

Illinois Law Empowers Victims Violated by the Sharing of Explicit Images

Article

Amundsen Davis Litigation Alert

September 28, 2022

In early 2020, an Illinois law became effective providing a civil cause of action for victims of revenge porn. 740 ILCS 190/1 (Civil Remedies for Nonconsensual Dissemination of Private Sexual Images Act). The purpose of the Civil Remedies Act is to allow private individuals to sue anyone who intentionally publishes or otherwise disseminates their private sexual images without the consent of the person depicted.

Elements of the Claim

To recover damages, the depicted person must prove:

1. The image was a private sexual image;
2. The depicted person is identifiable to someone else; and
3. The depicted person did not consent to the dissemination.

Sexual images here include those showing the subject fully or partially unclothed as well as depicting sexual activity of any kind. Under this statute, (1) consent to the image's creation is not consent to dissemination of that image; and (2) dissemination to one person does not equal permission to allow the recipient to distribute it further. 740 ILCS 190/10(b). In other words, sending a nude selfie to a significant other does not permit the recipient to show the image to anyone else or to post the picture online.

Damages

If the plaintiff proves the nonconsensual dissemination of a private sexual image, they may be entitled to:

1. The greater of either (1) statutory damages up to \$10,000.00; or (2) amounts for provable, economic harm and damages for emotional distress;
2. An amount equal to any amounts made by the defendant from the dissemination; and
3. Punitive damages.

PROFESSIONALS

Max Goodman
Partner

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This statute allows victims to seek damages based on their degree of emotional distress (e.g. how this incident affected their relationships, embarrassment/humiliation at work or with family, loss of sleep/appetite, depression, or anxiety). Victims can also seek punitive damages intended to make an example of the other party to deter them and others from similar conduct. The Illinois legislature has also allowed plaintiffs to seek attorneys' fees removing costly hurdles to this litigation. Causes of action can also be brought under this Act against someone who *merely threatens* to disseminate these sexual images.

Examples

Jane sends her boyfriend, John, a topless selfie. The photo shows part of her face and a fairly unique tattoo on her shoulder. John sends the photo to three friends who do not show the image to anyone.

Jane would likely have a successful claim under this Act against John. Even though Jane took the photograph and chose to send it to John, she did not give John permission to share the photo with others. Even though the image does not show Jane's full face, the dissemination of the photo is actionable if anyone could identify the person depicted as Jane. Did John tell his friends that this was a picture of Jane? If the friends were told this was a picture of Jane or if they could recognize her face or tattoo from the image, then John's dissemination of the photo would be actionable. Jane could seek damages for either (1) emotional distress, therapy, and possibly also for harm to her reputation; or (2) \$10,000.00 (whichever is greater) as well as attorneys fees. Jane would not likely have a strong punitive damages claim unless she could show wider dissemination of the image or severe emotional distress.

Tyler and Tammy are married. They jointly decide to film themselves having sex. Tyler later learns that Tammy is unfaithful and the couple splits. Tyler sells their sex tape online for \$15,000.00. Tyler also creates fake social media accounts for Tammy where he follows Tammy's co-workers, friends, and family before posting nude images of her.

Tammy would likely have a successful claim under this Act against Tyler. In addition to other damages, Tammy should seek the \$15,000.00 Tyler received for the wrongful sale of their video. Tammy would likely be entitled to significant punitive damages due to Tyler's intentional cruelty in publishing these images to those closest to Tammy. The court could also order Tyler to remove those fake social media accounts. See 740 ILCS 190/25(b)(2) (empowering the court to grant injunctive relief).

Revenge porn may also constitute a violation of Illinois criminal statutes including 720 ILCS 5/11-23.5 (Non-Consensual Dissemination of Private Sexual Images). The Civil Remedies Act, however, empowers revenge porn victims to take matters into their own hands by recognizing this unique form of abuse and providing a straightforward avenue to civil recovery and sizeable financial

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damages. If you or someone you know is a victim of revenge porn or wants to learn more about the Civil Remedies Act, please reach out to us.

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