**2160-S AMS LAW S2749.1 - NOT FOR FLOOR USE**

**SHB 2160** - S COMM AMD

By Committee on Law & Justice

**ADOPTED AS AMENDED 4/15/2015**

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.**  A new section is added to chapter 4.24 RCW to read as follows:

(1) A person distributes an intimate image of another person when that person intentionally and without consent distributes, transmits, or otherwise makes available an intimate image or images of that other person that was:

(a) Entrusted to that person by the other person, and that person's distribution, transmission, or otherwise making available of the intimate image intentionally or recklessly causes emotional distress to the other person; or

(b) Knowingly obtained by that person without authorization or by exceeding authorized access from the other person's property, accounts, messages, files, or resources.

(2) Any person who distributes an intimate image of another person as described in subsection (1) of this section shall be liable to that other person for up to ten thousand dollars or actual damages including, but not limited to, pain and suffering, emotional distress, economic damages, and lost earnings, whichever is greater, reasonable attorneys' fees, and costs. The court may also, in its discretion, award injunctive relief as it deems necessary.

(3) Factors that may be used to determine whether an intimate image was entrusted to a person include:

(a) The nature of the relationship between the parties;

(b) The circumstances under which the intimate image was taken;

(c) The circumstances under which the intimate image was distributed; and

(d) Any other relevant factors.

(4) As used in this section:

(a) "Entrusted" means the image was obtained under circumstances where both parties should reasonably understand that the image was to remain private.

(b) "Intimate image" means any photograph, motion picture film, videotape, digital image, or any other recording or transmission of another person who is identifiable from the image itself or from information displayed with or otherwise connected to the image, and that was taken in a private setting, is not a matter of public concern, and depicts:

(i) Sexual activity, including sexual intercourse as defined in RCW 9A.44.010 and masturbation; or

(ii) A person's intimate body parts, whether nude or visible through less than opaque clothing, including the genitals, pubic area, anus, or postpubescent female nipple.

(5) In an action brought under this section, the court shall:

(a) Make it known to the plaintiff as early as possible in the proceedings of the action that the plaintiff may use a confidential identity in relation to the action;

(b) Allow a plaintiff to use a confidential identity in all petitions, filings, and other documents presented to the court;

(c) Use the confidential identity in all of the court's proceedings and records relating to the action, including any appellate proceedings; and

(d) Maintain the records relating to the action in a manner that protects the confidentiality of the plaintiff.

(6) Nothing in this act shall be construed to impose liability on an interactive computer service, as defined in 47 U.S.C. 230(f)(2) as it exists on the effective date of this section, for content provided by another person."

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On page 1, line 1 of the title, after "images;" strike the remainder of the title and insert "adding a new section to chapter 4.24 RCW; and prescribing penalties."

EFFECT: The definition of "intimate image" is clarified. A plaintiff may use a pseudonym.