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**SB-157 Invasion of privacy: distribution of sexually explicit materials: protection of plaintiff's identity.**  
(2017-2018)

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**Senate Bill No. 157**

**CHAPTER 233**

An act to amend Section 1708.85 of the Civil Code, and to amend Section 6276.12 of the Government Code, relating to privacy.

[ Approved by Governor September 11, 2017. Filed with Secretary of State September 11, 2017. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 157, Wieckowski. Invasion of privacy: distribution of sexually explicit materials: protection of plaintiff's identity.

Existing law creates a private right of action against a person who intentionally 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 specified sexual acts, without his or her consent, knowing that the other person had a reasonable expectation that the material would remain private, if specified conditions are met. Existing law authorizes a plaintiff in a civil proceeding pursuant to these provisions to use a pseudonym instead of his or her true name and to exclude or redact from all pleadings and documents filed in the action other identifying characteristics of the plaintiff. Existing law requires specified court documents, including motions and papers filed by parties, to be worded in a way that protects the name or other identifying characteristics of the plaintiff from public revelation. Existing law specifies that identifying characteristics include certain information for these purposes.

This bill would require, in cases where a plaintiff uses a pseudonym, all other parties and their agents and attorneys to use the plaintiff's pseudonym in all pleadings, discovery documents, and other documents filed or served in the action, and at hearings, trial, and other court proceedings that are open to the public. The bill would require any party filing a pleading, discovery document, or other document in the action to exclude or redact identifying characteristics of the plaintiff from those documents, except as specified, and to file with the court and serve upon all other parties a confidential information form that includes the plaintiff's name and other identifying characteristics excluded or redacted. The bill would require the court to keep the plaintiff's name and excluded or redacted characteristics confidential. The bill would define identifying characteristics to include, among other information from which the plaintiff's identity can be discerned, telephone number, email address, social media profiles, online identifiers, as defined, and images of the plaintiff.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 1708.85 of the Civil Code is amended to read:

**1708.85.** (a) A private cause of action lies against a person who intentionally distributes by any means a photograph, film, videotape, recording, or any other reproduction of another, without the other's consent, if (1) the person knew that the other person had a reasonable expectation that the material would remain private, (2) the distributed material exposes an intimate body part of the other person, or shows the other person engaging in an act of intercourse, oral copulation, sodomy, or other act of sexual penetration, and (3) the other person suffers general or special damages as described in Section 48a.

(b) As used in this section, "intimate body part" means any portion of the genitals, and, in the case of a female, also includes any portion of the breast below the top of the areola, that is uncovered or visible through less than fully opaque clothing.

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

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

(2) The person possessing or viewing the distributed material has permission from the person appearing in the material to publish by any means or post the material on an Internet Web site.

(3) The person appearing in the material waived any reasonable expectation of privacy in the distributed material by making it accessible to the general public.

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

(5) The distributed material was photographed, filmed, videotaped, recorded, or otherwise reproduced in a public place and under circumstances in which the person depicted had no reasonable expectation of privacy.

(6) The distributed material was previously distributed by another person.

(d) In addition to any other relief available at law, the court may order equitable relief against the person violating subdivision (a), including a temporary restraining order, or a preliminary injunction or a permanent injunction ordering the defendant to cease distribution of material. The court may grant injunctive relief maintaining the confidentiality of a plaintiff using a pseudonym as provided in subdivision (f).

(e) The court may also grant, after holding a properly noticed hearing, reasonable attorney's fees and costs to the prevailing plaintiff.

(f) (1) A plaintiff in a civil proceeding pursuant to subdivision (a), may proceed using a pseudonym, either John Doe, Jane Doe, or Doe, for the true name of the plaintiff and may exclude or redact from all pleadings and documents filed in the action other identifying characteristics of the plaintiff. A plaintiff who proceeds using a pseudonym and excluding or redacting identifying characteristics as provided in this section shall file with the court and serve upon the defendant a confidential information form for this purpose that includes the plaintiff's name and other identifying characteristics excluded or redacted. The court shall keep the plaintiff's name and excluded or redacted characteristics confidential.

(2) In cases where a plaintiff proceeds using a pseudonym under this section, the following provisions shall apply:

(A) All other parties and their agents and attorneys shall use this pseudonym in all pleadings, discovery documents, and other documents filed or served in the action, and at hearings, trial, and other court proceedings that are open to the public.

(B) (i) Any party filing a pleading, discovery document, or other document in the action shall exclude or redact any identifying characteristics of the plaintiff from the pleading, discovery document, or other document, except for a confidential information form filed pursuant to this subdivision.

(ii) A party excluding or redacting identifying characteristics as provided in this section shall file with the court and serve upon all other parties a confidential information form that includes the plaintiff's name and other identifying characteristics excluded or redacted. The court shall keep the plaintiff's name and excluded or redacted characteristics confidential.

(C) All court decisions, orders, petitions, discovery documents, and other documents shall be worded so as to protect the name or other identifying characteristics of the plaintiff from public revelation.

(3) The following definitions apply to this subdivision:

(A) "Identifying characteristics" means name or any part thereof, address or any part thereof, city or unincorporated area of residence, age, marital status, relationship to defendant, and race or ethnic background, telephone number, email address, social media profiles, online identifiers, contact information, or any other information, including images of the plaintiff, from which the plaintiff's identity can be discerned.

