**South Carolina General Assembly**

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**H. 3025**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. W. Newton, West, Henegan, Pope and Guffey

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Introduced in the House on January 10, 2023

Currently residing in the House Committee on **Judiciary**

Summary: Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/8/2022 House Prefiled

12/8/2022 House Referred to Committee on **Judiciary**

1/10/2023 House Introduced and read first time ([House Journal‑page 44](h:\hj\20230110.docx))

1/10/2023 House Referred to Committee on **Judiciary** ([House Journal‑page 44](h:\hj\20230110.docx))

View the latest  [legislative information](https://www.scstatehouse.gov/billsearch.php?billnumbers=3025&session=125&summary=B)  at the website

**VERSIONS OF THIS BILL**

[12/08/2022](https://www.scstatehouse.gov/sess125_2023-2024/prever/3025_20221208.docx)

A bill

to amend the South Carolina Code of Laws by enacting the “Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act”; and To define necessary terms, create a civil action for an individual who suffers harm from a person's intentional or threatened disclosure of private, intimate images without consent, and provide exceptions to liability.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act”.

SECTION 2. Chapter 75, Title 15 of the S.C. Code is amended by adding:

Article 3

Civil Remedies for Unauthorized Disclosure of Intimate Images Act

Section 15‑75‑310. For the purposes of this article:

(1) “Child” means an unemancipated individual who is less than eighteen years of age.

(2) “Consent” means affirmative, conscious, and voluntary authorization by an individual with legal capacity to give authorization.

(3) “Depicted individual” means the individual whose body is shown, in whole or in part, in an intimate image.

(4) “Disclosure” means transfer, publication, or distribution to another person.

(5) “Harm” means physical harm, economic harm, and emotional distress whether, or not accompanied by physical or economic harm.

(6) “Identifiable” means recognizable by a person other than the depicted individual:

(a) from an intimate image itself; or

(b) from an intimate image and identifying characteristic displayed in connection with the intimate image.

(7) “Identifying characteristic” means information that may be used to identify a depicted individual.

(8) “Individual” means a human being.

(9) “Intimate image” means a photograph, film, video recording, or other similar medium that shows:

(a) the uncovered genitals, pubic area, anus, or female post pubescent nipple of a depicted individual; or

(b) a depicted individual engaging in or being subjected to sexual conduct.

(10) “Parent” means an individual recognized as a parent under the laws of this State.

(11) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(12) “Private” means:

(a) created or obtained under circumstances in which the 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.

(13) “Sexual conduct” means any act including, but not limited to:

(a) masturbation;

(b) genital, anal, or oral sex;

(c) sexual penetration of, or with, an object;

(d) bestiality; or

(e) the transfer of semen onto a depicted individual.

Section 15‑75‑320. (A) Except as otherwise provided in Section 15‑75‑330, a depicted individual who is identifiable and who suffers harm from a person’s intentional disclosure or threatened disclosure of an intimate image that was private without the depicted individual’s consent has a cause of action against the person if the person knew or acted with reckless disregard for whether:

(1) the depicted individual did not consent to the disclosure;

(2) the intimate image was private; and

(3) the depicted individual was identifiable.

(B) The following conduct by a depicted individual does not establish, by itself, that the individual consented to the disclosure of the intimate image which is the subject of an action under this article or that the individual lacked a reasonable expectation of privacy:

(1) consent to creation of the image; or

(2) previous consensual disclosure of the image.

(C) A depicted individual who does not consent to the sexual conduct or uncovering of the part of the body in an intimate image of the individual retains a reasonable expectation of privacy even if the image was created when the individual was in a public place.

Section 15‑75‑330. (A) A person is not liable under this article if the person proves the disclosure of, or threat to disclose, an intimate image was:

(1) made in good faith:

(a) to law enforcement;

(b) for a legal proceeding; or

(c) for medical education or treatment.

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

(a) unlawful conduct; or

(b) unsolicited and unwelcome conduct.

(3) related to a matter of public concern or public interest; or

(4) reasonably intended to assist the depicted individual.

(B) Subject to this section, a defendant who is a parent, legal guardian, or individual with legal custody of a child is not liable under this article for a disclosure or threatened disclosure of an intimate image, as defined in this article, of the child.

(C) If a defendant asserts an exception to liability under subsection (B), the exception does not apply if the plaintiff proves the disclosure was:

(1) prohibited by law other than this article; or

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

(D) Disclosure of, or threat to disclose, an intimate image is not a matter of public concern or public interest solely because the depicted individual is a public figure.

Section 15‑75‑340. In an action under this article, a plaintiff may file a motion to seal with the initial pleading or any other motion as necessary to protect the identity and privacy of the plaintiff. The court may make further orders as necessary to protect the identity and privacy of a plaintiff.

Section 15‑75‑350. (A) In an action under this article, a prevailing plaintiff may recover:

(1) the greater of:

(a) economic and noneconomic damages 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 not to exceed ten thousand dollars against each defendant found liable under this article for all disclosure and threatened disclosures by the defendant of which the plaintiff knew or reasonably should have known when filing the action or which became known during the pendency of the action. In determining the amount, if any, of statutory damages under this subsection, consideration shall be given to the age of the parties at the time of disclosure or threatened disclosure, the number of disclosures or threatened disclosures made by the defendant, the breadth of distribution of the image by the defendant, and other exacerbating or mitigating factors;

(2) an amount equal to any monetary gain made by the defendant from disclosure of the intimate image; and

(3) punitive damages as allowed under the law of this State.

(B) In an action under this article, the court may award a prevailing plaintiff:

(1) reasonable attorney’s fees and costs; and

(2) additional relief, including injunctive relief.

(C) The provisions of this section do not affect a right or remedy otherwise available under the laws of this State.

Section 15‑75‑360. (A) An action under this article for:

(1) an unauthorized disclosure may not be brought later than three years from the date:

(a) the disclosure was discovered; or

(b) should have been discovered with the exercise of reasonable diligence.

(2) a threat to disclose may not be brought later than four years from the date of the threat to disclose.

(B) Except as otherwise provided in subsection (C), a civil action brought under the provisions of this article is subject to the limitations on civil actions provided in Section 15‑3‑530.

(C) In an action under Section 15‑75‑320(A) by a depicted individual who was a child on the date of the disclosure or threat to disclose, the time limit to commence a civil action specified in this section does not begin to run until the depicted individual attains the age of eighteen.

Section 15‑75‑370. (A) This article must be construed to be consistent with the Communications Decency Act of 1996, 47 U.S.C. Section 230.

(B) This article may not be construed to alter the law of this State on sovereign immunity.

SECTION 3. The existing sections of Chapter 75 are redesignated as Article 1 entitled “General Provisions”.

SECTION 4. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide.  After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 5. This act takes effect upon approval by the Governor and applies to causes of action accruing on, or after, the effective date of this act.

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