

**2023 SENATE JUDICIARY**

**SB 2041**

# 2023 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Peace Garden Room, State Capitol

SB 2041  
1/9/2023

A bill relating to the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act; relating to the distribution of intimate images without or against consent.
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2:30 PM Chairman Larson opened the meeting.

Present are Chairman Larson, Senators Paulson, Sickler, Braunberger, Estenson, Luick and Myrdal.

## **Discussion Topics:**

- Unauthorized disclosure
- Minor and adult victims
- Privacy protection
- Statute of limitations
- Liability
- Damages

2:31 PM Jennifer Clark from Legislative Council introduced the bill and provided written testimony #12644.

2:49 PM Jackie Hall, North Dakota Association for Justice, spoke in favor of the bill. She suggested six years as a statute of limitations as an amendment.

2:55 PM Chairman Larson closed the public hearing.

2:58 PM Chairman Larson closed the meeting.

*Rick Schuchard, Committee Clerk*

# 2023 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Peace Garden Room, State Capitol

SB 2041  
1/10/2023

A bill relating to the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act; relating to the distribution of intimate images without or against consent
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10:41 AM Chairman Larson opened the meeting.

Chairman Larson, Senators Myrdal, Luick, Estenson, Braunberger, Sickler, and Paulson are present.

**Discussion Topics:**

- Intimate images
- Statute of limitations

10:42 AM Legal intern Zak Heier spoke in regards to statute of limitations laws.

10:46 AM Senator Myrdal moved to amend statute of limitation from four years to six years. LC 23.0114.01001. Senator Luick seconded the motion.

10:50 AM Voice vote on proposed amendment taken. Motion passed.

10:50 AM Senator Braunberger moves to Do Pass the bill as Amended. Senator Luick seconds the motion.

10:51 AM Roll Call Vote

<b>Senators</b>	<b>Vote</b>
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passed 7-0-0

Senator Braunberger will carry the bill.

This bill does not affect Workforce Development.

10:52 AM Chairman Larson closed the meeting.

*Rick Schuchard, Committee Clerk*

January 10, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2041

Page 5, line 9, replace "four" with "six"

Page 5, line 12, replace "four" with "six"

Renumber accordingly

*DR*  
*1/11*  
*1/10/2023*  
*Jen*

**REPORT OF STANDING COMMITTEE**

**SB 2041: Judiciary Committee (Sen. Larson, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2041 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 5, line 9, replace "four" with "six"

Page 5, line 12, replace "four" with "six"

Renumber accordingly

**2023 HOUSE JUDICIARY**

**SB 2041**

# 2023 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Room JW327B, State Capitol

SB 2041  
3/6/2023

Relating to the distribution of intimate images without or against consent.

9:00 AM Chairman Klemin opened the hearing. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, and Rep. Vetter. Absent: Rep. Bahl and Rep. VanWinkle

### Discussion Topics:

- Disclosure of images of minors.
- Statute damages.
- Exposure of intimate images.
- Definition of persons.

Jennifer Clark: Commissioner, ND Uniform State Laws: Testimony #22158

Tony Weiler, Executive Director of State Bar Association: No written testimony.

The hearing closed at 9:15 AM.

Rep. Schneider moved a Do Pass;  
Seconded by Vice Chairman Karls

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	A
Representative Cole Christensen	N
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	A
Representative Steve Vetter	Y

Roll call vote: 10 Yes 1 No 2 Absent Motion carried.

Carrier: Rep. Cory

The meeting closed at 9:18 AM.

Delores Shimek, Committee Clerk

**REPORT OF STANDING COMMITTEE**

**SB 2041, as engrossed: Judiciary Committee (Rep. Klemin, Chairman)** recommends **DO PASS** (10 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). Engrossed SB 2041 was placed on the Fourteenth order on the calendar.



**TESTIMONY**

**SB 2041**



**Uniform Law Commission**  
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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## THE UNIFORM CIVIL REMEDIES FOR UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES ACT

### - A Summary -

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 3 of the UCRUDIIA 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.

Two options for the requisite awareness that may give rise to civil liability are offered in the act: (1) the discloser knew or (2) the discloser knew or acted with reckless disregard.

Section 4 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. Section 4 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. Section 4 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 5 protects the privacy of a plaintiff. This section allows the plaintiff to use a pseudonym and otherwise protect his or her identity. Section 5 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 6 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. Section 6 does not affect a right or remedy available under other law.

Section 7 addresses statutes of limitations. Under this section, an action for the unauthorized disclosure of intimate images must be brought no later than four 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 four 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, this section provides states with an optional provision allowing the statute of limitations to begin running on the date the depicted individual attains the age of majority. This section is drafted to allow states to choose a different period of limitation if desired.

Section 8 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.

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



**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.

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- ***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](mailto:kwolff@uniformlaws.org).

The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.

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.