

REFERENCE TITLE: drag performers; drag shows; regulation

State of Arizona  
Senate  
Fifty-sixth Legislature  
First Regular Session  
2023

# SB 1030

Introduced by  
Senator Kern

## AN ACT

AMENDING SECTIONS 11-811, 12-741, 13-1422 AND 13-1425, ARIZONA REVISED STATUTES; RELATING TO ADULT ORIENTED BUSINESSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 11-811, Arizona Revised Statutes, is amended to  
3 read:

4 11-811. Zoning ordinance; zoning districts; definitions

5 A. Pursuant to this article, the board of supervisors ~~may~~ SHALL  
6 adopt a zoning ordinance in order to conserve and promote the public  
7 health, safety, convenience and general welfare. The zoning ordinance and  
8 all rezonings and zoning regulations amendments adopted under this article  
9 shall be consistent with and conform to the adopted comprehensive plan.  
10 In addition to the other matters that are required or authorized under  
11 this section and article 1 of this chapter, the zoning ordinance:

12 1. Shall show the zoning districts designated as appropriate for  
13 various classes of residential, business and industrial uses and shall  
14 provide for the establishment of setback lines and other plans providing  
15 for adequate light, air and parking facilities and for expediting traffic  
16 within the districts.

17 2. May establish the percentage of a lot or parcel that may be  
18 covered by buildings and the size of yards, courts and other open spaces.

19 3. Shall consider access to incident solar energy.

20 4. May provide for retirement community zoning districts.

21 5. ~~May~~ SHALL provide for the regulation and use of business  
22 licenses, adult oriented business manager permits, ~~and~~ adult service  
23 provider permits, DRAG SHOW PERMITS AND DRAG PERFORMER PERMITS in  
24 conjunction with the establishment or operation of adult oriented  
25 businesses and facilities, including adult arcades, adult bookstores or  
26 video stores, cabarets, adult live entertainment establishments, adult  
27 motion picture theaters, adult theaters, massage establishments,  
28 ESTABLISHMENTS THAT CONDUCT DRAG SHOWS and nude model studios. With  
29 respect to cabarets, the ordinance shall not conflict with specific  
30 statutory or valid regulatory requirements applicable to persons licensed  
31 to dispense alcoholic beverages, but the ordinance ~~may~~ SHALL include  
32 regulation of the age and conduct of erotic entertainers in a manner at  
33 least as restrictive as rules adopted under title 4. Notwithstanding  
34 section 11-812, a county in regulating or licensing businesses and  
35 facilities pursuant to this paragraph may impose reasonable operating  
36 requirements that affect the existing uses of businesses and facilities.

37 6. Shall designate and zone appropriate areas of reasonable size in  
38 which there may be established with reasonable permanency canneries,  
39 fertilizer plants, refineries, commercial feedlots, meat packing plants,  
40 tallow works and other like businesses. A dairy operation, including  
41 areas designated for the raising of replacement heifers or bulls owned by  
42 the same dairy operation, is not subject to this paragraph, and is a  
43 general agricultural purpose under subsection D, paragraph 2 of this  
44 section and section 11-812, subsection A, paragraph 2. A replacement  
45 heifer or bull raising operation of a dairy that is not on contiguous

1 property of the dairy is subject to this paragraph unless the operation  
2 begins within one-quarter mile of the dairy.

3 B. To carry out the purposes of this article, the board may adopt  
4 overlay zoning districts and regulations applicable to particular  
5 buildings, structures and land within individual zones. For the purposes  
6 of this subsection, "overlay zoning district" means a special zoning  
7 district that includes regulations that modify regulations in another  
8 zoning district with which the overlay zoning district is combined.  
9 Overlay zoning districts and regulations shall be adopted pursuant to  
10 section 11-813. The provisions of overlay zoning shall apply  
11 retroactively to authorize overlay zoning districts and regulations  
12 adopted before April 20, 1993.

13 C. In accordance with article II, sections 1 and 2, Constitution of  
14 Arizona, the board shall consider the individual property rights and  
15 personal liberties of the residents of the county before adopting any  
16 zoning ordinance.

17 D. This section does not authorize:

18 1. The imposition of dedications, exactions, fees or other  
19 requirements that are not otherwise authorized by law.

20 2. The regulation or restriction of the use or occupation of land  
21 or improvements for railroad, mining, metallurgical, grazing or general  
22 agricultural purposes, if the tract concerned is five or more contiguous  
23 commercial acres. For the purposes of this paragraph, general  
24 agricultural purposes do not include the cultivation of cannabis as  
25 defined in section 13-3401 or marijuana as defined in section 13-3401 or  
26 36-2801.

