



ARIZONA STATE SENATE
Fifty-Second Legislature, Second Regular Session

FINAL REVISED
FACT SHEET FOR H.B. 2001

unlawful distribution of private images

Purpose

An emergency measure, effective March 11, 2016, that modifies the crime of unlawful disclosure of private images to include elements regarding identifiability, expectation of privacy and intent.

Background

Laws 2014, Chapter 268, establishes the offense of unlawful distribution of images. Pursuant to current statute, it is unlawful to intentionally disclose, display, distribute, publish, advertise or offer a photograph, videotape, film or digital recording of another person in a state of nudity or engaged in specific sexual activities (private image) if the person knows or should have known that the depicted person has not consented to the disclosure. The law exempts the following from the offense: 1) lawful and common practices of law enforcement, reporting unlawful activity or when permitted or required by law or rule in legal proceedings; 2) lawful and common practices of medical treatment; 3) images involving voluntary exposure in a public or commercial setting; and 4) interactive computer services or information services with regard to content provided by another person.

Unlawful distribution of images is a class 5 felony, but if the depicted person is recognizable, it is a class 4 felony (A.R.S. § 13-1425).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

Unlawful Disclosure

1. Modifies the offense of unlawful distribution of private images to specify that it is unlawful for a person to intentionally disclose an image of another person who is identifiable from the image itself or from information displayed in connection with the image.
2. Adds that in order for a distribution of images to be unlawful the following must apply:
 - a) the depicted person has a reasonable expectation of privacy; and
 - b) the person making the disclosure does so with the intent to harm, harass, intimidate, threaten or coerce the depicted person.

- 3. Specifies that evidence that a person has sent an image to another person using an electronic device does not, on its own, remove the person’s reasonable expectation of privacy for that image.

Penalties

- 4. Classifies the offense above as a class 5 felony.
- 5. Makes it a class 4 felony if the private image is disclosed by electronic means.
- 6. Makes it a class 1 misdemeanor to threaten the disclosure of a private image without actually disclosing that image.

Definitions

- 7. Characterizes *disclosed by electronic means* as the delivery to an email address, mobile device, tablet or other electronic device as well as the disclosure on a website.
- 8. Defines *harm* as physical injury, financial injury or serious emotional distress.
- 9. Defines *reasonable expectation of privacy* to mean the person exhibits an actual expectation of privacy and the expectation is reasonable.
- 10. Narrows the definitions of *specific sexual activities* and *state of nudity*.

Miscellaneous

- 11. Provides that in order to be exempt from violation, the unlawful content provided by an interactive computer service or information service provider must be *wholly* provided by another party.
- 12. Exempts from the crime the disclosure of a private image:
 - a) made with the consent of the person who is depicted in the private image; or
 - b) related to criminal reporting.
- 13. Specifies that criminal proceedings commenced under current statute can only proceed if the alleged conduct constitutes prohibited conduct as specified above.
- 14. Makes technical and conforming changes.
- 15. Becomes effective on signature of the Governor, if the emergency clause is enacted.

House Action

Senate Action

RULES 01/13/16 DP 9-0-0-0-0
 3rd Read 01/13/16 58-0-1-0-1

JUD 02/25/16 DP 6-0-1
 3rd Read 03/07/16 29-0-1

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Signed by the Governor 03/11/16

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Prepared by Senate Research

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