

# SENATE BILL REPORT

## ESHB 2160

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As of Second Reading

**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:** Passed House: 3/02/15, 97-0; 6/11/15, 90-0.

**Committee Activity:** Law & Justice:

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Aldo Melchiori (786-7439)

**Background:** Washington recognizes a cause of action for the public disclosure of private facts. Someone invades another's privacy when that 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.

Publicity contemplates a matter made public by communication to the public at large or to so many people that it is certain to reach the public. In deciding whether the disclosure is a matter of legitimate concern to the public, the court considers the social value of the disclosure, the extent of the intrusion into the plaintiff's privacy, and whether the plaintiff consented to the disclosure explicitly or by voluntarily seeking public attention.

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 Bill:** A person is liable for distributing an intimate image of another if that person intentionally and without consent distributes, transmits, or makes available an intimate image that:

- was entrusted to that person by another person, and the distribution of the intimate image intentionally or recklessly causes emotional distress to the other person; or

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- was knowingly obtained by the person without authorization or by exceeding authorized access from the other person's property, accounts, messages, files, or resources.

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.

It is an affirmative defense if the defendant is a family member of a minor and did not intend to harm or harass in disclosing the images of other family members or friends of the defendant.

Entrusted means that the image was obtained under circumstances where both parties should reasonably understand that the image was to remain private. To determine whether an intimate image was entrusted, the court looks at the nature of the relationship between the parties, the circumstances under which the intimate image was taken and distributed, as well as any other relevant factors.

An intimate image is 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 the following:

- sexual activity, including sexual intercourse and masturbation; or
- 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.

The court must:

- 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;
- allow a plaintiff to use a confidential identity in all petitions, filings, and other documents presented to the court;
- use the confidential identity in all of the court's proceedings and records relating to the action, including appellate proceedings; and
- maintain the records relating to the action in a manner that protects the confidentiality of the plaintiff.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.