

SHB 2160 - S COMM AMD

By Committee on Law & Justice

ADOPTED AS AMENDED 4/15/2015

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

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 4.24  
4 RCW to read as follows:

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

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

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

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

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

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

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

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

29 (d) Any other relevant factors.

30 (4) As used in this section:

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

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

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

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

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

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

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

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

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

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

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27 On page 1, line 1 of the title, after "images;" strike the  
28 remainder of the title and insert "adding a new section to chapter  
29 4.24 RCW; and prescribing penalties."

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

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