

2725--A

2017-2018 Regular Sessions

I N S E N A T E

January 17, 2017

Introduced by Sens. GRIFFO, DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- 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 dissemination of sexually explicit images

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

- 1 Section 1. The penal law is amended by adding two new sections 250.70  
2 and 250.75 to read as follows:  
3 § 250.70 NON-CONSENSUAL DISSEMINATION OF SEXUALLY EXPLICIT IMAGES.  
4 A PERSON IS GUILTY OF NON-CONSENSUAL DISSEMINATION OF SEXUALLY EXPLIC-  
5 IT IMAGES WHEN HE OR SHE KNOWINGLY AND WITHOUT CONSENT OF THE DEPICTED  
6 PERSON DISSEMINATES A PHOTOGRAPH, FILM, VIDEOTAPE, RECORDING, OR ANY  
7 OTHER REPRODUCTION OF THE IMAGE OF SUCH DEPICTED PERSON WHOSE INTIMATE  
8 PARTS ARE EXPOSED OR WHO IS ENGAGED IN AN ACT OF SEXUAL CONTACT, WHEN A  
9 REASONABLE PERSON WOULD HAVE KNOWN THAT THE PERSON DEPICTED WOULD NOT  
10 HAVE CONSENTED TO SUCH DISSEMINATION, AND UNDER CIRCUMSTANCES IN WHICH  
11 THE DEPICTED PERSON HAS A REASONABLE EXPECTATION OF PRIVACY. A PERSON  
12 WHO HAS CONSENTED TO THE CAPTURE OR POSSESSION OF AN IMAGE WITHIN THE  
13 CONTEXT OF A PRIVATE OR CONFIDENTIAL RELATIONSHIP RETAINS A REASONABLE  
14 EXPECTATION OF PRIVACY WITH REGARD TO DISSEMINATION BEYOND THAT  
15 RELATIONSHIP.  
16 1. FOR THE PURPOSES OF THIS SECTION:  
17 (A) "INTIMATE PARTS" MEANS THE NAKED GENITALS, PUBIC AREA, ANUS, OR  
18 FEMALE POST-PUBESCENT NIPPLE OF THE PERSON.  
19 (B) "SEXUAL CONTACT" MEANS BUT IS NOT LIMITED TO, MASTURBATION, GENI-  
20 TAL, ANAL, OR ORAL SEX, SEXUAL PENETRATION WITH OBJECTS, OR THE TRANSFER  
21 OR TRANSMISSION OF SEMEN UPON ANY PART OF THE DEPICTED PERSON'S BODY.  
22 2. THIS SECTION SHALL NOT APPLY TO:

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

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1 (A) LAWFUL AND COMMON PRACTICES OF LAW ENFORCEMENT, CRIMINAL REPORT-  
2 ING, OR LEGAL PROCEEDINGS, OR DISSEMINATIONS MADE IN THE REPORTING OF  
3 UNLAWFUL ACTIVITY;

4 (B) SITUATIONS INVOLVING VOLUNTARY EXPOSURE IN PUBLIC OR COMMERCIAL  
5 SETTINGS, OR DISSEMINATIONS MADE FOR A LEGITIMATE PUBLIC PURPOSE; OR

6 (C) PROVIDERS OF AN INTERACTIVE COMPUTER SERVICE, AS DEFINED IN 47  
7 U.S.C. § 230(F), FOR IMAGES PROVIDED BY ANOTHER PERSON.

8 NON-CONSENSUAL DISSEMINATION OF SEXUALLY EXPLICIT IMAGES IS A CLASS A  
9 MISDEMEANOR.

10 § 250.75 CIVIL CAUSE OF ACTION FOR NON-CONSENSUAL DISSEMINATION OF SEXU-  
11 ALLY EXPLICIT IMAGES.

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

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

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

25 2. THE FOLLOWING AFFIRMATIVE DEFENSE SHALL APPLY IF:

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

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

33 (C) THE DISTRIBUTED MATERIAL WAS PHOTOGRAPHED, FILMED, VIDEOTAPED,  
34 RECORDED, OR OTHERWISE REPRODUCED IN A PUBLIC PLACE AND UNDER CIRCUM-  
35 STANCES IN WHICH THE PERSON DEPICTED HAD NO REASONABLE EXPECTATION OF  
36 PRIVACY.

37 3. IN ADDITION TO OTHER RELIEF AVAILABLE AT LAW, INCLUDING AN ORDER BY  
38 THE COURT TO DESTROY ANY IMAGE OBTAINED OR DISSEMINATED IN VIOLATION OF  
39 THIS SECTION, AND TO PRESERVE DISCOVERABLE INFORMATION, AND PRELIMINARY  
40 AND PERMANENT INJUNCTIVE RELIEF, THE ACTOR SHALL BE LIABLE TO THE PLAIN-  
41 TIFF FOR:

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

47 (B) PUNITIVE DAMAGES; AND

48 (C) REASONABLE COURT COSTS AND ATTORNEYS' FEES.

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

55 5. THE FOLLOWING DEFINITIONS SHALL APPLY: (A) "PERSONAL INFORMATION"  
56 INCLUDES, BUT IS NOT LIMITED TO, NAME OR ANY PART THEREOF, ADDRESS OR

1 ANY PART THEREOF, AGE, NAMES OF FAMILY MEMBERS, MARITAL STATUS,  
2 RELATIONSHIP TO DEFENDANT, RACE OR ETHNIC BACKGROUND, EMPLOYER, SCHOOL,  
3 OR URLS, SOCIAL MEDIA ACCOUNT USERNAMES, AND SCREENSHOTS RELATED TO THE  
4 CAUSE OF ACTION;

5 (B) "ACTUAL DAMAGES" INCLUDES, BUT IS NOT LIMITED TO, PAIN AND SUFFER-  
6 ING, EMOTIONAL DISTRESS, ECONOMIC DAMAGES, AND LOST EARNINGS.

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

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

12 8. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE THAT A CRIMI-  
13 NAL CHARGE BE BROUGHT OR A CRIMINAL CONVICTION BE OBTAINED AS A CONDI-  
14 TION OF BRINGING A CIVIL CAUSE OF ACTION OR RECEIVING A CIVIL JUDGMENT  
15 PURSUANT TO THIS SECTION OR BE CONSTRUED TO REQUIRE THAT ANY OF THE  
16 RULES GOVERNING A CRIMINAL PROCEEDING BE APPLICABLE TO ANY SUCH CIVIL  
17 ACTION.

18 9. THIS SECTION SHALL NOT APPLY TO PROVIDERS OF AN INTERACTIVE COMPUT-  
19 ER SERVICE, AS DEFINED IN 47 U.S.C. § 230(F), FOR IMAGES PROVIDED BY  
20 ANOTHER PERSON.

21 § 2. This act shall take effect on the first of November next succeed-  
22 ing the date on which it shall have become a law.