

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2020 (SECOND) Regular Session
LEGISLATIVE SESSION VOTING RECORD

Bill No. 102-35 (LS) As amended by the Committee on Health, Tourism, Historic Preservation, Land, and Justice; and further amended on the Floor.		Speaker Antonio R. Unpingco Legislative Session Hall Guam Congress Building February 4, 2020				
NAME	Aye	Nay	Not Voting/ Abstained	Out During Roll Call	Absent	Excused
Senator William M. CASTRO	✓					
Senator Régine Biscoe LEE	✓					
Senator Kelly G. MARSH (TAITANO), PhD	✓					
Senator James C. MOYLAN					✓	✓
Senator Louise B. MUÑA	✓					
Speaker Tina Rose MUÑA BARNES	✓					
Vice Speaker Telen Cruz NELSON	✓					
Senator Sabina Flores PEREZ	✓					
Senator Clynton E. RIDGELL	✓					
Senator Joe S. SAN AGUSTIN	✓					
Senator Amanda L. SHELTON	✓					
Senator Telo T. TAITAGUE	✓					
Senator Jose "Pedro" TERLAJE	✓					
Senator Therese M. TERLAJE	✓					
Senator Mary Camacho TORRES					✓	✓

TOTAL:	13				2	2
	Aye	Nay	Not Voting/ Abstained	Out During Roll Call	Absent	Excused

CERTIFIED TRUE AND CORRECT:



RENNAE V. C. MENO
Clerk of the Legislature

I = Pass

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.

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Introduced by:

Mary Camacho Torres
Régine Biscoe Lee
Telen Cruz Nelson
James C. Moylan

**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.

1 § 53104. Exceptions to Liability.

2 § 53105. Plaintiff’s Privacy.

3 § 53106. Remedies.

4 § 53107. Statute of Limitations.

5 § 53108. Construction.

6 **§ 53101. Title.**

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

9 **§ 53102. Definitions.**

10 As used in this Chapter, the term:

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

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

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

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

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

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

23 (1) from an intimate image itself; or

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

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

- 1 (h) *individual* means a human being.
- 2 (i) *intimate image* means a photograph, film, video recording, or
3 other similar medium that shows:
- 4 (1) the uncovered genitals, pubic area, anus, or female post-
5 pubescent nipple of a depicted individual; or
- 6 (2) the depicted individual engaging in or being subjected to sexual
7 conduct.
- 8 (j) *parent* means an individual recognized as a parent under Guam law.
- 9 (k) *person* means an individual, estate, business or nonprofit entity, public
10 corporation, government or governmental subdivision, agency or instrumentality, or
11 other legal entity;
- 12 (l) *private* means:
- 13 (1) created or obtained under circumstances in which the depicted
14 individual had a reasonable expectation of privacy; or
- 15 (2) made accessible through theft, bribery, extortion, fraud, false
16 pretenses, voyeurism, or exceeding authorized access to an account, message,
17 file, device, resource, or property;
- 18 (m) *sexual conduct* includes:
- 19 (1) masturbation;
- 20 (2) genital, anal, or oral sex;
- 21 (3) sexual penetration of, or with, an object;
- 22 (4) bestiality; or
- 23 (5) the transfer of semen onto a depicted individual.

24 **§ 53103. Civil Action.**

25 (a) Except as otherwise provided in § 53104 of this Chapter, a depicted
26 individual who is identifiable and who suffers harm from a person's intentional
27 disclosure or threatened disclosure of an intimate image that was private without the

1 depicted individual's consent has a cause of action against the person if the person
2 knew or acted with reckless disregard for whether:

- 3 (1) the depicted individual did not consent to the disclosure;
- 4 (2) the intimate image was private; and
- 5 (3) the depicted individual was identifiable.

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

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

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

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

19 **§ 53104. Exceptions to Liability.**

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

- 22 (1) made in good faith in:
 - 23 (A) law enforcement;
 - 24 (B) a legal proceeding; or
 - 25 (C) medical education or treatment; or
- 26 (2) made in good faith in the reporting or investigation of:
 - 27 (A) unlawful conduct;

1 (B) unsolicited and unwelcome conduct; or

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

3 (3) reasonably intended to assist the depicted individual.

4 (b) Subject to Subsection (c) of this Section, a defendant who is a parent,
5 legal guardian, or individual with legal custody of a child is not liable under this
6 Chapter for a disclosure or threatened disclosure of an intimate image, as defined in
7 § 53102(i), of the child.

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

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

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

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

16 **§ 53105. Plaintiff's Privacy.**

17 In an action under this Chapter:

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

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

22 (c) a plaintiff to whom Subsection (a) or (b) of this Section applies *shall*
23 file with the court and serve on the defendant a confidential information form that
24 includes the excluded or redacted plaintiff's name and other identifying
25 characteristics; and

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

1 **§ 53106. Remedies.**

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

3 (1) the greater of:

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

8 (B)(i) statutory damages not to exceed Ten Thousand Dollars
9 (\$10,000) against each defendant found liable under this Chapter for all
10 disclosures and threatened disclosures by the defendant of which the
11 plaintiff knew or reasonably should have known when filing the action
12 or which became known during the pendency of the action;

13 (ii) in determining the amount of statutory damages under this
14 Subsection (a)(1)(B), consideration must be given to the age of the
15 parties at the time of the disclosure or threatened disclosure, the number
16 of disclosures or threatened disclosures made by the defendant, the
17 breadth of distribution of the image by the defendant, and other
18 exacerbating or mitigating factors;

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

21 (3) punitive damages as allowed under Guam law other than this
22 Chapter.

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

25 (1) reasonable attorney fees and costs; and

26 (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.