

AMENDED IN ASSEMBLY APRIL 24, 2014

AMENDED IN ASSEMBLY APRIL 9, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2643

Introduced by Assembly Member Wieckowski

February 21, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2643, as amended, 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, as defined, of that person or him or her engaged in a *specified* sexual-act, acts, without his or her consent, if specified conditions are met. 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 a plaintiff to proceed using a pseudonym instead of his or her true name. The bill would require a plaintiff using a pseudonym in a civil proceeding under these provisions to file a confidential

information form, as specified. The bill would make these provisions operative July 1, 2015.

This bill would further require the Judicial Council to develop that confidential information form by July 1, 2015.

Vote: majority. Appropriation: no. Fiscal committee: yes. 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 by any means a photograph,
- 4 film, videotape, recording, or any other reproduction of another,
- 5 without his or her consent, if the distributed material exposes an
- 6 intimate body part of the other person, or shows the other person
- 7 engaging in an act of ~~sexual penetration or other sexual act~~
- 8 *intercourse, oral copulation, sodomy, or other act of sexual*
- 9 *penetration.*
- 10 (b) As used in this section, “intimate body part” means any
- 11 portion of the genitals, and, in the case of a female, also includes
- 12 any portion of the breast below the top of the areola, that is
- 13 uncovered or visible through less than fully opaque clothing.
- 14 (c) There shall be no liability on the part of the person
- 15 distributing material under subdivision (a) under any of the
- 16 following circumstances:
- 17 (1) The distributed material was created under an agreement by
- 18 the person appearing in the material for its public use and
- 19 distribution or otherwise intended by that person for public use
- 20 and distribution.
- 21 (2) The person possessing or viewing the distributed material
- 22 has permission from the person appearing in the material to publish
- 23 or post the material.
- 24 (3) The person appearing in the material waived any expectation
- 25 of privacy in the distributed material by making it accessible to
- 26 the general public.
- 27 (4) The distributed material constitutes a matter of public
- 28 concern.
- 29 (5) *The distributed material was photographed, filmed,*
- 30 *videotaped, recorded, or otherwise reproduced in a public place*

1 *and under circumstances in which the person depicted had no*
2 *reasonable expectation of privacy.*

3 (d) In addition to any other relief, the court may order equitable
4 relief against the person violating subdivision (a), including a
5 temporary restraining order, or a preliminary injunction or a
6 permanent injunction ordering the defendant to remove the
7 distributed material. The court may grant injunctive relief
8 substituting a pseudonym for the true name of the plaintiff pursuant
9 to subdivision (d). The court may also grant, after holding a
10 properly noticed hearing, reasonable ~~attorneys~~ attorney's fees and
11 costs to the prevailing party.

12 (e) (1) A plaintiff in a civil proceeding pursuant to subdivision
13 (a), may proceed using a pseudonym, either John Doe, Jane Doe,
14 or Doe, for the true name of the plaintiff and may exclude or redact
15 from all pleadings and documents filed in the action other
16 identifying characteristics of the plaintiff. A plaintiff who proceeds
17 using a pseudonym and excluding or redacting identifying
18 characteristics as provided in this section shall file a confidential
19 information form for this purpose that includes the plaintiff's name
20 and other identifying characteristics excluded or redacted. The
21 court shall keep the plaintiff's name and excluded or redacted
22 characteristics confidential. Nothing in this section restricts the
23 defendant's right to discovery from the plaintiff of information
24 contained in the confidential information form.

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

29 (3) Unless the plaintiff requests otherwise and the court so
30 orders, the parties, their counsel and other agents, and all other
31 persons subject to the jurisdiction of the court shall make no public
32 revelation of the name or any other identifying characteristics of
33 the plaintiff.

34 (4) As used in this subdivision, "identifying characteristics"
35 includes, but is not limited to, name or any part thereof, address
36 or any part thereof, city or unincorporated area of residence, age,
37 marital status, relationship to defendant, and race or ethnic
38 background.

39 (5) The responsibility for excluding or redacting the name or
40 identifying characteristics of the plaintiff from all documents filed

1 with the court rests solely with the parties and their attorneys.
2 Nothing in this section requires the court to review pleadings or
3 other papers for compliance with this provision.

4 (f) In an action pursuant to this section, the plaintiff shall state
5 in the caption of the complaint “ACTION BASED ON CIVIL
6 CODE SECTION 48.95.”

7 (g) Nothing in this section shall be construed to alter or negate
8 any rights, obligations, or immunities of an interactive service
9 provider under Section 230 of Title 47 of the United States Code.
10 Nothing in this section shall be construed to limit or preclude a
11 plaintiff from securing or recovering any other available remedy.

12 (h) The provisions of this section are severable. If any provision
13 of this section or its application is held invalid, that invalidity shall
14 not affect other provisions or applications that can be given effect
15 without the invalid provision or application.

16 (i) This section shall become operative on July 1, 2015.

17 SEC. 2. The Judicial Council shall, by July 1, 2015, develop
18 the confidential information form specified in subdivision (e) of
19 Section 48.95 of the Civil Code.