

Introduced by

Senators Schneider, Armstrong, Casper

Representatives Hanson, Kretschmar, Maragos

1 A BILL for an Act to create and enact section 12.1-17-07.2 and a new section to chapter 32-03  
2 of the North Dakota Century Code, relating to the distribution of graphic or intimate images of  
3 someone without consent; and to provide a penalty.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Section 12.1-17-07.2 of the North Dakota Century Code is created and  
6 enacted as follows:

7 **12.1-17-07.2. Distribution of intimate images without or against consent - Penalty.**

8 1. As used in this section:

- 9 a. "Distribute" means selling, exhibiting, displaying, wholesaling, retailing, providing,  
10 giving, granting admission to, providing access to, or otherwise transferring or  
11 presenting an image to another individual, with or without consideration.
- 12 b. "Hosting company" means a person that provides services or facilities for storing  
13 or distributing content over the internet without editorial or creative alteration of  
14 the content.
- 15 c. "Intimate image" means any visual depiction, photograph, film, video, recording,  
16 picture, or computer or computer-generated image or picture, whether made or  
17 produced by electronic, mechanical, or other means, that depicts:
- 18 (1) Exposed human male or female genitals or pubic area, with less than an  
19 opaque covering;
- 20 (2) A female breast with less than an opaque covering, or any portion of the  
21 female breast below the top of the areola; or
- 22 (3) The individual engaged in any sexually explicit conduct.
- 23 d. "Service provider" means an internet service provider, including a person who  
24 leases or rents a wire or cable for the transmission of data.

- 1 e. "Sexually explicit conduct" means actual or simulated:
- 2 (1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or
- 3 oral-anal, whether between persons of the same or opposite sex;
- 4 (2) Masturbation;
- 5 (3) Bestiality;
- 6 (4) Sadistic or masochistic activities;
- 7 (5) Exhibition of the genitals, pubic region, buttocks, or female breast of any
- 8 individual;
- 9 (6) Visual depiction of nudity or partial nudity;
- 10 (7) Fondling or touching of the genitals, pubic region, buttocks, or female
- 11 breast; or
- 12 (8) Explicit representation of the defecation or urination functions.
- 13 f. "Simulated sexually explicit conduct" means a feigned or pretended act of
- 14 sexually explicit conduct that duplicates, within the perception of an average
- 15 person, the appearance of an actual act of sexually explicit conduct.
- 16 2. A person commits the offense of distribution of intimate images if the person knowingly
- 17 or intentionally distributes to any third party any intimate image of an individual
- 18 eighteen years of age or older, if:
- 19 a. The person knows that the depicted individual has not given consent to the
- 20 person to distribute the intimate image;
- 21 b. The intimate image was created by or provided to the person under
- 22 circumstances in which the individual has a reasonable expectation of privacy;
- 23 and
- 24 c. Actual emotional distress or harm is caused to the individual as a result of the
- 25 distribution under this section.
- 26 3. This section does not apply to:
- 27 a. Lawful practices of law enforcement agencies;
- 28 b. Prosecutorial agency functions;
- 29 c. The reporting of a criminal offense;
- 30 d. Court proceedings or any other judicial proceeding;
- 31 e. Lawful and generally accepted medical practices and procedures;

- 1           f. An intimate image if the individual portrayed in the image voluntarily allows public  
2           exposure of the image; or
- 3           g. An intimate image that is portrayed in a lawful commercial setting.
- 4       4. This section also does not apply to:
- 5           a. An internet service provider or interactive computer service, as defined in  
6           47 U.S.C. 230(f)(2);
- 7           b. A provider of an electronic communications service, as defined in  
8           18 U.S.C. 2510;
- 9           c. A telecommunications service, information service, or mobile service, as defined  
10           in 47 U.S.C. 153, including a commercial mobile service, as defined in  
11           47 U.S.C. 332(d);
- 12          d. A cable operator, as defined in 47 U.S.C. 552, if:
- 13           (1) The distribution of an intimate image by the cable operator occurs only  
14           incidentally through the operator's function of:
- 15               (a) Transmitting or routing data from one person to another person; or  
16               (b) Providing a connection between one person and another person;
- 17           (2) The operator does not intentionally aid or abet in the distribution of the  
18           intimate image; and
- 19           (3) The operator does not knowingly receive from or through a person who  
20           distributes the intimate image a fee greater than the fee generally charged  
21           by the operator, as a specific condition for permitting the person to distribute  
22           the intimate image; or
- 23          e. A hosting company, if:
- 24           (1) The distribution of an intimate image by the hosting company occurs only  
25           incidentally through the hosting company's function of providing data  
26           storage space or data caching to a person;
- 27           (2) The hosting company does not intentionally engage, aid, or abet in the  
28           distribution of the intimate image; and
- 29           (3) The hosting company does not knowingly receive from or through a person  
30           who distributes the intimate image a fee greater than the fee generally

1                                   charged by the provider, as a specific condition for permitting the person to  
2                                   distribute, store, or cache the intimate image.

3        5. Distribution of an intimate image is a class A misdemeanor.

4        **SECTION 2.** A new section to chapter 32-03 of the North Dakota Century Code is created  
5 and enacted as follows:

6        **Distribution of intimate images without or against consent - Remedies.**

7        An individual whose intimate image is distributed in violation of section 1 of this Act may  
8 maintain a private right of action against each person who has distributed that image in violation  
9 of section 1 of this Act, without regard to whether the defendant has been charged with, found  
10 guilty of, or pleaded guilty to that offense. An individual whose intimate image is distributed in  
11 violation of section 1 of this Act is entitled to pursue all of the economic, noneconomic, and  
12 exemplary or punitive damages and other remedies available by law and to obtain a temporary  
13 restraining order or a preliminary or permanent injunction ordering the person to cease  
14 distribution of the intimate image.