

STATE OF NEW YORK

9019

IN SENATE

June 14, 2018

Introduced by Sens. BOYLE, GRIFFO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the penal law and the civil rights law, in relation to establishing the crime of unlawful dissemination or publication of an intimate image

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 a new section 245.15 to
2 read as follows:

3 § 245.15 Unlawful dissemination or publication of an intimate image.

4 1. A person is guilty of unlawful dissemination or publication of an
5 intimate image when:

6 (a) with intent to cause material harm to the emotional, financial or
7 physical welfare of another person, he or she intentionally disseminates
8 or publishes a still or video image of such other person, who is iden-
9 tifiable from the still or video image itself or from information
10 displayed in connection with the still or video image, without such
11 other person's consent, which depicts:

12 (i) an unclothed or exposed intimate part of such other person; or

13 (ii) such other person engaging in sexual conduct as defined in subdi-
14 vision ten of section 130.00 of this chapter with another person and
15 which reveals an unclothed or exposed intimate part; and

16 (b) such still or video image was taken under circumstances when the
17 person depicted had a reasonable expectation of privacy and the actor
18 knew or reasonably should have known the person depicted intended for
19 the still or video image to remain private indefinitely, regardless of
20 whether the actor was present when the still or video image was taken.

21 2. For purposes of this section "intimate part" means the naked geni-
22 tals, pubic area, anus or female nipple of the person.

23 3. This section shall not apply to the following:

24 (a) the reporting of unlawful conduct;

25 (b) dissemination or publication of an intimate image made during
26 lawful and common practices of law enforcement, legal proceedings or
27 medical treatment;

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

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1 (c) images involving voluntary exposure in a commercial setting;
2 (d) dissemination or publication of an intimate image made for a
3 legitimate public purpose;

4 (e) providers of an interactive computer service for images provided
5 by another person. For purposes of this subdivision, "interactive
6 computer service" shall mean: any information service, system or access
7 software provider that provides or enables computer access by multiple
8 users to a computer server, including specifically a service or system
9 that provides access to the internet and such systems operated or
10 services offered by libraries or educational institutions.

11 Unlawful dissemination or publication of an intimate image is a class
12 A misdemeanor.

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

15 § 52-b. Private right of action for unlawful dissemination or publica-
16 tion of an intimate image. 1. a. Any website or internet service provid-
17 er that hosts or transmits a still or video image, viewable in this
18 state, taken under circumstances where the person depicted had a reason-
19 able expectation of privacy, which depicts:

20 (i) an unclothed or exposed intimate part, as defined in section
21 245.15 of the penal law, of a resident of this state; or

22 (ii) a resident of this state engaging in sexual conduct as defined in
23 subdivision ten of section 130.00 of the penal law with another person
24 and which reveals an unclothed or exposed intimate part; and

25 b. Such still or video image is hosted or transmitted without the
26 consent of such resident of this state, shall be subject to personal
27 jurisdiction in a civil action in this state to the maximum extent
28 permitted under the United States constitution and federal law.

29 2. Regardless of whether or not the original still or video image was
30 consensually obtained, a person depicted in a still or video image shall
31 have a cause of action against an individual who, for the purpose of
32 harassing, annoying or alarming such person, disseminated or published,
33 or threatened to disseminate or publish, such still or video image,
34 where such image:

35 a. was taken when such person had a reasonable expectation of privacy;
36 and

37 b. depicts (i) an unclothed or exposed intimate part of such person;
38 or (ii) such person engaging in sexual conduct, as defined in subdivi-
39 sion ten of section 130.00 of the penal law, with another person which
40 reveals an unclothed or exposed intimate part; and

41 c. was disseminated or published, or threatened to be disseminated or
42 published, without the consent of such person.

43 3. In any action commenced pursuant to subdivision two of this
44 section, the finder of fact, in its discretion, may award injunctive
45 relief, exemplary damages, compensatory damages and reasonable court
46 costs and attorney's fees.

47 4. This section shall not apply to the following:

48 a. the reporting of unlawful conduct;

49 b. dissemination or publication of an intimate still or video image
50 made during lawful and common practices of law enforcement, legal
51 proceedings or medical treatment;

52 c. images involving voluntary exposure in a commercial setting; or

53 d. dissemination or publication of an intimate still or video image
54 made for a legitimate public purpose.

55 5. Any person depicted in a still or video image that depicts an
56 unclothed or exposed intimate part of such person, or such person engag-

1 ing in sexual conduct as defined in subdivision ten of section 130.00 of
2 the penal law with another person which reveals an unclothed or exposed
3 intimate part, which is disseminated or published without the consent of
4 such person and where such person had a reasonable expectation of priva-
5 cy, may maintain an action or special proceeding for a court order to
6 require any website or internet service provider that is subject to
7 personal jurisdiction under subdivision one of this section to perma-
8 nently remove such still or video image.

9 6. A cause of action or special proceeding under this section shall be
10 commenced the later of either:

- 11 a. three years after the dissemination or publication of an image; or
- 12 b. one year from the date a person discovers, or reasonably should
13 have discovered, the dissemination or publication of such image.

14 7. Nothing herein shall be read to require a prior criminal complaint,
15 prosecution or conviction to establish the elements of the cause of
16 action provided for by this section.

17 8. If any provision of this section or its application to any person
18 or circumstance is held invalid, the invalidity shall not affect other
19 provisions or applications of this section which can be given effect
20 without the invalid provision or application, and to this end the
21 provisions of this section are severable.

22 § 3. This act shall take effect on the sixtieth day after it shall
23 have become a law.