

E2SHB 1272 - H AMD 510

By Representative Orwall

ADOPTED 6/11/2015

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) A person commits the crime of
4 disclosing intimate images when the person knowingly discloses an
5 intimate image of another person and the person disclosing the image:

6 (a) Obtained it under circumstances in which a reasonable person
7 would know or understand that the image was to remain private;

8 (b) Knows or should have known that the depicted person has not
9 consented to the disclosure; and

10 (c) Knows or reasonably should know that disclosure would cause
11 harm to the depicted person.

12 (2) A person who is under the age of eighteen is not guilty of
13 the crime of disclosing intimate images unless the person:

14 (a) Intentionally and maliciously disclosed an intimate image of
15 another person;

16 (b) Obtained it under circumstances in which a reasonable person
17 would know or understand that the image was to remain private; and

18 (c) Knows or should have known that the depicted person has not
19 consented to the disclosure.

20 (3) This section does not apply to:

21 (a) Images involving voluntary exposure in public or commercial
22 settings; or

23 (b) Disclosures made in the public interest including, but not
24 limited to, the reporting of unlawful conduct, or the lawful and
25 common practices of law enforcement, criminal reporting, legal
26 proceedings, or medical treatment.

27 (4) This section does not impose liability upon the following
28 entities solely as a result of content provided by another person:

29 (a) An interactive computer service, as defined in 47 U.S.C. Sec.
30 230(f)(2);

31 (b) A provider of public or private mobile service, as defined in
32 section 13-214 of the public utilities act; or

1 (c) A telecommunications network or broadband provider.

2 (5) It shall be an affirmative defense to a violation of this
3 section that the defendant is a family member of a minor and did not
4 intend any harm or harassment in disclosing the images of the minor
5 to other family or friends of the defendant. This affirmative defense
6 shall not apply to matters defined under RCW 9.68A.011.

7 (6) For purposes of this section:

8 (a) "Disclosing" includes transferring, publishing, or
9 disseminating, as well as making a digital depiction available for
10 distribution or downloading through the facilities of a
11 telecommunications network or through any other means of transferring
12 computer programs or data to a computer;

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

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

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

24 (7) The crime of disclosing intimate images:

25 (a) Is a gross misdemeanor on the first offense; or

26 (b) Is a class C felony if the defendant has one or more prior
27 convictions for disclosing intimate images.

28 (8) Nothing in this section is construed to:

29 (a) Alter or negate any rights, obligations, or immunities of an
30 interactive service provider under 47 U.S.C. Sec. 230; or

31 (b) Limit or preclude a plaintiff from securing or recovering any
32 other available remedy.

33 NEW SECTION. **Sec. 2.** Section 1 of this act constitutes a new
34 chapter in Title 9A RCW."

35 Correct the title.

EFFECT: (1) Adds an element to the crime of disclosing intimate
images that requires that the defendant knows or reasonably should
know that the disclosure would cause harm to the depicted person.

(2) Creates an affirmative defense to the crime of disclosing intimate images that applies when the defendant is a family member of a minor and did not intend any harm or harassment in disclosing the images of the minor to other family or friends of the defendant. Provides that this defense does not apply to matters defined in RCW 9.68A.011.

--- END ---