

TWENTY-SECOND NORTHERN MARIANAS COMMONWEALTH
LEGISLATURE

IN THE HOUSE OF REPRESENTATIVES

Regular Session, 2021

H. B. 22- /

A BILL FOR AN ACT

To establish the Commonwealth of the Northern Mariana Islands
Civil Remedies for unauthorized disclosure of intimate images
Act of 2021; and for other purposes.

**BE IT ENACTED BY THE 22ND NORTHERN MARIANAS
COMMONWEALTH LEGISLATURE:**

1 **Section 1. Findings and Purpose.** The Legislature finds that
2 nonconsensual distribution of intimate images and sexual extortion, are becoming
3 common experiences for too many people. Advances in technology have
4 transformed and expanded the ways in which sexual violence can be perpetrated.
5 One new manifestation of such violence is the non-consensual creation and/or
6 distribution of private sexual images. The dissemination of sexually explicit
7 images of others without their permission, sometimes called “revenge porn” or
8 “nonconsensual pornography,” often involves situations where the individual
9 consented to the photos or videos but expected they would be kept private. In other
10 cases, images may have been taken surreptitiously, and then shared.

11 The Legislature finds that the problem of non-consensual publication of
12 intimate images received widespread attention in 2014 when a number of well-

1 known celebrities (Jennifer Lawrence and Kate Upton among them), had intimate
2 personal images published online following the hacking of their iCloud accounts.
3 However, the problem is not peculiar to celebrities: some adults in the CNMI have
4 had their nude or semi-nude image of themselves sent to others or posted online
5 without their permission. One concerning trend, among others, was that of ‘revenge
6 porn’ – the term given to the non-consensual distribution of nude or sexual imagery
7 of one person by a current or former intimate partner. A key feature of ‘revenge
8 porn’ is the fact that the images themselves are often taken by or with the consent
9 of the image subject, and shared consensually with the intimate partner, but later
10 sent to others or published online without the image subject’s consent.

11 The Legislature finds that about a dozen state laws currently allow for a
12 private right of action against those who disclose intimate images without consent.
13 In July 2018, the Uniform Law Commission approved the Uniform Civil Remedies
14 for Unauthorized Disclosure of Intimate Images Act. It aims to provide a “uniform,
15 clear, fair and constitutionally sound definition of this harmful conduct and
16 remedies for the harm it causes.

17 This Act provides that a depicted individual who is identifiable and who
18 suffers harm from a person's intentional dissemination or threatened dissemination
19 of a private sexual image without the depicted individual's consent has a cause of
20 action under specified circumstances.

1 **Section 2. Short Title.** This Act shall be cited as the “CNMI Civil Remedies
2 for Unauthorized Disclosure of Intimate Images Act of 2021.”

3 **Section 3. Enactment.** Subject to codification by the CNMI Law Revision
4 Commission, the following provision is hereby enacted:

5 “§101. This Chapter shall be known as the “Commonwealth of the
6 Northern Mariana Islands Civil Remedies for Unauthorized Disclosure of
7 Intimate Images Act of 2021.”

8 **102. Definitions.** As used in this Chapter, the term:

9 (a) child means an unemancipated individual who is less than
10 eighteen (18) years of age;

11 (b) consent means affirmative, conscious; and voluntary
12 authorization by an individual with legal capacity to give authorization;

13 (c) depicted individual means an individual whose body is shown in
14 whole or in part in an intimate image;

15 (d) disclosure means transfer, publication, or distribution to another
16 person; and disclose has a corresponding meaning;

17 (e) harm means physical harm, economic harm, or emotional
18 distress whether or not accompanied by physical or economic harm;

19 (f) identifiable means recognizable by a person other than the
20 depicted individual:

21 (1) from an intimate image itself; or

1 (2) from the intimate image and identifying characteristics
2 displayed in connection with the intimate image;

3 (g) identifying characteristic means information that may be used to
4 identify a depicted individual;

5 (h) individual means a human being;

6 (i) intimate image means a photograph, film, video recording, or
7 other similar medium that shows:

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

10 (2) the depicted individual engaging in or being subjected to
11 sexual conduct.

12 (j) parent means an individual recognized as a parent under CNMI
13 law.

14 (k) person means an individual, estate, business or nonprofit entity,
15 public corporation, government or governmental subdivision, agency or
16 instrumentality, or other legal entity;

17 (l) private means:

18 (1) created or obtained under circumstances in which the
19 depicted individual had a reasonable expectation of privacy; or

20 (2) made accessible through theft, bribery, extortion, fraud,
21 false pretenses, voyeurism, or exceeding authorized access to an

1 account, message, file, device, resource, or property;

2 (m) public concern or interest as used in this Act means:
3 consistent with the policies expressly set forth in the
4 Communications Decency Act of 1996, 47 U.S.C Section 230 (b).

5 (n) sexual conduct includes:

6 (1) masturbation;

7 (2) genital, anal, or oral sex;

8 (3) sexual penetration of, or with, an object;

9 (4) bestiality; or

10 (5) the transfer of semen onto a depicted individual.

11 **103. Civil Action.**

12 (a) Except as otherwise provided in §104 of this Chapter, a depicted
13 individual who is identifiable and who suffers harm from a person's
14 intentional disclosure or threatened disclosure of an intimate image that was
15 private without the depicted individual's consent has a cause of action
16 against the person if the person knew or acted with reckless disregard for
17 whether:

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

19 (2) the intimate image was private; and

20 (3) the depicted individual was identifiable.