27 E. For the purposes of this section:

28 1. "Adult arcade" means any place to which the public is ~~permitted~~  
29 ~~ALLOWED~~ or invited and in which coin-operated or slug-operated or  
30 electronically, electrically or mechanically controlled still or motion  
31 picture machines, projectors or other ~~image-producing~~ ~~IMAGE-PRODUCING~~  
32 devices are maintained to show images involving specific sexual activities  
33 or specific anatomical areas to persons in booths or viewing rooms.

34 2. "Adult bookstore or video store" means a commercial  
35 establishment that offers for sale or rent any of the following as one of  
36 its principal business purposes:

37 (a) Books, magazines, periodicals or other printed matter,  
38 photographs, films, motion pictures, videocassettes or reproductions or  
39 slides or other visual representations that depict or describe specific  
40 sexual activities or specific anatomical areas.

41 (b) Instruments, devices or paraphernalia that are designed for use  
42 in connection with specific sexual activities.

43 3. "Adult live entertainment establishment" means an establishment  
44 that features either:

45 (a) Persons who appear in a state of nudity.

1 (b) Live performances that are characterized by the exposure of  
2 specific anatomical areas or specific sexual activities.

3 4. "Adult motion picture theater" means a commercial establishment  
4 in which for any form of consideration films, motion pictures,  
5 videocassettes, slides or other similar photographic reproductions that  
6 are characterized by the depiction or description of specific sexual  
7 activities or specific anatomical areas are predominantly shown.

8 5. "Adult oriented business" means adult arcades, adult bookstores  
9 or video stores, cabarets, adult live entertainment establishments, adult  
10 motion picture theaters, adult theaters, massage establishments that offer  
11 adult service, ESTABLISHMENTS THAT CONDUCT DRAG SHOWS, DRAG PERFORMERS or  
12 nude model studios.

13 6. "Adult oriented business manager" means a person on the premises  
14 of an adult oriented business who is authorized to exercise overall  
15 operational control of the business.

16 7. "Adult service" means dancing, serving food or beverages,  
17 modeling, posing, wrestling, singing, reading, talking, listening or other  
18 performances or activities conducted for any consideration in an adult  
19 oriented business by a person who is nude or seminude during all or part  
20 of the time that the person is providing the service.

21 8. "Adult service provider" or "erotic entertainer" means any  
22 natural person who provides an adult service.

23 9. "Adult theater" means a theater, concert hall, auditorium or  
24 similar commercial establishment that predominantly features persons who  
25 appear in a state of nudity or who engage in live performances that are  
26 characterized by the exposure of specific anatomical areas or specific  
27 sexual activities.

28 10. "Cabaret" means an adult oriented business licensed to provide  
29 alcoholic beverages pursuant to title 4, chapter 2, article 1.

30 11. "Discernibly turgid state" means the state of being visibly  
31 swollen, bloated, inflated or distended.

32 12. "DRAG PERFORMER" MEANS A PERSON WHO DRESSES IN CLOTHING AND  
33 USES MAKEUP AND OTHER PHYSICAL MARKERS OPPOSITE OF THE PERSON'S GENDER AT  
34 BIRTH TO EXAGGERATE GENDER SIGNIFIERS AND ROLES AND ENGAGES IN SINGING,  
35 DANCING OR A MONOLOGUE OR SKIT IN ORDER TO ENTERTAIN AN AUDIENCE.

36 13. "DRAG SHOW" MEANS A SHOW OR PERFORMANCE FOR ENTERTAINMENT AT  
37 WHICH A SINGLE PERFORMER OR GROUP OF PERFORMERS DRESS IN CLOTHING AND USE  
38 MAKEUP AND OTHER PHYSICAL MARKERS OPPOSITE OF THE PERFORMER'S OR GROUP OF  
39 PERFORMERS' GENDER AT BIRTH TO EXAGGERATE GENDER SIGNIFIERS AND ROLES AND  
40 ENGAGE IN SINGING, DANCING OR A MONOLOGUE OR SKIT IN ORDER TO ENTERTAIN AN  
41 AUDIENCE OF TWO OR MORE PEOPLE.

