



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-5581/1
SWB:amn

2021 ASSEMBLY BILL 868

January 18, 2022 - Introduced by Representatives SNODGRASS, CABRERA, HEBL, HESSELBEIN, SHELTON, SUBECK, DITTRICH and SINICKI, cosponsored by Senators AGARD and ROYS. Referred to Committee on Criminal Justice and Public Safety.

1 **AN ACT to create** 895.437 and 944.27 of the statutes; **relating to:** prohibiting
2 sending unsolicited obscene or sexually explicit images by electronic means,
3 establishing a private civil cause of action for sending unsolicited obscene or
4 sexually explicit images by electronic means, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill establishes a penalty for knowingly sending an unsolicited obscene or sexually explicit image by electronic means, specifically any image depicting a person engaging in an act of sexual intercourse or masturbation or depicting the exposed genitals or anus of any person. Under the bill, a person who violates this prohibition is subject to a forfeiture not to exceed \$250 for a first violation, and a forfeiture not to exceed \$500 for any subsequent violation. If the person is under 18 years of age, however, the person is subject to a written warning for a first violation, and for any subsequent violation before the person is 18 years of age, a forfeiture not to exceed \$250.

The bill also establishes a private cause of action against a person who knowingly sends by electronic means an image depicting a person engaging in an act of sexual intercourse or masturbation or depicting the exposed genitals or anus of any person that the person who sends the image knows or reasonably should know is unsolicited.

Neither the prohibition resulting in a forfeiture nor the private civil action established under the bill applies to 1) an Internet service provider, mobile data provider, or operator of an online or mobile application, to the extent that the entity

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is transmitting, routing, or providing connections for electronic communications initiated by or at the direction of another person; 2) any service that transmits images or audiovisual works, including an on-demand, subscription, or advertising-supported service; or 3) a health care provider transmitting an image for a legitimate medical purpose.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 895.437 of the statutes is created to read:

2 **895.437 Sending unsolicited obscene or sexually explicit images;**

3 **action for. (1)** In this section:

4 (a) “Image” includes a moving visual image.

5 (b) “Sexual intercourse” has the meaning given in s. 944.27 (1) (b).

6 (c) “Unsolicited” has the meaning given in s. 944.27 (1) (c).

7 **(2)** A person has a civil cause of action against another person who knowingly
8 sends by electronic means an image depicting a person engaging in an act of sexual
9 intercourse or masturbation or depicting the exposed genitals or anus of any person
10 that the person who sends the image knows or reasonably should know is unsolicited.

11 **(3)** (a) A plaintiff who suffers harm as a result of receiving an image in violation
12 of sub. (2) and prevails in an action under this section may recover economic and
13 noneconomic damages proximately caused by the transmittal of the image, including
14 damages for emotional distress.

15 (b) A plaintiff who suffers harm as a result of receiving an image, the
16 transmittal of which had been expressly forbidden by the plaintiff, in violation of sub.
17 (2), and prevails in an action under this section may recover any of the following:

18 1. Economic and noneconomic damages proximately caused by the sending of
19 the image, including damages for emotional distress.

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1 2. Upon request of the plaintiff at any time before the final judgment is
2 rendered, in lieu of those damages specified in subd. 1., an award of statutory
3 damages in a sum of not less than \$1,500 but not more than \$30,000.

4 3. Punitive damages.

5 4. Reasonable attorney's fees and costs.

6 5. Any other available relief, including injunctive relief.

7 (c) The remedies provided by this section are cumulative and may not be
8 construed as restricting a remedy that is available under any other law.

9 (d) This section does not apply to any of the following:

10 1. An Internet service provider, mobile data provider, or operator of an online
11 or mobile application, to the extent that the entity is transmitting, routing, or
12 providing connections for electronic communications initiated by or at the direction
13 of another person.

14 2. Any service that transmits images or audiovisual works, including an
15 on-demand, subscription, or advertising-supported service.

16 3. A health care provider transmitting an image for a legitimate medical
17 purpose.

18 **SECTION 2.** 944.27 of the statutes is created to read:

19 **944.27 Sending unsolicited obscene or sexually explicit images. (1)** In
20 this section:

21 (a) "Image" includes a moving visual image.

22 (b) "Sexual intercourse" means vulvar penetration as well as cunnilingus,
23 fellatio, or anal intercourse between persons or any other intrusion, however slight,
24 of any part of a person's body or of any object into the genital or anal opening of
25 another person.

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1 (c) "Unsolicited" means that the recipient has not requested the image, has not
2 consented to its transmittal, or has expressly forbidden its transmittal.

3 (2) Whoever knowingly sends an unsolicited image by electronic means,
4 directed to another person, depicting a person engaging in an act of sexual
5 intercourse or masturbation or depicting the exposed genitals or anus of any person
6 is subject to the following:

7 (a) Except as provided in par. (b), a forfeiture not to exceed \$250 for a first
8 violation, and a forfeiture not to exceed \$500 for any subsequent violation.

9 (b) If the person is under 18 years of age, a written warning for a first violation,
10 and for any subsequent violation before the person is 18 years of age, a forfeiture not
11 to exceed \$250.

12 (3) This section does not apply to any of the following:

13 (a) An Internet service provider, mobile data provider, or operator of an online
14 or mobile application, to the extent that the entity is transmitting, routing, or
15 providing connections for electronic communications initiated by or at the direction
16 of another person.

17 (b) Any service that transmits images or audiovisual works, including an
18 on-demand, subscription, or advertising-supported service.

19 (c) A health care provider transmitting an image for a legitimate medical
20 purpose.

21 (END)