STATE OF NEW YORK

9090

IN SENATE

November 13, 2020

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

AN ACT to amend the penal law, in relation to creating the certain offenses and provisions related to the unlawful dissemination of a personal image; and to amend the civil rights law, in relation to creating a private right of action for such offenses

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 four new sections 250.70, 250.71, 250.72 and 250.73 to read as follows:

§ 250.70 Unlawful dissemination of a personal image; definitions, application.

1. The following definitions shall apply to sections 250.71, 250.72 and 250.73 of this article:

(a) "broadcast" means electronically transmitting a visual image with the intent that it be viewed by a person;

(b) "create" means to use or install, or permit the utilization or installation of an imaging device to view, broadcast and/or record a visual image of another person;

(c) "disseminate" means to give, provide, lend, deliver, mail, send, forward, transfer or transmit, electronically or otherwise to another person;

(d) "imaging device" means any mechanical, digital or electronic viewing device, camera, cellular phone or any other instrument capable of recording, storing or transmitting visual images that can be utilized to observe a person;

(e) "publish" means to: (i) disseminate, as defined in paragraph (c) of this subdivision, with the intent that such image or images be disseminated to ten or more persons; (ii) disseminate with the intent that such images be sold by another person; (iii) post, present, display, exhibit, circulate, advertise or allows access, electronically or otherwise, so as to make an image or images available to the public; or (iv) disseminate with the intent that an image or images be posted, presented, displayed, exhibited, circulated, advertised or made accessi-

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

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ble, electronically or otherwise and to make such image or images available to the public.

2. The following provisions shall apply to sections 250.71, 250.72 and 250.73 of this article:

(a) The provisions of these sections shall not apply to the following:

(i) the reporting of unlawful conduct;

(ii) the dissemination or publication of an image made during lawful and common practices of law enforcement, legal proceedings or medical treatment;

(iii) images involving activities in a public setting or activities in a commercial setting in which legal activities are being conducted; or

(iv) the dissemination or publication of an image made for a legitimate public purpose.

(b) Nothing in these sections shall be construed to limit, or to enlarge, the protections that 47 U.S.C. § 230 confers on an interactive computer service for content provided by another information content provider, as such terms are defined in 47 U.S.C. § 230.

§ 250.71 Unlawful dissemination of a personal image in the third degree.

A person is guilty of unlawful dissemination of a personal image in the third degree when, with the intent of humiliating, demeaning, degrading or abusing a person who has been the victim of an offense described in title H of this part, or otherwise causing harm to the emotional, financial or physical welfare of such victim or such victim's family, or when, for his or her own, or another person's amusement, entertainment or profit, he or she intentionally:

1. (a) creates and disseminates or publishes a still or video image of such victim, without the victim's consent, in a manner that has no or limited cultural or social value; and

(b) the victim is identifiable from the still or video image itself or from information displayed in connection with the still or video image; and

(c) the image depicts the commission of the offense against the victim or physical injury suffered by the victim as a result of the commission of the offense; or

2. acting as an agent of a person who creates an image as described in subdivision one of this section, he or she disseminates or publishes such image.

Unlawful dissemination of a personal image in the third degree is a class B misdemeanor.

§ 250.72 Unlawful dissemination of a personal image in the second degree.

A person is guilty of unlawful dissemination of a personal image in the second degree when he or she commits the offense of unlawful dissemination of a personal image in the third degree and:

1. he or she committed, participated in the commission of, or conspired to commit the offense against the victim; or

2. the victim suffered serious physical injury which is depicted in the unlawfully disseminated image; or

3. he or she has been convicted within the previous ten years of unlawful dissemination of a personal image in the third degree.

Unlawful dissemination of a personal image in the second degree is a class A misdemeanor.

§ 250.73 Unlawful dissemination of a personal image in the first degree.

A person is guilty of dissemination of an unlawful dissemination of a personal image in the first degree when he or she commits the offense of unlawful dissemination of a personal image in the third degree and:

1. he or she committed, participated in the commission of, or conspired to commit an offense described in article one hundred twenty-five of this chapter against the victim; or

2. the victim suffered death or serious physical injury as a result of the application of deadly physical force and such injury, death or the application of deadly physical force is depicted in the unlawfully disseminated image; or

3. he or she has been convicted within the previous ten years of unlawful dissemination of a personal image in the second degree.

Unlawful dissemination of a personal image in the first degree is a class E felony.

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

§ 52-c. Private right of action for unlawful dissemination or publication of a personal image. 1. Any person depicted in a still or video image which was unlawfully disseminated as provided in section 250.71, 250.72 or 250.73 of the penal law shall have a cause of action against an individual who disseminated or published, or threatened to disseminate or publish, such still or video image without the consent of the person depicted in the image.

2. In any action commenced pursuant to subdivision one of this section, the finder of fact, in its discretion, may award injunctive relief, punitive damages, compensatory damages and reasonable court costs and attorney's fees.

3. This section shall not apply to the following:

a. the reporting of unlawful conduct;

b. the dissemination or publication of an image made during lawful and common practices of law enforcement, legal proceedings or medical treatment;

c. images involving activities in a public setting or activities in a commercial setting in which legal activities are being conducted; or

d. the dissemination or publication of an image made for a legitimate public purpose.

4. Any person depicted in a still or video image which was unlawfully disseminated as provided in section 250.71, 250.72 or 250.73 of the penal law may maintain an action or special proceeding for a court order to require any website that is subject to personal jurisdiction under subdivision five of this section to permanently remove such still or video image; any such court order granted pursuant to this subdivision may direct removal only as to images that are reasonably within such website's control.

5. Any website that hosts or transmits a still or video image, viewable in this state, which was unlawfully disseminated as provided in section 250.71, 250.72 or 250.73 of the penal law and which image is hosted or transmitted without the consent of the person depicted in the image, shall be subject to personal jurisdiction in a civil action in this state to the maximum extent permitted under the United States constitution and federal law.

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

a. three years after the dissemination or publication of an image; or

b. one year from the date a person discovers, or reasonably should have discovered, the dissemination or publication of such image.

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

8. The provisions of this section are in addition to, but shall not supersede, any other rights or remedies available in law or equity.

9. 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.

10. Nothing in this section shall be construed to limit, or to enlarge, the protections that 47 U.S.C. § 230 confers on an interactive computer service for content provided by another information content provider, as such terms are defined in 47 U.S.C. § 230.

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