42 ~~12.~~ 14. "Massage establishment" means an establishment in which a  
43 person, firm, association or corporation engages in or permits massage  
44 activities, including any method of pressure on, friction against,  
45 stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating

1 of external soft parts of the body with the hands or with the aid of any  
2 mechanical apparatus or electrical apparatus or appliance. This paragraph  
3 does not apply to:

4 (a) Persons who are licensed pursuant to title 32, chapter 7, 8,  
5 13, 14 or 17.

6 (b) Registered nurses, licensed practical nurses or technicians who  
7 are acting under the supervision of a physician who is licensed pursuant  
8 to title 32, chapter 13 or 17.

9 (c) Registered nurse practitioners who are licensed pursuant to  
10 title 32, chapter 15.

11 (d) Persons who are employed or acting as trainers for a bona fide  
12 amateur, semiprofessional or professional athlete or athletic team.

13 (e) Persons who are licensed pursuant to title 32, chapter 3 or 5  
14 if the activity is limited to the head, face or neck.

15 ~~13.~~ 15. "Nude model studio":

16 (a) Means a place in which a person who appears in a state of  
17 nudity or who displays specific anatomical areas is observed, sketched,  
18 drawn, painted, sculptured, photographed or otherwise depicted by other  
19 persons who pay money or other consideration. ~~Nude model studio~~

20 (b) Does not include a proprietary school that is licensed by this  
21 state, a college, community college or university that is supported  
22 entirely or in part by taxation, a private college or university that  
23 maintains and operates educational programs in which credits are  
24 transferable to a college, community college or university that is  
25 supported entirely or in part by taxation or a structure to which the  
26 following apply:

27 ~~(a)~~ (i) A sign is not visible from the exterior of the structure  
28 and no other advertising appears indicating that a nude person is  
29 available for viewing.

30 ~~(b)~~ (ii) A student must enroll at least three days in advance of a  
31 class in order to participate.

32 ~~(c)~~ (iii) No more than one nude or seminude model is on the  
33 premises at any time.

34 ~~14.~~ 16. "Nude", "nudity" or "state of nudity" means any of the  
35 following:

36 (a) The appearance of a human anus, genitals or a female breast  
37 below a point immediately above the top of the areola.

38 (b) A state of dress that fails to opaquely cover a human anus,  
39 genitals or a female breast below a point immediately above the top of the  
40 areola.

41 ~~15.~~ 17. "Principal business purposes" means that a commercial  
42 establishment derives fifty percent or more of its gross income from the  
43 sale or rental of items listed in paragraph 2 of this subsection.

1 ~~16-~~ 18. "Seminude" means a state of dress in which clothing covers  
2 no more than the genitals, pubic region and female breast below a point  
3 immediately above the top of the areola, as well as portions of the body  
4 that are covered by supporting straps or devices.

5 ~~17-~~ 19. "Specific anatomical areas" means any of the following:  
6 (a) A human anus, genitals, the pubic region or a female breast  
7 below a point immediately above the top of the areola that is less than  
8 completely and opaquely covered.

9 (b) Male genitals in a discernibly turgid state even if completely  
10 and opaquely covered.

11 ~~18-~~ 20. "Specific sexual activities" means any of the following:

12 (a) Human genitals in a state of sexual stimulation or arousal.

13 (b) Sex acts, normal or perverted, actual or simulated, including  
14 acts of human masturbation, sexual intercourse, oral copulation or sodomy.

15 (c) Fondling or other erotic touching of the human genitals, pubic  
16 region, buttocks, anus or female breast.

17 (d) Excretory functions as part of or in connection with any of the  
18 activities under subdivision (a), (b) or (c) of this paragraph.

19 Sec. 2. Section 12-741, Arizona Revised Statutes, is amended to  
20 read:

21 12-741. Unauthorized disclosure of intimate images; civil  
22 action; exceptions; confidential information form;  
23 remedies; statute of limitations; definitions

24 A. A person is liable in a civil action for intentionally  
25 disclosing or threatening to disclose an intimate image of another  
26 individual if the depicted individual suffers harm from the disclosure or  
27 threatened disclosure and the person knew or should have known all of the  
28 following:

29 1. The depicted individual did not consent to the disclosure.

30 2. The intimate image was private.

31 3. The depicted individual was identifiable from the image itself  
32 or from information that is displayed in connection with the image.

33 B. Evidence that the depicted individual consented to the creation  
34 of the image or that the depicted individual previously consented to the  
35 disclosure of the image does not by itself establish that the depicted  
36 individual consented to the disclosure of the intimate image or that the  
37 depicted individual lacked a reasonable expectation of privacy.

