

SHB 2160 - S COMM AMD

By Committee on Law & Justice

ADOPTED AND ENGROSSED 4/15/2015

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 4.24  
4 RCW to read as follows:

5 (1) A person distributes an intimate image of another person when  
6 that person intentionally and without consent distributes, transmits,  
7 or otherwise makes available an intimate image or images of that  
8 other person that was:

9 (a) Entrusted to that person by the other person, and that  
10 person's distribution, transmission, or otherwise making available of  
11 the intimate image intentionally or recklessly causes emotional  
12 distress to the other person; or

13 (b) Knowingly obtained by that person without authorization or by  
14 exceeding authorized access from the other person's property,  
15 accounts, messages, files, or resources.

16 (2) Any person who distributes an intimate image of another  
17 person as described in subsection (1) of this section and knowingly  
18 or reasonably should have known that the other person is afraid,  
19 intimidated, or harassed even if the person did not intend to place  
20 the other person in fear or intimidate or harass the other person  
21 shall be liable to that other person for up to ten thousand dollars  
22 or actual damages including, but not limited to, pain and suffering,  
23 emotional distress, economic damages, and lost earnings, whichever is  
24 greater, reasonable attorneys' fees, and costs. The court may also,  
25 in its discretion, award injunctive relief as it deems necessary.

26 (3) Factors that may be used to determine whether an intimate  
27 image was entrusted to a person include:

28 (a) The nature of the relationship between the parties;

29 (b) The circumstances under which the intimate image was taken;

30 (c) The circumstances under which the intimate image was  
31 distributed; and

32 (d) Any other relevant factors.

33 (4) As used in this section:

1 (a) "Entrusted" means the image was obtained under circumstances  
2 where both parties should reasonably understand that the image was to  
3 remain private.

4 (b) "Intimate image" means any photograph, motion picture film,  
5 videotape, digital image, or any other recording or transmission of  
6 another person who is identifiable from the image itself or from  
7 information displayed with or otherwise connected to the image, and  
8 that was taken in a private setting, is not a matter of public  
9 concern, and depicts:

10 (i) Sexual activity, including sexual intercourse as defined in  
11 RCW 9A.44.010 and masturbation; or

12 (ii) A person's intimate body parts, whether nude or visible  
13 through less than opaque clothing, including the genitals, pubic  
14 area, anus, or postpubescent female nipple.

15 (5) In an action brought under this section, the court shall:

16 (a) Make it known to the plaintiff as early as possible in the  
17 proceedings of the action that the plaintiff may use a confidential  
18 identity in relation to the action;

19 (b) Allow a plaintiff to use a confidential identity in all  
20 petitions, filings, and other documents presented to the court;

21 (c) Use the confidential identity in all of the court's  
22 proceedings and records relating to the action, including any  
23 appellate proceedings; and

24 (d) Maintain the records relating to the action in a manner that  
25 protects the confidentiality of the plaintiff.

26 (6) Nothing in this act shall be construed to impose liability on  
27 an interactive computer service, as defined in 47 U.S.C. 230(f)(2) as  
28 it exists on the effective date of this section, for content provided  
29 by another person."

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30 On page 1, line 1 of the title, after "images;" strike the  
31 remainder of the title and insert "adding a new section to chapter  
32 4.24 RCW; and prescribing penalties."

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