



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

SB-53 Unsolicited images. (2021-2022)

SHARE THIS:  

Date Published: 09/26/2022 09:00 PM

Senate Bill No. 53

CHAPTER 504

An act to add Section 1708.88 to the Civil Code, relating to unsolicited images.

[Approved by Governor September 23, 2022. Filed with Secretary of State September 23, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 53, Leyva. Unsolicited images.

Existing law creates a private cause of action against a person who intentionally distributes material that exposes an intimate body part of another person or shows that other person engaging in sexual conduct if the person knew that the other person had a reasonable expectation that the material would remain private.

This bill would create a private cause of action against a person 18 years of age or older who knowingly sends an unsolicited image, as specified, by electronic means depicting obscene material, as defined. The bill would entitle the plaintiff to recover economic and noneconomic damages or statutory damages of a sum not less than \$1,500 but not more than \$30,000, as well as punitive damages, reasonable attorney's fees and costs, and other available relief, including injunctive relief, as specified.

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

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

SECTION 1. Section 1708.88 is added to the Civil Code, to read:

1708.88. (a) A private cause of action lies against a person 18 years of age or older who knowingly sends an image, that the person knows or reasonably should know is unsolicited, by electronic means, depicting obscene material.

(b) For purposes of this section, the following terms have the following meanings:

(1) An "image" includes, but is not limited to, a moving visual image.

(2) "Obscene material" means material, including, but not limited to, images depicting a person engaging in an act of sexual intercourse, sodomy, oral copulation, sexual penetration, or masturbation, or depicting the exposed genitals or anus of any person, taken as a whole, that to the average person, applying contemporary statewide standards, appeals to the prurient interest, that, taken as a whole, depicts or describes sexual conduct in a patently offensive way, and that, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(3) An image is "unsolicited" if the recipient has not consented to or has expressly forbidden the receipt of the image.

(c) (1) A prevailing plaintiff who suffers harm as a result of receiving an image in violation of subdivision (a) may recover economic and noneconomic damages proximately caused by the receipt of the image, including damages for emotional distress.

(2) A prevailing plaintiff who suffers harm as a result of receiving an image, the receipt of which had been expressly forbidden by the plaintiff, in violation of subdivision (a), may recover the following:

(A) Economic and noneconomic damages proximately caused by the receipt of the image, including damages for emotional distress.

(B) Upon request of the plaintiff at any time before the final judgment is rendered, the plaintiff may, in lieu of those damages specified in subparagraph (A), recover an award of statutory damages of a sum of not less than one thousand five hundred dollars (\$1,500) but not more than thirty thousand dollars (\$30,000).

(C) Punitive damages.

(3) A prevailing plaintiff described in paragraph (1) or (2) may recover the following:

(A) Reasonable attorney's fees and costs.

(B) Any other available relief, including injunctive relief.

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

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

(1) An internet service provider, mobile data provider, or operator of an online or mobile application, to the extent that the entity 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, without limitation, an on-demand, subscription, or advertising-supported service.

(3) A health care provider transmitting an image for a legitimate medical purpose.

(4) An individual who has not expressly opted-out of receiving sexually explicit images on the service in which the image is transmitted, where such an option is available.