38 C. A depicted individual who does not consent to the specific  
39 sexual activities or state of nudity depicted in an intimate image of the  
40 individual retains a reasonable expectation of privacy even if the image  
41 was created when the depicted individual was in a public place.

42 D. Notwithstanding subsection A of this section, a person is not  
43 liable under this section if the person proves that disclosing or  
44 threatening to disclose the intimate image was any of the following:

- 1           1. Made in good faith in any of the following:
- 2           (a) Law enforcement.
- 3           (b) A legal proceeding.
- 4           (c) Medical education or treatment.
- 5           2. Made in good faith in reporting or investigating any of the
- 6 following:
- 7           (a) Unlawful conduct.
- 8           (b) Unsolicited and unwelcome conduct.
- 9           3. Related to a matter of public concern or public interest.
- 10          4. Reasonably intended to assist the depicted individual.
- 11          5. Made by a parent, legal guardian or individual with legal
- 12 custody of a child and the depicted individual is the child unless the
- 13 image is disclosed with the intent to harm the depicted individual.
- 14          E. Subsection D of this section does not apply if the plaintiff
- 15 proves the disclosure was prohibited by law or made for the purpose of
- 16 sexual arousal, sexual gratification, humiliation, degradation or monetary
- 17 or commercial gain.
- 18          F. Disclosing or threatening to disclose an intimate image is not a
- 19 matter of public concern or public interest solely because the depicted
- 20 individual is a public figure.
- 21          G. If the plaintiff files with the court and serves on the
- 22 defendant a confidential information form that includes the excluded or
- 23 redacted plaintiff's name and other identifying characteristics, the court
- 24 may exclude or redact from all pleadings and documents filed in the action
- 25 other identifying characteristics of the plaintiff. The court may make
- 26 further orders as necessary to protect the identity and privacy of a
- 27 plaintiff.
- 28          H. The prevailing plaintiff may recover:
- 29           1. The greater of:
- 30           (a) Economic and noneconomic damages that are proximately caused by
- 31 the defendant's disclosure or threatened disclosure, including damages for
- 32 emotional distress whether or not accompanied by other damages.
- 33           (b) Statutory damages of not more than \$10,000 against each
- 34 defendant found liable under this section for all of the defendant's
- 35 disclosures and threatened disclosures that the plaintiff knew or
- 36 reasonably should have known when filing the action or that became known
- 37 during the pendency of the action. In determining the amount of statutory
- 38 damages under this subdivision, consideration must be given to the age of
- 39 the parties at the time of the disclosure or threatened disclosure, the
- 40 number of disclosures or threatened disclosures made by the defendant, the
- 41 breadth of distribution of the image by the defendant and other
- 42 exacerbating or mitigating factors.
- 43           2. An amount equal to any monetary gain made by the defendant from
- 44 disclosing or threatening to disclose the intimate image.
- 45           3. Punitive damages.

1 4. Reasonable attorney fees and costs.

2 5. Additional relief, including injunctive relief.

3 I. A civil action for an unauthorized disclosure may not be brought  
4 later than four years after the date that the disclosure was discovered or  
5 should have been discovered with the exercise of reasonable diligence  
6 except that a threat to disclose may not be brought later than four years  
7 after the date of the threat to disclose.

8 J. In a civil action brought by a depicted individual who was a  
9 minor on the date of the disclosure or threat to disclose, the time  
10 specified in subsection I of this section does not begin to run until the  
11 depicted individual attains the age of majority.

12 K. For the purposes of this section:

13 1. "Consent" means affirmative, conscious and voluntary  
14 authorization by an individual with legal capacity to give authorization.

15 2. "Depicted individual" means an individual whose body is shown in  
16 whole or in part in an intimate image.

17 3. "Disclose" or "disclosure" means to display, distribute,  
18 publish, advertise or offer.

19 4. "Harm" includes physical harm, economic harm and emotional  
20 distress whether or not accompanied by physical or economic harm.

21 5. "Intimate image" means a photograph, film, videotape, digital  
22 recording or other similar medium that shows a state of nudity or specific  
23 sexual activities.

24 6. "Private" means either of the following:

25 (a) Created or obtained under circumstances in which a depicted  
26 individual had a reasonable expectation of privacy.

27 (b) Made accessible through theft, bribery, extortion, fraud, false  
28 pretenses, voyeurism or exceeding authorized access to an account,  
29 message, file, device, resource or property.

