UFISINAN I MAGA'HÅGA
OFFICE OF THE GOVERNOR

LOURDES A. LEON GUERRERO
MAGA'HÅGA • GOVERNOR

JOSHUA F. TENORIO
SIGUNDO MAGA'LÅHI • LIEUTENANT GOVERNOR

HAND-DELIVERED

February 12, 2020

35GL-20-1535
Speaker Tina Rose Muña Barnes

FEB 12 2020
Time 4:40 ( )AM (PM
Received By: RR.AN

2020 FEB 12 PM 5:10 R.T.

HONORABLE TINA ROSE MUÑA BARNES, Speaker
I Mina'trentai Singko Na Liheslaturan Guåhan
35th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Re: **Bill No. 102-35 (LS) –** ***An Act to Add a New Chapter 53 to Title 7 of the Guam Code Annotated, Relative to the Creation of Civil Remedies for Victims of Intentional or Threatened Disclosure of Intimate Images; and to Further Citing this Act as the 'Guam Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act of 2019'***

Dear Madame Speaker:

Intimate images shared or created when two people are in a relationship should be viewed by whom and in the context for which they were made. Such images, when publicly disseminated for consumption by others without consent, can be emotional weapons to wield revenge for perceived or actual injuries suffered as a result of the dissolution of a relationship. As a community, we should not allow such bullying tactics to pervade.

Bill No. 102-35, ***"An Act to Add a New Chapter 53 to Title 7 of the Guam Code Annotated, Relative to the Creation of Civil Remedies for Victims of Intentional or Threatened Disclosure of Intimate Images; and to Further Citing this Act as the 'Guam Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act of 2019,'"*** which is now ***Public Law No. 35-67***, gives some measure of recourse to those who suffer the damages of what is often called "revenge porn." This Administration joins the Legislature in supporting civility -- even where relationships have fractured.

Senseremente,

JOSHUA F. TENORIO
Åkto Maga'låhen Guahan
Acting Governor of Guam

Enclosure(s): Bill No. 102-35 (LS) *nka Public Law No. 35-67*
cc via email: *Maga'hågan Guåhan*
Compiler of Laws

1535

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I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2020 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'HÅGAN GUÅHAN*

This is to certify that **Bill No. 102-35 (LS), "AN ACT TO *ADD* A NEW CHAPTER 53 TO TITLE 7 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE CREATION OF CIVIL REMEDIES FOR VICTIMS OF INTENTIONAL OR THREATENED DISCLOSURE OF INTIMATE IMAGES; AND TO FURTHER CITING THIS ACT AS THE 'GUAM UNIFORM CIVIL REMEDIES FOR UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES ACT OF 2019,"** was on the 4th day of February 2020, duly and regularly passed.

Tina Rose Muña Barnes
Speaker

Attested:

Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 4th day of February 2020, at 4:10 o'clock P.M.

Assistant Staff Officer
Maga'håga's Office

APPROVED:

FOR
Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: 2-12-20

Public Law No. PL35-67

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2019 (FIRST) Regular Session

Bill No. 102-35 (LS)
As amended by the Committee on Health,
Tourism, Historic Preservation, Land and Justice;
and further amended on the Floor.

Introduced by:

Mary Camacho Torres
Régine Biscoe Lee
Telena Cruz Nelson
James C. Moylan
William M. Castro
Kelly Marsh (Taitano), PhD
Louise B. Muña
Tina Rose Muña Barnes
Sabina Flores Perez
Clynton E. Ridgell
Joe S. San Agustin
Amanda L. Shelton
Telo T. Taitague
Jose "Pedo" Terlaje
Therese M. Terlaje

AN ACT TO *ADD* A NEW CHAPTER 53 TO TITLE 7 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE CREATION OF CIVIL REMEDIES FOR VICTIMS OF INTENTIONAL OR THREATENED DISCLOSURE OF INTIMATE IMAGES; AND TO FURTHER CITING THIS ACT AS THE "GUAM UNIFORM CIVIL REMEDIES FOR UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES ACT OF 2019."

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new Chapter 53 is *added* to Title 7 of the Guam Code Annotated, to read as follows:

"CHAPTER 53

THE GUAM UNIFORM CIVIL REMEDIES FOR UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES ACT OF 2019

§ 53101. Title.
§ 53102. Definitions.
§ 53103. Civil Action.
§ 53104. Exceptions to Liability.
§ 53105. Plaintiff's Privacy.
§ 53106. Remedies.
§ 53107. Statute of Limitations.
§ 53108. Construction.

§ 53101. Title.

This Chapter *shall* be known as the "Guam Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act of 2019."

§ 53102. Definitions.

As used in this Chapter, the term:

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

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

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

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

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

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

(1) from an intimate image itself; or

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

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

(h) *individual* means a human being.

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

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

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

(j) *parent* means an individual recognized as a parent under Guam law.

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

(l) *private* means:

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

(2) made accessible through theft, bribery, extortion, fraud, false pretenses, voyeurism, or exceeding authorized access to an account, message, file, device, resource, or property;

(m) *sexual conduct* includes:

(1) masturbation;

(2) genital, anal, or oral sex;

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

(4) bestiality; or

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

§ 53103. Civil Action.

(a) Except as otherwise provided in § 53104 of this Chapter, 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 the action or that the individual lacked a reasonable expectation of privacy:

(1) consent to the creation of the image; or

(2) previous consensual disclosure of the image.

(c) A depicted individual who does not consent to sexual conduct or the uncovering of the part of the body depicted in the 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.

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

§ 53104. Exceptions to Liability.

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

(1) made in good faith in:

(A) law enforcement;

(B) a legal proceeding; or

(C) medical education or treatment; or

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

(A) unlawful conduct;

(B) unsolicited and unwelcome conduct; or

(C) a matter of public concern or public interest; or

(3) reasonably intended to assist the depicted individual.

(b) Subject to Subsection (c) of this Section, a defendant who is a parent, legal guardian, or individual with legal custody of a child is not liable under this Chapter for a disclosure or threatened disclosure of an intimate image, as defined in § 53102(i), of the child.

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

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

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

(d) Disclosure of, or a 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.

§ 53105. Plaintiff's Privacy.

In an action under this Chapter:

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

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

(c) a plaintiff to whom Subsection (a) or (b) of this Section 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

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

§ 53106. Remedies.

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

(1) the greater of:

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

(B)(i) statutory damages not to exceed Ten Thousand Dollars ($10,000) 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;

(ii) in determining the amount of statutory damages under this Subsection (a)(1)(B), 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;

(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 Guam law other than this Chapter.

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

(1) reasonable attorney fees and costs; and

(2) additional relief, including injunctive relief.

(c) This Chapter does not affect a right or remedy available under Guam law other than this Chapter.

§ 53107. Statute of Limitations.

(a) An action under § 53103(a) for:

(1) an unauthorized disclosure may not be brought later than four (4) years from the date the disclosure was discovered or should have been discovered with the exercise of reasonable diligence; and

(2) a threat to disclose may not be brought later than four (4) years from the date of the threat to disclose.

(b) Except as otherwise provided in Subsection (c) of this Section, this Section is subject to the tolling statutes of Guam.

(c) In an action under § 53103(a) by a depicted individual who was a minor on the date of the disclosure or threat to disclose, the time specified in Subsection (a) of this Section does not begin to run until the depicted individual attains the age of majority.

§ 53108. Construction.

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

(b) This Chapter may not be construed to alter the Government Claims Act, 5 GCA Chapter 6."

Section 2. This Act *shall* be effective upon enactment.

Section 3. Severability. If any provision of this Act or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity *shall not* affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.