S T A T E O F N E W Y O R K

4714

2015-2016 Regular Sessions

I N A S S E M B L Y

February 5, 2015

Introduced by M. of A. MOYA -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil rights law, in relation to indecent image or video removal

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "indecent image or video removal act".

S 2. The civil rights law is amended by adding a new section 52-a to read as follows:

S 52-A. INDECENT IMAGE OR VIDEO REMOVAL. 1. LEGISLATIVE INTENT. THE LEGISLATURE ACKNOWLEDGES A PERSISTENT TREND WHERE RESIDENTS OF THIS STATE HAVE HAD IMAGES OR VIDEO POSTED ONLINE WHICH DEPICTS THE SEXUAL OR OTHER INTIMATE PARTS OF SUCH RESIDENTS, OR SUCH RESIDENTS ENGAGING IN SEXUAL CONDUCT WHICH ARE POSTED ONLINE WITHOUT THEIR CONSENT. THE MOTIVATIONS OF PERSONS WHO POST SUCH IMAGES OR VIDEO, SOMETIMES ALSO DEPICTED IN THE IMAGE OR VIDEO, RANGE FROM PRANKS, REVENGE OR MONETARY REWARD. THE POSTING OF SUCH CONTENT HAS LED TO EMOTIONAL DISTRESS, VIOLENCE AND SUICIDE. THE LEGISLATURE HEREBY FINDS THAT IT HAS BECOME NECESSARY TO CREATE A MECHANISM THROUGH WHICH AFFECTED PARTIES CAN BRING A CIVIL ACTION AGAINST THE PERSON WHO POSTS THE CONTENT FOR THE PURPOSE OF HARASSMENT, ANNOYANCE OR REVENGE REGARDLESS OF WHETHER THE ORIGINAL IMAGE OR VIDEO WAS CONSENSUALLY OBTAINED, AND OBTAIN A COURT ORDER TO HAVE SUCH CONTENT TAKEN DOWN FROM THE WEBSITES AND INTERNET SERVICE PROVIDERS THAT HOST IT UNLESS THEY HAVE WRITTEN CONSENT OF ALL PARTIES DEPICTED IN THE IMAGE OR VIDEO.

2. PERSONAL JURISDICTION. ANY WEBSITE OR INTERNET SERVICE PROVIDER THAT HOSTS OR TRANSMITS A STILL OR VIDEO, VIEWABLE IN THIS STATE, WHICH PORTRAYS A RESIDENT OF THIS STATE AND DEPICTS THE SEXUAL OR OTHER INTIMATE PARTS OF SUCH RESIDENT, OR SUCH RESIDENT ENGAGING IN SEXUAL CONDUCT, WITHOUT THE WRITTEN CONSENT OF SUCH RESIDENT SHALL BE SUBJECT

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD06738-01-5

TO PERSONAL JURISDICTION IN THIS STATE TO THE MAXIMUM EXTENT PERMITTED UNDER THE UNITED STATES CONSTITUTION.

3. ACTION FOR DAMAGES AGAINST A PERSON WHO POSTS CERTAIN STILL OR VIDEO IMAGES. ANY RESIDENT OF THIS STATE SHOWN IN A STILL OR VIDEO IMAGE THAT DEPICTS THE SEXUAL OR OTHER INTIMATE PARTS OF SUCH RESIDENT, OR SUCH RESIDENT ENGAGING IN SEXUAL CONDUCT, WHICH IS POSTED ON THE INTERNET WITHOUT THE CONSENT OF SUCH RESIDENT SHALL HAVE A CAUSE OF ACTION FOR DAMAGES AGAINST THE PERSON WHO POSTED SUCH IMAGE OR VIDEO ON THE INTERNET WHERE IT WAS POSTED FOR THE PURPOSE OF HARASSING, ANNOYING OR ALARMING SUCH RESIDENT, REGARDLESS OF WHETHER OR NOT THE ORIGINAL IMAGE OR VIDEO WAS CONSENSUALLY OBTAINED. IN ANY SUCH ACTION, THE FINDER OF FACT, IN ITS DISCRETION, MAY AWARD EXEMPLARY DAMAGES, IN ADDITION TO COMPENSATORY DAMAGES.

4. CAUSE OF ACTION TO OBTAIN A COURT ORDER TO REDACT IMAGES OR VIDEO HOSTED OR TRANSMITTED WITHOUT CONSENT. ANY RESIDENT OF THIS STATE SHOWN IN A STILL OR VIDEO IMAGE THAT DEPICTS THE SEXUAL OR INTIMATE PARTS OF SUCH RESIDENT, OR SUCH RESIDENT ENGAGING IN SEXUAL CONDUCT, UNDER CIRCUMSTANCES WHERE SUCH IMAGE IS HOSTED OR TRANSMITTED ON THE INTERNET WITHOUT THE WRITTEN CONSENT OF SUCH RESIDENT, MAY MAINTAIN A SPECIAL PROCEEDING TO OBTAIN A COURT ORDER WHICH WILL REQUIRE ANY WEBSITE OR INTERNET SERVICE PROVIDER THAT IS SUBJECT TO PERSONAL JURISDICTION UNDER SUBDIVISION TWO OF THIS SECTION TO PERMANENTLY REDACT SUCH IMAGE OR VIDEO.

5. SEVERANCE CLAUSE. IF ANY PROVISION OF THIS SECTION OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY SHALL NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS SECTION WHICH CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS SECTION ARE SEVERABLE.

S 3. This act shall take effect immediately.