

HOUSE BILL REPORT

ESHB 2160

As Passed House:
June 11, 2015

Title: An act relating to the distribution of intimate images.

Brief Description: Concerning the distribution of intimate images.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Wylie, Orwall, Klippert and Buys).

Brief History:

Committee Activity:

Judiciary: 2/19/15 [DPS].

Floor Activity:

Passed House: 3/2/15, 97-0.

Senate Amended.

Passed Senate: 4/15/15, 48-0.

Second Special Session

Floor Activity:

Passed House: 6/11/15, 90-0.

Brief Summary of Engrossed Substitute Bill

- Provides for civil liability against any person who intentionally and without consent distributes certain intimate images of another person.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Klippert, Muri, Orwall, Stokesbary and Walkinshaw.

Staff: Brent Campbell (786-7152).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Liability currently exists for some harms that result from disclosure of embarrassing or emotionally distressful material.

The tort of invasion of privacy is codified in statute and is based on the common law tort of public disclosure of private facts. Under this statute, someone invades another's privacy when he or she gives publicity to a matter concerning the private life of another. A person who invades another's privacy is subject to liability to the other person if the matter publicized is of a kind that would be highly offensive to a reasonable person and is not of legitimate concern to the public.

The tort of intentional infliction of emotional distress, also known as the tort of outrage, exists when a defendant engages in extreme and outrageous conduct to intentionally or recklessly inflict emotional distress on a plaintiff and the plaintiff actually suffers severe emotional distress as a result.

Summary of Engrossed Substitute Bill:

A person is liable for distributing an intimate image of another if he or she intentionally and without consent distributes an intimate image that:

- was obtained under circumstances in which a reasonable person would know or understand that the image was to remain private; or
- was knowingly obtained by the person without authorization or by exceeding authorized access from the other person's property, accounts, messages, files, or resources.

Several factors are listed that may be used to determine whether a reasonable person would know or understand that an image was to remain private.

An "intimate image" is any image or recording of an identifiable person that is taken in a private setting, is not a matter of public concern, and depicts:

- sexual activity; or
- a person's intimate body parts, whether nude or visible through less than opaque clothing.

Anyone who distributes an intimate image of another, and at the time of such distribution knows or reasonable should know that disclosure would cause harm to the depicted person, is liable for actual damages, reasonable attorneys' fees, and costs. The court also may award injunctive relief as it deems necessary. However, an interactive computer service, as defined by federal law, cannot be held liable for content provided by another person.

It is an affirmative defense to a violation if a family member of a minor distributes certain images of the minor to other family or friends and did not intend any harm or harassment in the disclosure.

The court must make it known to a plaintiff that the plaintiff may use a confidential identity, and the court must use the confidential identity in all petitions, filings, or other documents.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support-from testimony on HB 1624, which is identical to HB 2160 except for sponsors, on February 11, 2015) This bill is about the dignity and privacy of individuals whose lives are shattered through the release of intimate images. This issue, often called revenge porn, disproportionately affects women and girls and has had devastating effects, including suicide. Action needs to be taken to stop this. Websites are dedicated to this, and sometimes even extort money from victims in order to remove images from their servers. Victims of this conduct are harassed and threatened with rape and death. Other states have recognized the need for legislation and have already acted.

The bill is good, but could be made stronger. The bill should not require an intention to cause emotional distress because the damage to an individual is no different based on the intent, and oftentimes emotional distress is not the motive behind releasing the images. It could be about money, bragging rights, or something else. The definitions could also be changed to make them more specific. The bill should be drafted to include downstream distributors, so that it would apply when someone distributes an image to a friend and the friend then shares it with the world. However, computer interactive services should be specifically excluded from liability. The bill should also give the right to proceed under a pseudonym. A criminal component is necessary because there should be laws that directly cover this and because a civil penalty may not be able to be paid by a perpetrator.

(Opposed-from testimony on HB 1624, which is identical to HB 2160 except for sponsors, on February 11, 2015) None.

Persons Testifying: Representative Orwall, prime sponsor; Gary Ernsdorff, King County Prosecutor's Office; Kim L.; Megan Schrader, TechNet; and David Ward, Legal Voice.

Persons Signed In To Testify But Not Testifying: None.