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**HOUSE BILL 1788**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Representatives Wylie, Holy, Ryu, Carlyle, Jinkins, Pollet, Moscoso, Appleton, Vick, Sawyer, Tarleton, Orwall, Ormsby, Farrell, and Riccelli

AN ACT Relating to creating the crime of criminal invasion of privacy via nonconsensual dissemination or disclosure of a sexual act or intimate parts; adding a new section to chapter 9A.44 RCW; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  A new section is added to chapter 9A.44 RCW to read as follows:

(1) A person may not knowingly disseminate or disclose an image of another, identifiable person, whose intimate parts are exposed or who is engaged in sexual contact, when the person knows or should have known that the depicted person has not consented to the dissemination or disclosure.

(2)(a) A person commits criminal invasion of privacy via nonconsensual disclosure or dissemination of a sexual act or intimate parts when the person knowingly discloses or disseminates an image of another person who is:

(i) Identifiable from the image itself or information displayed in connection with the image; and

(ii) Engaged in a sexual act or whose intimate parts are exposed; and

(b) The person disclosing or disseminating the image:

(i) Obtained it under circumstances in which a reasonable person would know or understand that the image was to remain private; and

(ii) Knows or should have known that the depicted person has not consented to the disclosure or dissemination.

(3) This section does not apply to:

(a) Images involving voluntary exposure in public or commercial settings; or

(b) Disclosures made in the public interest including, but not limited to, the reporting of unlawful conduct, or the lawful and common practices of law enforcement, criminal reporting, legal proceedings, or medical treatment.

(4) Nothing in this section is construed to impose liability upon the following entities solely as a result of content provided by another person:

(a) An interactive computer service, as defined in 47 U.S.C. Sec. 230(f)(2);

(b) A provider of public or private mobile service, as defined in section 13-214 of the public utilities act; or

(c) A telecommunications network or broadband providers.

(5) This section creates a private right of action against a person who knowingly discloses or disseminates an image of another, identifiable person, whose intimate parts are exposed or who is engaged in sexual acts, when that person knows or should have known that the depicted person has not consented to the disclosure.

(a) A private cause of action lies against a person who knowingly distributes by any means a photograph, film, videotape, recording, or any other reproduction of another, without the other's consent, if (i) the person knew that the other person had a reasonable expectation that the material would remain private, (ii) the distributed material exposes an intimate part of the other person, or shows the other person engaging in a sexual act, and (iii) the other person suffers general or special damages.

(b) There is no liability for the person disclosing or disseminating material under (a) of this subsection under the following exceptions:

(i) Images involving voluntary exposure in public or commercial settings; or

(ii) Disclosures made in the public interest including, but not limited to, the reporting of unlawful conduct, or the lawful and common practices of law enforcement, criminal reporting, legal proceedings, or medical treatment.

(c) In addition to any other relief available at law, the court may order equitable relief against the person violating (a) of this subsection, including a temporary restraining order, or a preliminary injunction or a permanent injunction ordering the defendant to cease distribution of material. The court may grant injunctive relief maintaining the confidentiality of a plaintiff using a pseudonym as provided in (e) of this subsection.

(d) Any person deeming himself or herself injured by any act in violation of this section has a civil action to recover the actual damages sustained by the person. The court may also grant, after holding a properly noticed hearing, reasonable attorneys' fees and costs to the prevailing plaintiff.

(e)(i) A plaintiff in a civil proceeding pursuant to (a) of this subsection, may proceed using a pseudonym, either John Doe, Jane Doe, or Doe, for the true name of the plaintiff and may exclude or redact from all pleadings and documents filed in the action other identifying characteristics of the plaintiff. A plaintiff who proceeds using a pseudonym and excluding or redacting identifying characteristics as provided in this section shall file with the court and serve upon the defendant a confidential information form for this purpose that includes the plaintiff's name and other identifying characteristics excluded or redacted. The court shall keep the plaintiff's name and excluded or redacted characteristics confidential.

(ii) All court decisions, orders, petitions, and other documents, including motions and papers filed by the parties, shall be worded so as to protect the name or other identifying characteristics of the plaintiff from public revelation.

(f) The responsibility for excluding or redacting the name or identifying characteristics of the plaintiff from all documents filed with the court rests solely with the parties and their attorneys. Nothing in this section requires the court to review pleadings or other papers for compliance with this subsection (5)(f).

(6) For the purposes of this section:

(a) "Disclose" includes transferring, publishing, distributing, or reproducing;

(b) "Disseminate" includes selling, distributing, exchanging, or transferring possession, with or without consideration; or making a depiction by computer available for distribution or downloading through the facilities of a telecommunications network or through any other means of transferring computer programs or data to a computer;

(c) "Identifying characteristics" includes, but is not limited to, name or any part thereof, address or any part thereof, city or unincorporated area of residence, age, marital status, relationship to defendant, and race or ethnic background;

(d) "Image" includes a photograph, film, videotape, recording, digital, or other reproduction;

(e) "Intimate parts" means the naked genitals, pubic area, or female adult nipple; and

(f) "Sexual act" includes any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether the persons are of the same or opposite sex.

(7) Criminal invasion of privacy via nonconsensual dissemination or disclosure of a sexual act or intimate parts is a class C felony.

(8) Nothing in this section is construed to:

(a) Alter or negate any rights, obligations, or immunities of an interactive service provider under 47 U.S.C. Sec. 230; or

(b) Limit or preclude a plaintiff from securing or recovering any other available remedy.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**--- END ---**