

# HOUSE BILL REPORT

## SHB 2160

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### As Amended by the Senate

**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.

#### **Brief Summary of Substitute Bill**

- Provides for civil liability against any person who intentionally and without consent distributes an intimate image of another person under certain circumstances.

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### 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:**

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

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*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.*

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 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 entrusted to him or her by another person, and the distribution of the intimate image intentionally or recklessly causes emotional distress to the other person; 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.

"Entrusted" means that the image was obtained under circumstances where both parties should reasonably understand that the image was to remain private. Several factors are listed that may be used to determine whether an intimate image was entrusted.

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

- a person's intimate apparel;
- a person's intimate body parts, whether nude or visible through less than opaque clothing; or
- touching of any person's intimate body parts done for the purpose of gratifying sexual desire.

Anyone who distributes an intimate image of another is liable for up to \$10,000 or actual damages, whichever is greater, 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.

### **EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment modifies the definition of "intimate image" by:

- requiring that the image be of a person who is identifiable from the image itself or from information displayed with or otherwise connected to the image;
- no longer considering images of intimate apparel an intimate image;
- providing that an image of sexual activity as defined by statute is considered an intimate image instead of an image of the touching of any person's intimate body parts done for the purpose of gratifying sexual desire; and

- listing intimate body parts that may be included in an intimate image, including the genitals, pubic area, anus, or post pubescent female nipple.

The Senate amendment requires the court to make it known to a plaintiff as early as possible that the plaintiff may use a confidential identity in relation to the action. The court must allow a plaintiff to use a confidential identity in all documents presented to the court and the court must maintain all records relating to the action in a manner that protects the confidentiality of the plaintiff.

The Senate amendment provides that a person who distributes an intimate image of another person is only liable if they knowingly or reasonably should have known that the other person is afraid, intimidated, or harassed even if that person did not intend to place the other person in fear or intimidate or harass the other person.

**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.