# Sixty-fourth Legislative Assembly of North Dakota
# In Regular Session Commencing Tuesday, January 6, 2015

SENATE BILL NO. 2357
(Senators Schneider, Armstrong, Casper)
(Representatives Hanson, Kretschmar, Maragos)

AN ACT to create and enact section 12.1-17-07.2 and a new section to chapter 32-03 of the North Dakota Century Code, relating to the distribution of graphic or intimate images of someone without consent; and to provide a penalty.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** Section 12.1-17-07.2 of the North Dakota Century Code is created and enacted as follows:

**12.1-17-07.2. Distribution of intimate images without or against consent - Penalty.**

1. As used in this section:

   a. "Distribute" means selling, exhibiting, displaying, wholesaling, retailing, providing, giving, granting admission to, providing access to, or otherwise transferring or presenting an image to another individual, with or without consideration.

   b. "Hosting company" means a person that provides services or facilities for storing or distributing content over the internet without editorial or creative alteration of the content.

   c. "Intimate image" means any visual depiction, photograph, film, video, recording, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, that depicts:

      (1) Exposed human male or female genitals or pubic area, with less than an opaque covering;

      (2) A female breast with less than an opaque covering, or any portion of the female breast below the top of the areola; or

      (3) The individual engaged in any sexually explicit conduct.

   d. "Service provider" means an internet service provider, including a person who leases or rents a wire or cable for the transmission of data.

   e. "Sexually explicit conduct" means actual or simulated:

      (1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

      (2) Masturbation;

      (3) Bestiality;

      (4) Sadistic or masochistic activities;

      (5) Exhibition of the genitals, pubic region, buttocks, or female breast of any individual;

      (6) Visual depiction of nudity or partial nudity;

      (7) Fondling or touching of the genitals, pubic region, buttocks, or female breast; or

(8) Explicit representation of the defecation or urination functions.

f. "Simulated sexually explicit conduct" means a feigned or pretended act of sexually explicit conduct that duplicates, within the perception of an average person, the appearance of an actual act of sexually explicit conduct.

2. A person commits the offense of distribution of intimate images if the person knowingly or intentionally distributes to any third party any intimate image of an individual eighteen years of age or older, if:

a. The person knows that the depicted individual has not given consent to the person to distribute the intimate image;

b. The intimate image was created by or provided to the person under circumstances in which the individual has a reasonable expectation of privacy; and

c. Actual emotional distress or harm is caused to the individual as a result of the distribution under this section.

3. This section does not apply to:

a. Lawful practices of law enforcement agencies;

b. Prosecutorial agency functions;

c. The reporting of a criminal offense;

d. Court proceedings or any other judicial proceeding;

e. Lawful and generally accepted medical practices and procedures;

f. An intimate image if the individual portrayed in the image voluntarily allows public exposure of the image; or

g. An intimate image that is portrayed in a lawful commercial setting.

4. This section also does not apply to:

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

b. A provider of an electronic communications service, as defined in 18 U.S.C. 2510;

c. A telecommunications service, information service, or mobile service, as defined in 47 U.S.C. 153, including a commercial mobile service, as defined in 47 U.S.C. 332(d);

d. A cable operator, as defined in 47 U.S.C. 552, if:

(1) The distribution of an intimate image by the cable operator occurs only incidentally through the operator's function of:

(a) Transmitting or routing data from one person to another person; or

(b) Providing a connection between one person and another person;

(2) The operator does not intentionally aid or abet in the distribution of the intimate image; and

(3) The operator does not knowingly receive from or through a person who distributes the intimate image a fee greater than the fee generally charged by the operator, as a specific condition for permitting the person to distribute the intimate image; or

e. A hosting company, if:

(1) The distribution of an intimate image by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;

(2) The hosting company does not intentionally engage, aid, or abet in the distribution of the intimate image; and

(3) The hosting company does not knowingly receive from or through a person who distributes the intimate image a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute, store, or cache the intimate image.

5. Distribution of an intimate image is a class A misdemeanor.

**SECTION 2.** A new section to chapter 32-03 of the North Dakota Century Code is created and enacted as follows:

**Distribution of intimate images without or against consent - Remedies.**

An individual whose intimate image is distributed in violation of section 1 of this Act may maintain a private right of action against each person who has distributed that image in violation of section 1 of this Act, without regard to whether the defendant has been charged with, found guilty of, or pleaded guilty to that offense. An individual whose intimate image is distributed in violation of section 1 of this Act is entitled to pursue all of the economic, noneconomic, and exemplary or punitive damages and other remedies available by law and to obtain a temporary restraining order or a preliminary or permanent injunction ordering the person to cease distribution of the intimate image.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-fourth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2357.

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| Senate Vote: | Yeas 46 | Nays 0 | Absent 1 |
| House Vote: | Yeas 92 | Nays 1 | Absent 1 |

Secretary of the Senate

Received by the Governor at 10:06 M. on April 7, 2015.

Approved at 2:37 P.M. on April 8, 2015.

Governor

Filed in this office this 8th day of April, 2015,

at 3:36 o'clock P M.

Secretary of State