

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1558

99TH GENERAL ASSEMBLY

Reported from the Committee on General Laws, May 3, 2018, with recommendation that the Senate Committee Substitute do pass.

ADRIANE D. CROUSE, Secretary.

5278S.02C

AN ACT

To amend chapter 573, RSMo, by adding thereto two new sections relating to the offense of nonconsensual dissemination of private sexual images, with a penalty provision.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 573, RSMo, is amended by adding thereto two new sections, to be known as sections 573.110 and 573.112, to read as follows:

573.110. 1. As used in this section and section 573.112, the following terms mean:

(1) "Computer", a device that accepts, processes, stores, retrieves, or outputs data and includes, but is not limited to, auxiliary storage and telecommunications devices connected to computers;

(2) "Computer program", a series of coded instructions or statements in a form acceptable to a computer that causes the computer to process data and supply the results of the data processing;

(3) "Data", a representation in any form of information, knowledge, facts, concepts, or instructions including, but not limited to, program documentation, that is prepared or has been prepared in a formalized manner and is stored or processed in or transmitted by a computer or in a system or network. Data is considered property and may be in any form including, but not limited to, printouts, magnetic or optical storage media, punch cards, data stored internally in the memory of the computer, or data stored externally that is accessible by the computer;

(4) "Image", a photograph, film, videotape, digital recording, or other depiction or portrayal of an object, including a human body;

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21 (5) "Intimate parts", the fully unclothed, partially unclothed, or
22 transparently clothed genitals, pubic area, or anus or, if the person is
23 female, a partially or fully exposed nipple, including exposure through
24 transparent clothing;

25 (6) "Private mobile radio services", private land mobile radio
26 services and other communications services characterized by the public
27 service commission as private mobile radio services;

28 (7) "Public mobile services", air-to-ground radio telephone
29 services, cellular radio telecommunications services, offshore radio,
30 rural radio services, public land mobile telephone services, and other
31 common carrier radio communications services;

32 (8) "Sexual act", sexual penetration, masturbation, or sexual
33 activity;

34 (9) "Sexual activity", any:

35 (a) Knowing touching or fondling by the victim or another
36 person or animal, either directly or through clothing, of the sex organs,
37 anus, or breast of the victim or another person or animal for the
38 purpose of sexual gratification or arousal;

39 (b) Transfer or transmission of semen upon any part of the
40 clothed or unclothed body of the victim for the purpose of sexual
41 gratification or arousal of the victim or another;

42 (c) Act of urination within a sexual context;

43 (d) Bondage, fetter, sadism, or masochism; or

44 (e) Sadomasochism abuse in any sexual context.

45 2. A person commits the offense of nonconsensual dissemination
46 of private sexual images if he or she:

47 (1) With the intent to harass, threaten, or coerce any individual,
48 intentionally disseminates an image of another person:

49 (a) Who is at least eighteen years of age;

50 (b) Who is identifiable from the image itself or information
51 displayed in connection with the image; and

52 (c) Who is engaged in a sexual act or whose intimate parts are
53 exposed, in whole or in part;

54 (2) Obtains the image under circumstances in which a reasonable
55 person would know or understand that the image was to remain
56 private; and

57 **(3) Knows or should have known that the person in the image did**
58 **not consent to the dissemination.**

59 **3. The following activities are exempt from the provisions of this**
60 **section:**

61 **(1) The intentional dissemination of an image of another**
62 **identifiable person who is engaged in a sexual act or whose intimate**
63 **parts are exposed if the dissemination is made for the purpose of a**
64 **criminal investigation that is otherwise lawful;**

65 **(2) The intentional dissemination of an image of another**
66 **identifiable person who is engaged in a sexual act or whose intimate**
67 **parts are exposed if the dissemination is for the purpose of, or in**
68 **connection with, the reporting of unlawful conduct;**

69 **(3) The intentional dissemination of an image of another**
70 **identifiable person who is engaged in a sexual act or whose intimate**
71 **parts are exposed if the image involves voluntary exposure in a public**
72 **or commercial setting; or**

73 **(4) The intentional dissemination of an image of another**
74 **identifiable person who is engaged in a sexual act or whose intimate**
75 **parts are exposed if the dissemination serves a lawful public purpose.**

76 **4. Nothing in this section shall be construed to impose liability**
77 **upon the following entities solely as a result of content or information**
78 **provided by another person:**

79 **(1) An interactive computer service, as defined in 47 U.S.C.**
80 **Section 230(f)(2), except where such a service had actual notice that its**
81 **service was being used in violation of this section and failed to take**
82 **corrective action to remove the offending material from its service**
83 **within five business days of receipt of such notice;**

84 **(2) A provider of public mobile services or private mobile radio**
85 **services; or**

86 **(3) A telecommunications network or broadband provider.**

87 **5. A person convicted under this section is subject to the**
88 **forfeiture provisions under sections 513.600 to 513.660.**

89 **6. The offense of nonconsensual dissemination of private sexual**
90 **images is a class D felony.**

91 **7. In addition to the criminal penalties listed in subsection 6 of**
92 **this section, the person in violation of the provisions of this section**
93 **shall also be subject to a private cause of action from the depicted**

94 person. Any successful private cause of action brought under this
95 subsection shall result in an award equal to ten thousand dollars or
96 actual damages, whichever is greater, and in addition shall include
97 attorney's fees. Humiliation or embarrassment shall be an adequate
98 show that the plaintiff has incurred damages; however, no physical
99 manifestation of either humiliation or embarrassment is necessary for
100 damages to be shown.

573.112. 1. A person commits the offense of threatening the
2 nonconsensual dissemination of private sexual images if he or she gains
3 or attempts to gain anything of value, or coerces or attempts to coerce
4 another person to act or refrain from acting, by threatening to
5 disseminate an image of another person, which was obtained under
6 circumstances in which a reasonable person would know or understand
7 that the image was to remain private, against the will of such person:

- 8 (1) Who is at least eighteen years of age;
- 9 (2) Who is identifiable from the image itself or information
10 displayed in connection with the image; and
- 11 (3) Who is engaged in a sexual act or whose intimate parts are
12 exposed, in whole or in part.

13 2. The offense of threatening the nonconsensual dissemination
14 of private sexual images is a class E felony.

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