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H.744

Introduced by Representatives Rachelson of Burlington, Chapin of East
Montpelier, and Headrick of Burlington

Referred to Committee on

Date:

Subject: Crimes and criminal procedure; lewdness; disclosure of sexually
explicit images without consent

Statement of purpose of bill as introduced: This bill proposes to eliminate the
intent to harm requirement from the criminal offense of disclosure of sexually
explicit images without consent.

An act relating to disclosure of sexually explicit images without consent

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 13 V.S.A. § 2606 is amended to read;

§ 2606. DISCLOSURE OF SEXUALLY EXPLICIT IMAGES WITHOUT
CONSENT

(a) As used in this section:

(1) “Disclose” includes transfer, publish, distribute, exhibit, or
reproduce.

(2) “Harm” means physical injury, financial injury, or serious emotional
distress.

1 (3) “Nude” means any one or more of the following uncovered parts of
2 the human body:

3 (A) genitals;

4 (B) pubic area;

5 (C) anus; or

6 (D) post-pubescent female nipple.

7 (4) “Sexual conduct” shall have the same meaning as in section 2821 of
8 this title.

9 (5) “Visual image” includes a photograph, film, videotape, recording, or
10 digital reproduction.

11 (b)(1) A person violates this section if ~~he or she~~ the person knowingly
12 discloses a visual image of an identifiable person who is nude or who is
13 engaged in sexual conduct, without ~~his or her~~ the person’s consent, ~~with the~~
14 ~~intent to harm, harass, intimidate, threaten, or coerce the person depicted, and~~
15 ~~the disclosure would cause a reasonable person to suffer harm.~~ A person may
16 be identifiable from the image itself or information offered in connection with
17 the image. Consent to recording of the visual image does not, by itself,
18 constitute consent for disclosure of the image. A person who violates this
19 subdivision ~~(4)~~ shall be imprisoned not more than two years or fined not more
20 than \$2,000.00, or both.

1 (2) A person who violates subdivision (1) of this subsection with the
2 intent of disclosing the image for financial profit shall be imprisoned not more
3 than five years or fined not more than \$10,000.00, or both.

4 (c) A person who maintains an ~~Internet~~ internet website, online service,
5 online application, or mobile application that contains a visual image of an
6 identifiable person who is nude or who is engaged in sexual conduct shall not
7 solicit or accept a fee or other consideration to remove, delete, correct, modify,
8 or refrain from posting or disclosing the visual image if requested by the
9 depicted person.

10 (d) This section shall not apply to:

11 (1) Images involving voluntary nudity or sexual conduct in public or
12 commercial settings or in a place where a person does not have a reasonable
13 expectation of privacy.

14 (2) Disclosures made in the public interest, including the reporting of
15 unlawful conduct, or lawful and common practices of law enforcement,
16 criminal reporting, corrections, legal proceedings, or medical treatment.

17 (3) Disclosures of materials that constitute a matter of public concern.

18 (4) Interactive computer services, as defined in 47 U.S.C. § 230(f)(2), or
19 information services or telecommunications services, as defined in 47 U.S.C.
20 § 153, for content solely provided by another person. This subdivision shall
21 not preclude other remedies available at law.

1 (e)(1) A plaintiff shall have a private cause of action against a defendant
2 who knowingly discloses, without the plaintiff's consent, an identifiable visual
3 image of the plaintiff while ~~he or she~~ the plaintiff is nude or engaged in sexual
4 conduct and the disclosure causes the plaintiff harm.

5 (2) In addition to any other relief available at law, the court may order
6 equitable relief, including a temporary restraining order, a preliminary
7 injunction, or a permanent injunction ordering the defendant to cease display
8 or disclosure of the image. The court may grant injunctive relief maintaining
9 the confidentiality of a plaintiff using a pseudonym.

10 Sec. 2. EFFECTIVE DATE

11 This act shall take effect on July 1, 2024.