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

571--A

2015-2016 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2015

Introduced by M. of A. BRAUNSTEIN, BRINDISI, PAULIN, SCHIMEL, McDONOUGH, DUPREY, MONTESANO, SIMOTAS, MORELLE, BARRETT, BENEDETTO, BLANKENBUSH, TENNEY, RAIA, OTIS, FINCH, QUART, SALADINO, ORTIZ, SKOUFIS, CLARK, BRABENEC, FRIEND -- Multi-Sponsored by -- M. of A. CROUCH, GALEF, MARKEY, McKEVITT, PALMESANO, RODRIGUEZ, SKARTADOS -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to establishing the crime of non-consensual disclosure of sexually explicit images

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

Section 1. The penal law is amended by adding two new sections 250.70 and 250.75 to read as follows:

S 250.70 NON-CONSENSUAL DISCLOSURE OF SEXUALLY EXPLICIT IMAGES.

A PERSON IS GUILTY OF NON-CONSENSUAL DISCLOSURE OF SEXUALLY EXPLICIT IMAGES WHEN HE OR SHE INTENTIONALLY AND KNOWINGLY DISCLOSES A PHOTOGRAPH, FILM, VIDEOTAPE, RECORDING, OR ANY OTHER REPRODUCTION OF THE IMAGE OF ANOTHER PERSON WHOSE INTIMATE PARTS ARE EXPOSED OR WHO IS ENGAGED IN AN ACT OF SEXUAL CONTACT WITHOUT SUCH PERSON'S CONSENT, WHEN A REASONABLE PERSON WOULD HAVE KNOWN THAT THE PERSON DEPICTED WOULD NOT HAVE CONSENTED TO SUCH DISCLOSURE, AND UNDER CIRCUMSTANCES IN WHICH THE PERSON HAS A REASONABLE EXPECTATION OF PRIVACY. A PERSON WHO HAS CONSENTED TO THE CAPTURE OR POSSESSION OF AN IMAGE WITHIN THE CONTEXT OF A PRIVATE OR CONFIDENTIAL RELATIONSHIP RETAINS A REASONABLE EXPECTATION OF PRIVACY WITH REGARD TO DISCLOSURE BEYOND THAT RELATIONSHIP.

1. FOR THE PURPOSES OF THIS SECTION:

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

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(A) "DISCLOSE" MEANS TO SELL, MANUFACTURE, GIVE, PROVIDE, LEND, TRADE, MAIL, DELIVER, TRANSFER, PUBLISH, DISTRIBUTE, CIRCULATE, DISCLOSE, PRESENT, EXHIBIT, ADVERTISE OR OFFER.

(B) "INTIMATE PARTS" MEANS THE NAKED GENITALS, PUBIC AREA, BUTTOCKS, OR FEMALE ADULT NIPPLE OF THE PERSON.

(C) "SEXUAL CONTACT" MEANS SEXUAL INTERCOURSE, INCLUDING GENITAL-GENITAL, ORAL-GENITAL, ANAL-GENITAL, OR ORAL-ANAL, WHETHER BETWEEN PERSONS OF THE SAME OR OPPOSITE SEX.

2. THIS SECTION SHALL NOT APPLY TO:

(A) LAWFUL AND COMMON PRACTICES OF LAW ENFORCEMENT, CRIMINAL REPORTING, OR LEGAL PROCEEDINGS, OR DISCLOSURES MADE IN THE REPORTING OF UNLAWFUL ACTIVITY; OR

(B) SITUATIONS INVOLVING VOLUNTARY EXPOSURE IN PUBLIC OR COMMERCIAL SETTINGS, OR DISCLOSURES MADE FOR A LEGITIMATE PUBLIC PURPOSE.

NON-CONSENSUAL DISCLOSURE OF SEXUALLY EXPLICIT IMAGES IS A CLASS A MISDEMEANOR.

S 250.75 CIVIL CAUSE OF ACTION FOR NON-CONSENSUAL DISCLOSURE OF SEXUALLY EXPLICIT IMAGES.

1. A CIVIL CAUSE OF ACTION LIES AGAINST A PERSON WHO DISCLOSES, THREATENS TO DISCLOSE AN IMAGE OF ANOTHER PERSON IDENTIFIABLE FROM THE IMAGE ITSELF OR INFORMATION DISPLAYED IN CONNECTION WITH THE IMAGE AND WHOSE INTIMATE PARTS ARE EXPOSED OR IS ENGAGED IN SEXUAL CONDUCT WITHOUT THAT OTHER PERSON'S CONSENT, IF THE ACTOR:

(A) OBTAINED THE IMAGE OR IMAGES UNDER CIRCUMSTANCES IN WHICH A REASONABLE PERSON WOULD KNOW OR UNDERSTAND THAT THE IMAGE WAS TO REMAIN PRIVATE, INCLUDING BUT NOT LIMITED TO IMAGES SHARED WITHIN THE CONTEXT OF A CONFIDENTIAL RELATIONSHIP THAT WERE THEN DISCLOSED BEYOND SUCH RELATIONSHIP; OR

(B) KNOWINGLY OBTAINED THE IMAGE OR IMAGES UNDER FALSE PRETENSES OR WITHOUT AUTHORIZATION OR BY EXCEEDING AUTHORIZED ACCESS TO PROPERTY, ACCOUNTS, MESSAGES, FILES, DEVICES, OR RESOURCES.

