CHAPTER 32-49
UNIFORM CIVIL REMEDIES FOR UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES ACT

32-49-01. Definitions.

As used in this chapter:

1. "Consent" means affirmative, conscious, and voluntary authorization by an individual with legal capacity to give authorization.
2. "Depicted individual" means an individual whose body is shown in whole or in part in an intimate image.
3. "Disclosure" or "disclose" means the transfer, publication, or distribution to another person.
4. "Identifiable" means recognizable by a person other than the depicted individual from:
   a. An intimate image itself; or
   b. An intimate image and identifying characteristic displayed in connection with the intimate image.
5. "Identifying characteristic" means information that may be used to identify a depicted individual.
6. "Individual" means a human being.
7. "Intimate image" means a photograph, film, video recording, or other similar medium showing:
   a. The uncovered genitals, pubic area, anus, or female postpubescent nipple of a depicted individual; or
   b. A depicted individual engaging in or being subjected to sexual conduct.
8. "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.
9. "Sexual conduct" includes:
   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.

32-49-02. Civil action - Definitions.

1. As used in this section:
   a. "Harm" includes physical harm, economic harm, and emotional distress whether or not accompanied by physical or economic harm.
   b. "Private" means:
      (1) Created or obtained under circumstances in which a depicted individual had a reasonable expectation of privacy; or
      (2) Made accessible through theft of property, bribery, coercion, sexual extortion, fraud, false pretenses, voyeurism, or exceeding authorized access to an account, message, file, device, resource, or property.
2. Except as otherwise provided under section 32-49-03, 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 the:
   a. Depicted individual did not consent to the disclosure;
   b. Intimate image was private; and
   c. Depicted individual was identifiable.
3. 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 chapter or the individual lacked a reasonable expectation of privacy:
   a. Consent to creation of the image; or

b. Previous consensual disclosure of the image.

4. A depicted individual who does not consent to the sexual conduct or uncovering of the part of the body depicted 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.

32-49-03. Exceptions to liability.

1. As used in this section:
   a. "Child" means an unemancipated individual who is less than eighteen years of age.
   b. "Parent" means an individual recognized as a parent under a law of this state other than this chapter.
2. A person is not liable under this chapter if the person proves that disclosure of, or a threat to disclose, an intimate image was:
   a. Made in good faith:
      (1) By law enforcement;
      (2) In a legal proceeding; or
      (3) For medical education or treatment;
   b. Made in good faith in the reporting or investigation of:
      (1) Unlawful conduct; or
      (2) Unsolicited and unwelcome conduct;
   c. Related to a matter of public concern or public interest; or
   d. Reasonably intended to assist the depicted individual.
3. Subject to subsection 4, a defendant who is a parent or legal guardian of a child is not liable under this chapter for a disclosure or threatened disclosure of an intimate image of the child.
4. If a defendant asserts an exception to liability under subsection 3, the exception does not apply if the plaintiff proves the disclosure was:
   a. Prohibited by law other than this chapter; or
   b. Made for the purpose of sexual arousal, sexual gratification, humiliation, degradation, or monetary or commercial gain.

32-49-04. Plaintiff's privacy.

In an action under this chapter:

1. The court may exclude or redact from all pleadings and documents filed in the action other identifying characteristics of the plaintiff under rule 3.4 of the North Dakota Rules of Court;
2. A plaintiff to whom subsection 1 applies shall file with the court and serve on the defendant a confidential information form that includes the excluded or redacted plaintiff's name and other identifying characteristics; and
3. The court may make further orders as necessary to protect the identity and privacy of a plaintiff.

32-49-05. Remedies.

1. In an action under this chapter, a prevailing plaintiff may recover:
   a. The greater of:
      (1) 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
      (2) Statutory damages not to exceed ten thousand dollars against each defendant found liable under this chapter for all disclosures 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 of statutory damages under this paragraph, consideration must be given to the age of the parties

at the time of the 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;

b. An amount equal to any monetary gain made by the defendant from disclosure of the intimate image; and

c. Exemplary damages.

2. In an action under this chapter, the court may award a prevailing plaintiff:
   a. Reasonable attorney's fees and costs; and
   b. Other remedies available by law, including injunctive relief.
3. This chapter does not affect a right or remedy available under a law of this state other than this chapter.

32-49-06. Statute of limitations.

1. An action under subsection 2 of section 32-49-02 for:
   a. An unauthorized disclosure may not be brought later than six years from the date the disclosure was discovered or should have been discovered with the exercise of reasonable diligence; and
   b. A threat to disclose may not be brought later than six years from the date of the threat to disclose.
2. Except as otherwise provided in subsection 3, this section is subject to the provisions tolling limitations in chapter 28-01.
3. In an action under subsection 2 of section 32-49-02 by a depicted individual who was a minor on the date of the disclosure or threat to disclose, the time specified in subsection 1 does not begin to run until the depicted individual attains eighteen years of age.

32-49-07. Construction.

This chapter must be construed to be consistent with the Communications Decency Act of 1996 [47 U.S.C. Section 230].