30 7. "Specific sexual activities" has the same meaning prescribed in  
31 section 11-811.

32 8. "State of nudity" has the same meaning prescribed in section  
33 11-811, subsection E, paragraph ~~14~~ 16, subdivision (a).

34 Sec. 3. Section 13-1422, Arizona Revised Statutes, is amended to  
35 read:

36 13-1422. Adult oriented businesses; location; hours of  
37 operation; injunction; classification; definitions

38 A. An adult oriented business shall not be located within  
39 one-fourth mile of a child care facility, a private, public or charter  
40 school, a public playground, a public recreational facility, a residence  
41 or a place of worship. For the purposes of this subsection, measurements  
42 shall be made in a straight line in all directions, without regard to  
43 intervening structures or objects, from the nearest point on the property  
44 line of a parcel containing an adult oriented business to the nearest  
45 point on the property line of a parcel containing a child care facility, a



1 private, public or charter school, a public playground, a public  
2 recreational facility, a residence or a place of worship. An adult  
3 oriented business lawfully operating in conformity with this section does  
4 not violate this section if a child care facility, a private, public or  
5 charter school, a public playground, a public recreational facility, a  
6 residence or a place of worship subsequently locates within one-fourth  
7 mile of the adult oriented business.

8 B. An adult arcade, adult bookstore or video store, adult cabaret,  
9 adult motion picture theater, adult theater, escort agency or nude model  
10 studio shall not remain open at any time between the hours of 1:00 a.m.  
11 and 8:00 a.m. on Monday through Saturday and between the hours of 1:00  
12 a.m. and 12:00 noon on Sunday. A DRAG SHOW SHALL NOT BE CONDUCTED BETWEEN  
13 THE HOURS OF 1:00 A.M. AND 8:00 A.M. ON MONDAY THROUGH SATURDAY AND  
14 BETWEEN THE HOURS OF 1:00 A.M. AND 12:00 NOON ON SUNDAY.

15 C. Subsection A of this section does not prohibit counties or  
16 municipalities from enacting and enforcing ordinances that regulate the  
17 location of adult oriented businesses.

18 D. Subsection B of this section does not prohibit counties or  
19 municipalities from enacting and enforcing ordinances that regulate an  
20 adult arcade, adult bookstore or video store, adult cabaret, adult motion  
21 picture theater, adult theater, escort agency, ~~or~~ nude model studio OR  
22 DRAG SHOW in a manner that is at least as restrictive as subsection B of  
23 this section.

24 E. If there is reason to believe that a violation of subsection A  
25 of this section is being committed in any county or city, the county  
26 attorney of the county shall, or a citizen of this state who resides in  
27 the county or city in the citizen's own name may, maintain an action to  
28 abate and prevent the violation and to enjoin perpetually any person who  
29 is committing the violation and the owner, lessee or agent of the building  
30 or place in or on which the violation is occurring from directly or  
31 indirectly committing or ~~permitting~~ ALLOWING the violation.

32 F. A violation of subsection A or B of this section is a class 1  
33 misdemeanor. Each day of violation constitutes a separate offense.

34 G. For the purposes of this section:

35 1. "Adult arcade" has the same meaning prescribed in section  
36 11-811.

37 2. "Adult bookstore or video store" has the same meaning prescribed  
38 in section 11-811.

39 3. "Adult cabaret": ~~excludes~~

40 (a) DOES NOT INCLUDE any establishment licensed under title 4. ~~and~~

41 (b) Includes any nightclub, bar, restaurant or other similar  
42 commercial establishment that regularly features:

43 ~~(a)~~ (i) Persons who appear in a state of nudity or who are  
44 seminude.

