

**ASSEMBLY BILL**

**No. 2643**

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**Introduced by Assembly Member Wieckowski**

February 21, 2014

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An act to add Section 48.95 to the Civil Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2643, as introduced, Wieckowski. Invasion of privacy: distribution of sexually explicit materials.

Existing law makes it a crime for a person to distribute, with the intent to cause serious emotional distress, a photograph or recorded image of the intimate body part or parts of another identifiable person, under circumstances where the parties agree or understand that the image shall remain private, if the depicted person subsequently suffers serious emotional distress.

This bill would create a private right of action against a person who intentionally or recklessly distributes a photograph or recorded image of another that exposes the intimate body parts of that person or him or her engaged in a sexual act, without his or her consent, if specified conditions are met, including that the person depicted suffer emotional distress. The bill would establish affirmative defenses to that cause of action, including waiver or consent of the person appearing in the material. In a civil proceeding pursuant to these provisions, the bill would also authorize equitable relief, as specified, and substituting a pseudonym for the true name of the plaintiff.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 48.95 is added to the Civil Code, to read:

2 48.95. (a) A private cause of action lies against a person who  
3 intentionally or recklessly distributes a photograph, film, videotape,  
4 recording, or any other reproduction of another, without his or her  
5 consent, if all of the following are met:

6 (1) The distributed material exposes an intimate body part of  
7 the other person, or shows the other person engaging in an act of  
8 sexual penetration or other sexual act.

9 (2) The distribution of the material causes emotional distress to  
10 the other person.

11 (b) There shall be no liability on the part of the person  
12 distributing material under subdivision (a) under any of the  
13 following circumstances:

14 (1) The distributed material was created under an agreement by  
15 the person appearing in the material for its public use and  
16 distribution or otherwise intended by that person for public use  
17 and distribution.

18 (2) The person possessing or viewing the distributed material  
19 has permission from the person appearing in the material to possess  
20 or view the material.

21 (3) The person appearing in the material waived any expectation  
22 of privacy in the distributed material by distributing it to a  
23 substantial number of persons.

24 (4) The distributed material constitutes a matter of public  
25 concern.

26 (c) In addition to any other relief, the court may order equitable  
27 relief against the person violating subdivision (a), including a  
28 temporary restraining order, or a preliminary injunction or a  
29 permanent injunction ordering the defendant to remove the  
30 distributed material. The court may grant injunctive relief  
31 substituting a pseudonym for the true name of the plaintiff pursuant  
32 to subdivision (d). The court may also grant, after holding a  
33 properly noticed hearing, reasonable attorneys fees and costs to  
34 the prevailing party.

35 (d) (1) In a civil proceeding pursuant to subdivision (a), the  
36 court shall substitute a pseudonym for the true name of the plaintiff.  
37 The actual name and other identifying characteristics of the plaintiff  
38 shall be revealed to the court only in camera, and the court shall

1 seal that information from further revelation, except to defense  
2 counsel as part of discovery.

3 (2) All court decisions, orders, petitions, and other documents,  
4 including motions and papers filed by the parties, shall be worded  
5 so as to protect the name or other identifying characteristics of the  
6 plaintiff from public revelation.

7 (3) Unless the plaintiff requests otherwise, the court shall, at  
8 the first opportunity, issue an order that the parties, their counsel  
9 and other agents, court staff, and all other persons subject to the  
10 jurisdiction of the court shall make no public revelation of the  
11 name or any other identifying characteristics of the plaintiff.

12 (4) As used in this subdivision, “identifying characteristics”  
13 includes, but is not limited to, name or any part thereof, address  
14 or any part thereof, city or unincorporated area of residence, age,  
15 marital status, relationship to defendant, and race or ethnic  
16 background.