexual arousal, sexual gratification, humiliation, degradation, or monetary or commercial gain.

Section 32-49-04 protects the privacy of a plaintiff. This section allows the plaintiff to use a pseudonym and otherwise protect his or her identity. The section further permits the court to exclude or redact other identifying characteristics of the plaintiff from all pleadings and documents filed in the action. To exercise this right, a plaintiff must file with the court a confidential information form that includes the plaintiff's real name and other information and serve a copy of this form on a defendant.

Section 32-49-05 provides various remedies for victims. A prevailing plaintiff may recover actual damages, statutory damages, and, where appropriate, punitive damages, and attorney's fees. A plaintiff may also recover an amount equal to the gain made by the defendant from disclosure of the intimate image if applicable. This section does not affect a right or remedy available under other law.

Section 32-49-06 addresses statutes of limitations. Under this section, an action for the unauthorized disclosure of intimate images must be brought no later than 6 years from the date the unauthorized disclosure was discovered or should have been discovered with the exercise of reasonable diligence. Actions brought under the act for a threat to disclose an intimate image must be brought no later than 6 years from the date of the threat to disclose. The Act also incorporates relevant state tolling statutes. For actions brought by individuals who are minors, the statute of limitations begins running on the date the depicted individual attains the age of majority.

Section 32-49-07 provides that the Act must be construed consistently with federal law, which exempts interactive computer service providers from liability for material disclosed by users. This section also provides that the Act does not alter state law on sovereign or governmental immunity.

SECTION 2 repeals NDCC Section 32-03-58.

32-03-58. Distribution of intimate images without or against consent - Remedies.

An individual whose intimate image is distributed in violation of section 12.1-17-07.2 may maintain a private right of action against each person who has distributed that image in violation of section 12.1-17-07.2, without regard to whether the defendant has been charged with, found guilty of, or pleaded guilty to that offense. An individual whose intimate image is distributed in violation of section 12.1-17-07.2 is entitled to pursue all of the economic, noneconomic, and exemplary or punitive damages and other remedies available by law and to obtain a temporary restraining order or a preliminary or permanent injunction ordering the person to cease distribution of the intimate image.