- 1           ~~(b)~~ (ii) Live performances that are characterized by the exposure  
2 of specific anatomical areas or specific sexual activities.
- 3           ~~(c)~~ (iii) Films, motion pictures, videocassettes, slides or other  
4 photographic reproductions that are characterized by the depiction or  
5 description of specific sexual activities or specific anatomical areas.
- 6           4. "Adult motion picture theater" has the same meaning prescribed  
7 in section 11-811.
- 8           5. "Adult oriented business" has the same meaning prescribed in  
9 section 11-811.
- 10          6. "Adult theater" has the same meaning prescribed in section  
11 11-811.
- 12          7. "DRAG SHOW" MEANS A SHOW OR PERFORMANCE FOR ENTERTAINMENT AT  
13 WHICH A SINGLE PERFORMER OR GROUP OF PERFORMERS DRESS IN CLOTHING AND USE  
14 MAKEUP AND OTHER PHYSICAL MARKERS OPPOSITE OF THE PERFORMER'S OR GROUP OF  
15 PERFORMERS' GENDER AT BIRTH TO EXAGGERATE GENDER SIGNIFIERS AND ROLES AND  
16 ENGAGE IN SINGING, DANCING OR A MONOLOGUE OR SKIT IN ORDER TO ENTERTAIN AN  
17 AUDIENCE OF TWO OR MORE PEOPLE.
- 18          ~~7.~~ 8. "Escort" means a person who for consideration agrees or  
19 offers to act as a companion, guide or date for another person or who  
20 agrees or offers to privately model lingerie or to privately perform a  
21 striptease for another person.
- 22          ~~8.~~ 9. "Escort agency" means a person or business association that  
23 furnishes, offers to furnish or advertises the furnishing of escorts as  
24 one of its primary business purposes for any fee, tip or other  
25 consideration.
- 26          ~~9.~~ 10. "Nude model studio" has the same meaning prescribed in  
27 section 11-811.
- 28          ~~10.~~ 11. "Nude", "nudity" or "state of nudity" has the same meaning  
29 prescribed in section 11-811.
- 30          ~~11.~~ 12. "Place of worship" means a structure where persons  
31 regularly assemble for worship, ceremonies, rituals and education relating  
32 to a particular form of religious belief and which a reasonable person  
33 would conclude is a place of worship by reason of design, signs or  
34 architectural or other features.
- 35          ~~12.~~ 13. "Residence" means a permanent dwelling place.
- 36          ~~13.~~ 14. "Seminude" has the same meaning prescribed in section  
37 11-811.
- 38          ~~14.~~ 15. "Specific anatomical areas" has the same meaning prescribed  
39 in section 11-811.
- 40          ~~15.~~ 16. "Specific sexual activities" has the same meaning  
41 prescribed in section 11-811.

1           Sec. 4. Section 13-1425, Arizona Revised Statutes, is amended to  
2 read:

3           13-1425. Unlawful disclosure of images depicting states of  
4                           nudity or specific sexual activities;  
5                           classification; definitions

6           A. It is unlawful for a person to intentionally disclose an image  
7 of another person who is identifiable from the image itself or from  
8 information displayed in connection with the image if all of the following  
9 apply:

10           1. The person in the image is depicted in a state of nudity or is  
11 engaged in specific sexual activities.

12           2. The depicted person has a reasonable expectation of privacy.  
13 Evidence that a person has sent an image to another person using an  
14 electronic device does not, on its own, remove the person's reasonable  
15 expectation of privacy for that image.

16           3. The image is disclosed with the intent to harm, harass,  
17 intimidate, threaten or coerce the depicted person.

18           B. This section does not apply to any of the following:

19           1. The reporting of unlawful conduct.

20           2. Lawful and common practices of law enforcement, criminal  
21 reporting, legal proceedings or medical treatment.

22           3. Images involving voluntary exposure in a public or commercial  
23 setting.

24           4. An interactive computer service, as defined in 47 United States  
25 Code section 230(f)(2), or an information service, as defined in 47 United  
26 States Code section 153, with regard to content wholly provided by another  
27 party.

28           5. Any disclosure that is made with the consent of the person who  
29 is depicted in the image.

30           C. A violation of this section is a class 5 felony, except that a  
31 violation of this section is a:

32           1. Class 4 felony if the image is disclosed by electronic means.

33           2. Class 1 misdemeanor if a person threatens to disclose but does  
34 not disclose an image that if disclosed would be a violation of this  
35 section.

36           D. For the purposes of this section:

37           1. "Disclose" means display, distribute, publish, advertise or  
38 offer.

39           2. "Disclosed by electronic means" means delivery to an email  
40 address, mobile device, tablet or other electronic device and includes  
41 disclosure on a website.

42           3. "Harm" means physical injury, financial injury or serious  
43 emotional distress.

1           4. "Image" means a photograph, videotape, film or digital  
2 recording.

3           5. "Reasonable expectation of privacy" means the person exhibits an  
4 actual expectation of privacy and the expectation is reasonable.

5           6. "Specific sexual activities" has the same meaning prescribed in  
6 section 11-811, subsection E, paragraph ~~18~~ 20, subdivisions (a) and (b).

7           7. "State of nudity" has the same meaning prescribed in section  
8 11-811, subsection E, paragraph ~~14~~ 16, subdivision (a).