2. THE FOLLOWING AFFIRMATIVE DEFENSE SHALL APPLY IF:

(A) THE DISTRIBUTED MATERIAL WAS CREATED OR DISTRIBUTED UNDER AN AGREEMENT BY THE PERSON APPEARING IN THE MATERIAL FOR ITS PUBLIC USE AND DISTRIBUTION; OR

(B) THE DISTRIBUTED MATERIAL CONSTITUTES A MATTER OF PUBLIC CONCERN, LAWFUL AND COMMON PRACTICES OF LAW ENFORCEMENT, CRIMINAL REPORTING, LEGAL PROCEEDINGS, MEDICAL TREATMENT, OR SCIENTIFIC OR EDUCATIONAL ACTIVITIES; OR

(C) THE DISTRIBUTED MATERIAL WAS PHOTOGRAPHED, FILMED, VIDEOTAPED, RECORDED, OR OTHERWISE REPRODUCED IN A PUBLIC PLACE AND UNDER CIRCUMSTANCES IN WHICH THE PERSON DEPICTED HAD NO REASONABLE EXPECTATION OF PRIVACY.

3. IN ADDITION TO OTHER RELIEF AVAILABLE AT LAW, INCLUDING AN ORDER BY THE COURT TO DESTROY ANY IMAGE OBTAINED OR DISCLOSED IN VIOLATION OF THIS SECTION, AND TO PRESERVE DISCOVERABLE INFORMATION, AND PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF, THE ACTOR SHALL BE LIABLE TO THE PLAINTIFF FOR:

(A) ACTUAL DAMAGES, BUT NOT LESS THAN LIQUIDATED DAMAGES, TO BE COMPUTED AT THE RATE OF ONE THOUSAND DOLLARS PER DAY FOR EACH DAY THE IMAGE OR IMAGES WERE VIEWABLE OR EACH INSTANCE A THREAT TO DISTRIBUTE WAS MADE OR AN IMAGE FRAUDULENTLY OBTAINED UP TO THIRTY DAYS, OR TEN THOUSAND DOLLARS, WHICHEVER IS HIGHER; AND

(B) PUNITIVE DAMAGES; AND

(C) REASONABLE COURT COSTS AND ATTORNEYS' FEES.

4. IN AN ACTION BROUGHT UNDER THIS SECTION, ALL IDENTIFYING INFORMATION ABOUT THE PLAINTIFF MAY BE REDACTED FROM PLEADINGS AND COURT FILINGS AND THE PLAINTIFF MAY PROCEED UNDER PSEUDONYM; THE COURT SHALL INFORM THE PLAINTIFF OF THE OPTION TO PROCEED UNDER PSEUDONYM AT THE EARLIEST POSSIBLE POINT AND SHALL MAINTAIN THE RECORDS IN A MANNER THAT PROTECTS THE PLAINTIFF'S CONFIDENTIALITY.

5. THE FOLLOWING DEFINITIONS SHALL APPLY: (A) "PERSONAL INFORMATION" INCLUDES, BUT IS NOT LIMITED TO, NAME OR ANY PART THEREOF, ADDRESS OR ANY PART THEREOF, AGE, NAMES OF FAMILY MEMBERS, MARITAL STATUS, RELATIONSHIP TO DEFENDANT, RACE OR ETHNIC BACKGROUND, EMPLOYER, SCHOOL, OR URLS, SOCIAL MEDIA ACCOUNT USERNAMES, AND SCREENSHOTS RELATED TO THE CAUSE OF ACTION;

(B) "ACTUAL DAMAGES" INCLUDES, BUT IS NOT LIMITED TO, PAIN AND SUFFERING, EMOTIONAL DISTRESS, ECONOMIC DAMAGES, AND LOST EARNINGS.

6. A CAUSE OF ACTION BROUGHT UNDER THIS SECTION MAY BE BROUGHT NO MORE THAN FIVE YEARS AFTER THE LAST DISCLOSURE OR INCIDENT.

7. THE ACTOR'S CLAIM THAT THE DEPICTED PERSON IS A PUBLIC FIGURE SHALL NOT BE SUFFICIENT TO ESTABLISH THE AFFIRMATIVE DEFENSE THAT DISTRIBUTION CONSTITUTES A MATTER OF PUBLIC CONCERN.

8. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE THAT A CRIMINAL CHARGE BE BROUGHT OR A CRIMINAL CONVICTION BE OBTAINED AS A CONDITION OF BRINGING A CIVIL CAUSE OF ACTION OR RECEIVING A CIVIL JUDGMENT PURSUANT TO THIS SECTION OR BE CONSTRUED TO REQUIRE THAT ANY OF THE RULES GOVERNING A CRIMINAL PROCEEDING BE APPLICABLE TO ANY SUCH CIVIL ACTION.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.