

# FINAL BILL REPORT

## ESHB 2160

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### C 8 L 15 E2

Synopsis as Enacted

**Brief Description:** Concerning the distribution of intimate images.

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

**House Committee on Judiciary**  
**Senate Committee on Law & Justice**

#### **Background:**

Liability may exist for some harms that result from the disclosure of embarrassing or emotionally distressful material.

The tort of invasion of privacy is based on the common law tort of public disclosure of private facts. Invasion of privacy occurs when a person 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, occurs 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:**

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.

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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.*

Several factors 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 reasonably 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, may not 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.

**Votes on Final Passage:**

House	97	0	
Senate	48	0	(Senate amended)

Second Special Session

House	90	0
Senate	43	0

**Effective:** September 26, 2015