(B) "Online identifiers" means any personally identifying information or signifiers that would tie an individual to a particular electronic service, device, or Internet application, website, or platform account, including, but not limited to, access names, access codes, account names, aliases, avatars, credentials, gamer tags, display names, handles, login names, member names, online identities, pseudonyms, screen names, user accounts, user identifications, usernames, Uniform Resource Locators (URLs), domain names, Internet Protocol (IP) addresses, and media access control (MAC) addresses.

(4) The responsibility for excluding or redacting the name or identifying characteristics of the plaintiff from all documents filed with the court rests solely with the parties and their attorneys. Nothing in this section requires the court to review pleadings or other papers for compliance with this provision.

(5) Upon request of the plaintiff, the clerk shall allow access to the court file in an action filed under this section only as follows:

(A) To a party to the action, including a party's attorney.

(B) To a person by order of the court on a showing of good cause for access.

(C) To any person 60 days after judgment is entered unless the court grants a plaintiff's motion to seal records pursuant to Chapter 3 of Division 4 of Title 2 of the California Rules of Court.

(g) In an action pursuant to this section, the plaintiff shall state in the caption of the complaint "ACTION BASED ON CIVIL CODE SECTION 1708.85."

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

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

(j) The Judicial Council shall, on or before January 1, 2019, adopt or revise as appropriate rules and forms in order to implement subdivision (f).

**SEC. 2.** Section 6276.12 of the Government Code is amended to read:

**6276.12.** Conservatee, confidentiality of the conservatee's report, Section 1826, Probate Code.

Conservatee, estate plan of, confidentiality of, Section 2586, Probate Code.

Conservatee with disability, confidentiality of report, Section 1827.5, Probate Code.

Conservator, confidentiality of conservator's birthdate and driver's license number, Section 1834, Probate Code.

Conservator, supplemental information, confidentiality of, Section 1821, Probate Code.

Conservatorship, court review of, confidentiality of report, Section 1851, Probate Code.

Consumer fraud investigations, access to complaints and investigations, Section 26509.

Consumption or utilization of mineral materials, disclosure of, Section 2207.1, Public Resources Code.

Contractor, evaluations and contractor responses, confidentiality of, Section 10370, Public Contract Code.

Contractor, license applicants, evidence of financial solvency, confidentiality of, Section 7067.5, Business and Professions Code.

Controlled Substance Law violations, confidential information, Section 818.7.

Controlled substance offenders, confidentiality of registration information, Section 11594, Health and Safety Code.

Cooperative Marketing Association, confidential information disclosed to conciliator, Section 54453, Food and Agricultural Code.

Coroner, inquests, subpoena duces tecum, Section 27491.8.

County aid and relief to indigents, confidentiality of investigation, supervision, relief, and rehabilitation records, Section 17006, Welfare and Institutions Code.

County alcohol programs, confidential information and records, Section 11812, Health and Safety Code.

County Employees' Retirement, confidential statements and records, Section 31532.

County mental health system, confidentiality of client information, Section 5610, Welfare and Institutions Code.

County social services, investigation of applicant, confidentiality, Section 18491, Welfare and Institutions Code.

County social services rendered by volunteers, confidentiality of records of recipients, Section 10810, Welfare and Institutions Code.

County special commissions, disclosure of health care peer review and quality assessment records not required, Section 14087.58, Welfare and Institutions Code.

County special commissions, disclosure of records relating to the commission's rates of payment for publicly assisted medical care not required, Section 14087.58, Welfare and Institutions Code.

Court files, access to, restricted for 60 days, Section 1161.2, Code of Civil Procedure.

Court files, access to, restricted for 60 days, Section 1708.85, Civil Code.

Court reporters, confidentiality of records and reporters, Section 68525.

Court-appointed special advocates, confidentiality of information acquired or reviewed, Section 105, Welfare and Institutions Code.

Crane employers, previous business identities, confidentiality of, Section 7383, Labor Code.

Credit unions, confidentiality of investigation and examination reports, Section 14257, Financial Code.

Credit unions, confidentiality of employee criminal history information, Section 14409.2, Financial Code.

Criminal defendant, indigent, confidentiality of request for funds for investigators and experts, Section 987.9, Penal Code.

Criminal offender record information, access to, Sections 11076 and 13202, Penal Code.

Crop reports, confidential, subdivision (e), Section 6254.

Customer list of chemical manufacturers, formulators, suppliers, distributors, importers, and their agents, the quantities and dates of shipments, and the proportion of a specified chemical within a mixture, confidential, Section 147.2, Labor Code.

Customer list of employment agency, trade secret, Section 16607, Business and Professions Code.

Customer list of telephone answering service, trade secret, Section 16606, Business and Professions Code.

**SEC. 3.** The Legislature finds and declares that Section 1 of this act, which amends Section 1708.85 of the Civil Code, and Section 2 of this act, which amends Section 6276.12 of the Government Code, impose a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect the identity of victims whose privacy was violated by the unconsented distribution of material that exposes his or her intimate body part or shows him or her engaging in specified sexual acts.