1 (b) The following conduct by a depicted individual does not
2 establish by itself that the individual consented to the disclosure of the
3 intimate image which is the subject of the action or that the individual
4 lacked a reasonable expectation of privacy:

- 5 (1) consent to the creation of the image; or
6 (2) previous consensual disclosure of the image.

7 Consent is not given when a device that contains intimate images is
8 sold, lost, or stolen.

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

13 (d) This Section is not the exclusive remedy for an intentional
14 disclosure or threatened disclosure of an intimate image, and a plaintiff may
15 also bring any other available common law or statutory claims.

16 **104. Exceptions to Liability.**

17 (a) A person is not liable under this Chapter if the person proves that
18 disclosure of, or a threat to disclose, an intimate image was:

- 19 (1) made in good faith in:
20 (A) law enforcement;
21 (B) a legal proceeding; or

- 1 (C) medical education or treatment; or
2 (2) made in good faith in the reporting or investigation of:
3 (A) unlawful conduct;
4 (B) unsolicited and unwelcome conduct; or
5 (C) a matter of public concern or public interest; or
6 (3) reasonably intended to assist the depicted individual.

7 (b) Subject to Subsection (c) of this Section, a defendant who is a
8 parent, legal guardian, or individual with legal custody of a child is not
9 liable under this Chapter for a disclosure or threatened disclosure of an
10 intimate image, as defined in § 102 (i) (1), of the child.

11 (c) If a defendant asserts an exception to liability under Subsection
12 (b) of this Section, the exception does not apply if the plaintiff proves the
13 disclosure was:

- 14 (1) prohibited by law other than this Subsection; or
15 (2) made used, shared, or transferred, for the purposes of sexual
16 arousal, sexual gratification, humiliation, degradation, or monetary or
17 commercial gain.

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

21 **105. Plaintiff's Privacy.**

1 In an action under this Chapter:

2 (a) a plaintiff may proceed using a pseudonym in place of the true
3 name of the plaintiff;

4 (b) the court may exclude or redact from all pleadings and
5 documents filed in the action other identifying characteristics of the
6 plaintiff;

7 (c) a plaintiff to whom Subsection (a) or (b) of this section applies
8 shall file with the court and serve on the defendant a confidential
9 information form that includes the excluded or redacted plaintiff's name and
10 other identifying characteristics; and

11 (d) the court may make further orders as necessary to protect the
12 identity and privacy of a plaintiff.

13 **106. Remedies.**

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

15 (1) the greater of:

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

20 (B) (i) statutory damages not to exceed Ten Thousand
21 Dollars (\$10,000.00) against each defendant found liable under this

1 Act for all disclosures and threatened disclosures by the defendant
2 of which the plaintiff knew or reasonably should have known when
3 filing the action or which became known during the pendency of the
4 action;

5 (ii) in determining the amount of statutory damages under
6 this Subsection (a)(1)(B), consideration must be given to the age of
7 the parties at the time of the disclosure or threatened disclosure, the
8 number of disclosures or threatened disclosures made by the
9 defendant, the breadth of distribution of the image by the defendant,
10 and other exacerbating or mitigating factors;

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

13 (3) punitive damages as allowed under CNMI law other than this
14 Act.

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

17 (1) reasonable attorney fees and costs; and

18 (2) additional relief, including injunctions relief.

19 (c) This Act does not affect a right or remedy available under CNMI
20 law other than this Act.

21 **107. Statute of Limitations.**

1 (a) An action under 103(a) for:

2 (1) an unauthorized disclosure may be brought at any time after the
3 date the disclosure was discovered or should have been discovered with the
4 exercise of reasonable diligence; and

5 (2) a threat to disclose may be brought at any time after the date of
6 the threat to disclose.

7 **108. Construction.**

8 (a) This Act shall be construed to be consistent with the federal
9 Communications Decency Act of 1996, 47 U.S.C. § 230.”

10 **Section 4. Severability.** If any provision of this Act or the application of
11 any such provision to any person or circumstance should be held invalid by a court
12 of competent jurisdiction, the remainder of this Act or the application of its
13 provisions to persons or circumstances other than those to which it is held invalid
14 shall not be affected thereby.

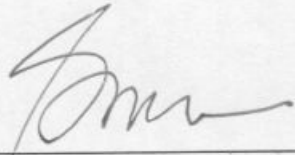
15 **Section 5. Savings Clause.** This Act and any repealer contained herein
16 shall not be construed as affecting any existing right acquired under contract or
17 acquired under statutes repealed or under any rule, regulation or order adopted
18 under the statutes. Repealers contained in this Act shall not affect any proceeding
19 instituted under or pursuant to prior law. The enactment of this Act shall not have
20 the effect of terminating, or in any way modifying, any liability civil or criminal,
21 which shall already be in existence at the date this Act becomes effective.

1 **Section 6. Effective Date.** This Act shall take effect upon its approval by
2 the Governor or upon its becoming law without such approval.

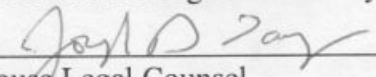
Prefiled: 1/21/2021

Date: 1/15/2021

Introduced by:


Rep. Joseph Leepan T. Guerrero

Reviewed for Legal Sufficiency by:


House Legal Counsel