

STATE OF NEW YORK

6304

2021-2022 Regular Sessions

IN SENATE

April 21, 2021

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

AN ACT to amend the penal law and the civil rights law, in relation to unlawful dissemination or publication of intimate images created by digitization

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 1 of section 245.15 of the penal law, as added
2 by chapter 109 of the laws of 2019, is amended and new subdivision 2-b
3 is added to read as follows:

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

6 (a) with intent to cause harm to the emotional, financial or physical
7 welfare of another person, he or she intentionally disseminates or
8 publishes a still or video, including an image created by digitization,
9 image of such other person, who is identifiable from the still or video
10 image itself or from information displayed in connection with the still
11 or video image, without such 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 (b) such still or video image was:

16 (i) taken under circumstances when the person depicted had a reason-
17 able expectation that the image would remain private and the actor knew
18 or reasonably should have known the person depicted intended for the
19 still or video image to remain private, regardless of whether the actor
20 was present when the still or video image was taken[-]; or

21 (ii) created by digitization and the actor knew or reasonably should
22 have known the person depicted did not consent to its creation.

23 2-b. For purposes of this section "digitization" means to realis-
24 tically depict any of the following:

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

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1 (a) The nude body parts of another human being as the nude body parts
2 of the depicted person.

3 (b) Computer-generated nude body parts as the nude body parts of the
4 depicted person.

5 (c) The depicted person engaging in sexual conduct in which the
6 depicted person did not engage.

7 § 2. Section 52-b of the civil rights law, as added by chapter 109 of
8 the laws of 2019, is amended to read as follows:

9 § 52-b. Private right of action for unlawful dissemination or publica-
10 tion of an intimate image. 1. For purposes of this section "digitiza-
11 tion" means to realistically depict any of the following:

12 (a) The nude body parts of another human being as the nude body parts
13 of the depicted person.

14 (b) Computer-generated nude body parts as the nude body parts of the
15 depicted person.

16 (c) The depicted person engaging in sexual conduct in which the
17 depicted person did not engage.

18 2. Any person depicted in a still or video image, regardless of wheth-
19 er or not the original still or video image was consensually obtained,
20 shall have a cause of action against an individual who, for the purpose
21 of harassing, annoying or alarming such person, disseminated or
22 published, or threatened to disseminate or publish, such still or video
23 image, where such image:

24 a. was taken when such person had a reasonable expectation that the
25 image would remain private; and

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

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

31 3. Any person depicted in a still or video image, shall have a cause
32 of action against an individual who, for the purpose of harassing,
33 annoying or alarming such person, disseminated or published, or
34 threatened to disseminate or publish, such still or video image, where
35 such image:

36 a. was created by digitization without the consent of the person; 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
39 subdivision ten of section 130.00 of the penal law, with another person;
40 and

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

43 [2] 4. In any action commenced pursuant to [~~subdivision one~~] subdivi-
44 sions two and three of this section, the finder of fact, in its
45 discretion, may award injunctive relief, punitive damages, compensatory
46 damages and reasonable court costs and attorney's fees.

47 [3] 5. 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 public or commercial
53 setting; or

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

[4] 6. Any person depicted in a still or video image that depicts an unclothed or exposed intimate part of such person, or such person engaging in sexual conduct as defined in subdivision ten of section 130.00 of the penal law with another person, which is disseminated or published without the consent of such person and where such person had a reasonable expectation that the image would remain private, or where such still or video image was created by digitization without the consent of the person, 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] 7. a. Any website that hosts or transmits a still or video image, viewable in this state, taken under circumstances where the person depicted had a reasonable expectation that the image would remain private, or where such still or video image was created by digitization without the consent of the person, which depicts:

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

(ii) a resident of this state engaging in sexual conduct as defined in subdivision ten of section 130.00 of the penal law with another person; and

b. Such still or video image is hosted or transmitted without the consent of such resident of this state, 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] 8. 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] 9. 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] 10. The provisions of this section are in addition to, but shall not supersede, any other rights or remedies available in law or equity.

[9] 11. 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] 12. 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.