STATE OF NEW YORK

975

2023-2024 Regular Sessions

IN ASSEMBLY

January 11, 2023

Introduced by M. of A. BUTTENSCHON -- read once and referred to the Committee on Codes

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

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

Section 1. Section 250.72 of the penal law, as added by a chapter of the laws of 2022 amending the penal law relating to creating certain offenses and provisions related to the unlawful dissemination of a personal image; and amending the civil rights law relating to creating a private right of action for such offenses, as proposed in legislative bills numbers S. 7211-B and A. 1121-C, is REPEALED.

§ 2. Sections 250.70 and 250.71 of the penal law, as added by a chapter of the laws of 2022 amending the penal law relating to creating certain offenses and provisions related to the unlawful dissemination of a personal image; and amending the civil rights law relating to creating a private right of action for such offenses, as proposed in legislative bills numbers S. 7211-B and A. 1121-C, are amended to read as follows:

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

1. The following definitions shall apply to [~~sections~~] **section** 250.71 [~~and 250.72~~] of this article:

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

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

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

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(c) "publish" means to: (i) disseminate, as defined in paragraph (b) 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 accessible, electronically or otherwise and to make such image or images available to the public[~~.~~];

(d) "family" means a parent or guardian, sibling, spouse, or child of a person depicted in an image disseminated in violation of section 250.71 of this article.

(e) "social media platform" means a website, online or mobile application, or online service that is designed primarily to enable a user to generate or share content that can be viewed by other users on the platform or to interact with other user-generated content on such platform. "Social media platform" does not include a website, online or mobile application, or online service that is designed primarily to enable a user to access content on the platform that is not user-generated and is preselected or organized by the provider; or a website, online or mobile application, or online service that includes any chat, comment, or other interactive functionality that is incidental to the provision of such website, application, or service.

2. The following provisions shall apply to [~~sections~~] **section** 250.71 [~~and 250.72~~] of this article:

(a) The provisions of [~~these sections~~] **section 270.71 of this article** shall not apply to the following:

(i) the reporting of **suspected** unlawful conduct **to law enforcement**;

(ii) the dissemination or publication of an image made [~~during lawful and common practices of~~] **in the course of official** law enforcement **duties**, legal proceedings **or criminal prosecution,** or medical treatment; **or**

(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~~] **discourse concerning local, national, or worldwide events or other matters of public concern or public interest or affecting the public welfare; any work of public interest, educational or newsworthy value, including comment, criticism, parody or satire, and works of entertainment, regardless of the degree of fictionalization; or an advertisement or commercial announcement for any of the foregoing works**.

(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.

3. With respect to [~~sections~~] **section** 250.71 [~~and 250.72~~] of this article, the provisions of subdivision two of section 235.15 and subdivisions one and two of section 235.24 of this part shall apply.

§ 250.71 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, with the intent of degrading or abusing a person who has been the victim of a crime 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 for the actor's own or another person's amusement, entertainment or profit, the actor~~] **the person** intentionally:

1. (a) creates and disseminates or publishes a still or video image of such victim **on a social media platform**, without the victim's consent, in a manner that has no or minimal 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 crime against the victim or physical injury suffered by the victim as a result of the commission of the crime; or~~] **the victim suffered physical injury as a result of a sex offense as defined by article one hundred thirty of this part, serious physical injury as a result of any non-sex offense, or death, and this injury or death is depicted in the image; and**

(d) the actor committed, participated in the commission of, or conspired to commit the crime that resulted in such injury to such victim; or

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

Unlawful dissemination of a personal image in the second degree is a class [~~B~~] **A** misdemeanor.

§ 3. Section 52-d of the civil rights law, as added by a chapter of the laws of 2022 amending the penal law relating to creating certain offenses and provisions related to the unlawful dissemination of a personal image; and amending the civil rights law relating to creating a private right of action for such offenses, as proposed in legislative bills numbers S. 7211-B and A. 1121-C, is amended to read as follows:

§ 52-d. Private right of action for unlawful dissemination or publication of a personal image. 1. Any crime victim depicted in a still or video image which was unlawfully disseminated as provided in section 250.71 [~~or 250.72~~] of the penal law shall have a cause of action against such individual who disseminated or published such still or video image without the consent of the person depicted in the image **in violation of section 250.71 of the penal law**.

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 attorneys' fees.

3. This section shall not apply to the following:

a. the reporting of **suspected** unlawful conduct **to law enforcement**;

b. the dissemination or publication of an image made [~~during~~] **in the course of official** law enforcement [~~activities~~] **duties**, legal proceedings **or criminal prosecution,** or medical treatment; **or**

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~~] **discourse concerning local, national, or worldwide events or other matters of public concern or public interest or affecting the public welfare; any work of public interest, educational or newsworthy value, including comment, criticism, parody or satire, and works of entertainment, regardless of the degree of fictionalization; or an advertisement or commercial announcement for any of the foregoing works**.

4. Any such crime victim depicted in a still or video image which was unlawfully disseminated as provided in section 250.71 [~~or 250.72~~] of the penal law, or such person's estate, may maintain an action or special proceeding for a court order to require any [~~website~~] **social media platform** 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~~] **social media platform'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 or 250.72 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 such image; or

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

[~~7.~~] **6.** Nothing in this section 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.~~] **7.** The provisions of this section are in addition to, but shall not supersede, any other rights or remedies available in law or equity.

[~~9.~~] **8.** 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.~~] **9.** 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.

§ 4. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2022 amending the penal law relating to creating certain offenses and provisions related to the unlawful dissemination of a personal image; and amending the civil rights law relating to creating a private right of action for such offenses, as proposed in legislative bills numbers S. 7211-B and A. 1121-C, takes effect.