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HOUSE BILL 2384

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State of Washington

64th Legislature

2016 Regular Session

By Representatives Buys, Wylie, Orwall, and Rodne

1 AN ACT Relating to clarifying the meaning of mobile  
2 telecommunications service provider; amending RCW 9A.86.010; and  
3 prescribing penalties.

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

5 **Sec. 1.** RCW 9A.86.010 and 2015 2nd sp.s. c 7 s 1 are each  
6 amended to read as follows:

7 (1) A person commits the crime of disclosing intimate images when  
8 the person knowingly discloses an intimate image of another person  
9 and the person disclosing the image:

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

12 (b) Knows or should have known that the depicted person has not  
13 consented to the disclosure; and

14 (c) Knows or reasonably should know that disclosure would cause  
15 harm to the depicted person.

16 (2) A person who is under the age of eighteen is not guilty of  
17 the crime of disclosing intimate images unless the person:

18 (a) Intentionally and maliciously disclosed an intimate image of  
19 another person;

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

1 (c) Knows or should have known that the depicted person has not  
2 consented to the disclosure.

3 (3) This section does not apply to:

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

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

10 (4) This section does not impose liability upon the following  
11 entities solely as a result of content provided by another person:

12 (a) An interactive computer service, as defined in 47 U.S.C. Sec.  
13 230(f)(2);

14 (b) A mobile telecommunications service provider (~~(of public or~~  
15 ~~private mobile service)), as defined in ((section 13-214 of the~~  
16 ~~public utilities act)) RCW 82.04.065; or~~

17 (c) A telecommunications network or broadband provider.

18 (5) It shall be an affirmative defense to a violation of this  
19 section that the defendant is a family member of a minor and did not  
20 intend any harm or harassment in disclosing the images of the minor  
21 to other family or friends of the defendant. This affirmative defense  
22 shall not apply to matters defined under RCW 9.68A.011.

23 (6) For purposes of this section:

24 (a) "Disclosing" includes transferring, publishing, or  
25 disseminating, as well as making a digital depiction available for  
26 distribution or downloading through the facilities of a  
27 telecommunications network or through any other means of transferring  
28 computer programs or data to a computer;

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

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

37 (ii) A person's intimate body parts, whether nude or visible  
38 through less than opaque clothing, including the genitals, pubic  
39 area, anus, or post-pubescent female nipple.

40 (7) The crime of disclosing intimate images:

1           (a) Is a gross misdemeanor on the first offense; or  
2           (b) Is a class C felony if the defendant has one or more prior  
3 convictions for disclosing intimate images.  
4           (8) Nothing in this section is construed to:  
5           (a) Alter or negate any rights, obligations, or immunities of an  
6 interactive service provider under 47 U.S.C. Sec. 230; or  
7           (b) Limit or preclude a plaintiff from securing or recovering any  
8 other available remedy.

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