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SECOND ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1272

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State of Washington

64th Legislature

2015 Regular Session

By House General Government & Information Technology (originally sponsored by Representatives Buys, Orwall, and Pollet)

READ FIRST TIME 02/27/15.

1 AN ACT Relating to the wrongful distribution of intimate images;  
2 adding a new chapter to Title 9A RCW; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

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

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

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

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

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

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

21 (3) This section does not apply to:

1 (a) Images involving voluntary exposure in public or commercial  
2 settings; or

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

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

9 (a) An interactive computer service, as defined in 47 U.S.C. Sec.  
10 230(f)(2);

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

13 (c) A telecommunications network or broadband provider.

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

19 (6) For purposes of this section:

20 (a) "Disclosing" includes transferring, publishing, or  
21 disseminating, as well as making a digital depiction available for  
22 distribution or downloading through the facilities of a  
23 telecommunications network or through any other means of transferring  
24 computer programs or data to a computer;

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

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

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

36 (7) The crime of disclosing intimate images:

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

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

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

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

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

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

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