

SENATE BILL No. 312

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-21.8.

Synopsis: Health care information privacy. Creates a civil cause of action against a person who discloses an image or information that indicates health care services or treatment that an individual has sought, considered, or obtained without the individual's express permission. Provides that a prevailing plaintiff may recover the greater of: (1) economic and noneconomic damages; or (2) statutory damages not to exceed \$10,000; plus attorney's fees, court costs, and other relief, including injunctive relief. Establishes criteria to be used by the trier of fact in determining damages. Provides that an interactive computer service may not be liable for disclosing content.

Effective: July 1, 2022.

Yoder

January 11, 2022, read first time and referred to Committee on Judiciary.



Second Regular Session of the 122nd General Assembly (2022)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

SENATE BILL No. 312



A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-21.8 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
3 2022]:
4 **ARTICLE 21.8. CAUSES OF ACTION: HEALTH CARE**
5 **INFORMATION PRIVACY**
6 **Chapter 1. Improper Disclosure of an Individual's Health Care**
7 **Information**
8 **Sec. 1. (a) An individual whose health care information is**
9 **identifiable and has suffered harm may bring an action for**
10 **disclosing the individual's health care information against a person**
11 **who:**
12 **(1) discloses an image or information that indicates health**
13 **care services or treatment that the individual has sought,**
14 **considered, or obtained; and**
15 **(2) did not obtain the individual's express permission for the**
16 **disclosure of the images or information.**
17 **(b) The following conduct by an individual described in**



1 subsection (a) does not establish by itself that the individual
 2 consented to the disclosure of an image or information that is the
 3 subject of an action under this section:

4 (1) The individual's consent to the creation of the image or
 5 information.

6 (2) The individual's previous consensual disclosure of the
 7 image or information.

8 (c) An individual who does not consent to the disclosure of
 9 images described in subsection (a) retains a reasonable expectation
 10 of privacy even if the image was created when the individual was
 11 in a public place.

12 Sec. 2. (a) An individual who prevails in an action brought
 13 under this chapter may recover:

14 (1) the greater of:

15 (A) economic and noneconomic damages proximately
 16 caused by the defendant's disclosure, including damages
 17 for emotional distress whether or not accompanied by
 18 other damages; or

19 (B) statutory damages not to exceed ten thousand dollars
 20 (\$10,000) against each defendant found liable under this
 21 chapter for all disclosures by the defendant of which the
 22 plaintiff knew or reasonably should have known when
 23 filing the action or which became known during the
 24 pendency of the action;

25 (2) an amount equal to any monetary gain made by the
 26 defendant from disclosure of the image or information; and

27 (3) punitive damages.

28 (b) In determining the amount of statutory damages under
 29 subsection (a)(1)(B), the trier of fact shall consider the following:

30 (1) The age of the parties at the time of the disclosure.

31 (2) The number of persons to whom the image or information
 32 was disclosed.

33 (3) The breadth of distribution of the image or information by
 34 the defendant.

35 (4) Whether the person who disclosed or distributed the image
 36 or information received any compensation for the disclosure
 37 or distribution.

38 (5) Whether, and to what extent, the disclosure or distribution
 39 of the image or information was willful.

40 (6) Any other circumstances surrounding the disclosure or
 41 distribution of the image or information that relates to the
 42 severity of the harm suffered by the individual.



1 (c) In addition, an individual who prevails in an action brought
2 under this chapter is entitled to:

3 (1) reasonable attorney's fees;

4 (2) court costs; and

5 (3) additional relief, including injunctive relief.

6 (d) Punitive damages awarded under this section are not subject
7 to IC 34-51-3-4, IC 34-51-3-5, or IC 34-51-3-6.

8 (e) This section does not affect other rights or remedies
9 available under state law.

10 Sec. 3. (a) An action under section 1 of this chapter may be
11 brought not later than four (4) years from the date the disclosure
12 was discovered or should have been discovered with the exercise of
13 reasonable diligence.

14 (b) In an action under section 1 of this chapter by an individual
15 who was a minor on the date of disclosure, the time specified in
16 subsection (a) does not begin to run until the individual reaches the
17 age of majority.

18 Sec. 4. Nothing in this article shall be construed to impose
19 liability on an interactive computer service, as defined in 47 U.S.C.
20 230(f)(2), for content provided by another person.

