

# STATE OF NEW YORK

1121--B

Cal. No. 62

2021-2022 Regular Sessions

## IN ASSEMBLY

January 7, 2021

Introduced by M. of A. BUTTENSCHON, GALEF, JACKSON, FALL, GUNTHER, ABINANTI, SILLITTI, JONES, JACOBSON, CONRAD, GRIFFIN -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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:

1 Section 1. This act shall be known and may be cited as "Bianca's Law".

2 § 2. The penal law is amended by adding three new sections 250.70,  
3 250.71, and 250.72 to read as follows:

4 § 250.70 Unlawful dissemination of a personal image; definitions, appli-  
5 cation.

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

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

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

13 (c) "publish" means to: (i) disseminate, as defined in paragraph (b)  
14 of this subdivision, with the intent that such image or images be  
15 disseminated to ten or more persons; (ii) disseminate with the intent  
16 that such images be sold by another person; (iii) post, present,  
17 display, exhibit, circulate, advertise or allows access, electronically  
18 or otherwise, so as to make an image or images available to the public;  
19 or (iv) disseminate with the intent that an image or images be posted,

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

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1 presented, displayed, exhibited, circulated, advertised or made accessi-  
2 ble, electronically or otherwise and to make such image or images avail-  
3 able to the public.

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

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

7 (i) the reporting of unlawful conduct;

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

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

13 (iv) the dissemination or publication of an image made for a legiti-  
14 mate public purpose.

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

19 3. With respect to sections 250.71 and 250.72 of this article, the  
20 provisions of subdivision two of section 235.15 and subdivisions one and  
21 two of section 235.24 of this part shall apply.

22 § 250.71 Unlawful dissemination of a personal image in the second  
23 degree.

24 A person is guilty of unlawful dissemination of a personal image in  
25 the second degree when, with the intent of degrading or abusing a person  
26 who has been the victim of a crime described in title H of this part, or  
27 otherwise causing harm to the emotional, financial or physical welfare  
28 of such victim or such victim's family, or for the actor's own or another  
29 person's amusement, entertainment or profit, the actor intentionally:

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

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

36 (c) the image depicts the commission of the crime against the victim  
37 or physical injury suffered by the victim as a result of the commission  
38 of the crime; or

39 2. acting as an agent of the actor who created an image in violation  
40 of subdivision one of this section, he or she knowingly disseminates or  
41 publishes such image.

42 Unlawful dissemination of a personal image in the second degree is a  
43 class B misdemeanor.

44 § 250.72 Unlawful dissemination of a personal image in the first degree.

45 A person is guilty of unlawful dissemination of a personal image in  
46 the first degree when he or she commits the offense of unlawful dissem-  
47 ination of a personal image in the second degree and:

48 1. he or she committed, participated in the commission of, or  
49 conspired to commit the crime that resulted in such injury to such  
50 victim; or

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

53 Unlawful dissemination of a personal image in the first degree is a  
54 class A misdemeanor.

55 § 3. The civil rights law is amended by adding a new section 52-d to  
56 read as follows:

1 § 52-d. Private right of action for unlawful dissemination or publica-  
2 tion of a personal image. 1. Any crime victim depicted in a still or  
3 video image which was unlawfully disseminated as provided in section  
4 250.71 or 250.72 of the penal law shall have a cause of action against  
5 such individual who disseminated or published such still or video image  
6 without the consent of the person depicted in the image.

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

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

12 a. the reporting of unlawful conduct;

13 b. the dissemination or publication of an image made during law  
14 enforcement activities, legal proceedings or medical treatment;

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

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

19 4. Any such crime victim depicted in a still or video image which was  
20 unlawfully disseminated as provided in section 250.71 or 250.72 of the  
21 penal law, or such person's estate, may maintain an action or special  
22 proceeding for a court order to require any website that is subject to  
23 personal jurisdiction under subdivision five of this section to perma-  
24 nently remove such still or video image; any such court order granted  
25 pursuant to this subdivision may direct removal only as to images that  
26 are reasonably within such website's control.

27 5. Any website that hosts or transmits a still or video image, view-  
28 able in this state, which was unlawfully disseminated as provided in  
29 section 250.71 or 250.72 of the penal law and which image is hosted or  
30 transmitted without the consent of the person depicted in the image,  
31 shall be subject to personal jurisdiction in a civil action in this  
32 state to the maximum extent permitted under the United States constitu-  
33 tion and federal law.

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

36 a. three years after the dissemination or publication of such image;  
37 or

38 b. one year from the date the plaintiff or petitioners discovered, or  
39 reasonably should have discovered, such dissemination or publication of  
40 such image.

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

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

46 9. If any provision of this section or its application to any person  
47 or circumstance is held invalid, the invalidity shall not affect other  
48 provisions or applications of this section which can be given effect  
49 without the invalid provision or application, and to this end the  
50 provisions of this section are severable.

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

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