

CONFERENCE COMMITTEE AMENDMENTS TO H.B. 2133  
(Reference to Senate engrossed bill)

Amendment instruction key:

[GREEN UNDERLINING IN BRACKETS] indicates text added to statute or previously enacted session law.

[Green underlining in brackets] indicates text added to new session law or text restoring existing law.

~~[GREEN STRIKEOUT IN BRACKETS]~~ indicates new text removed from statute or previously enacted session law.

~~[Green strikeout in brackets]~~ indicates text removed from existing statute, previously enacted session law or new session law.

<<Green carets>> indicate a section added to the bill.

<<~~Green strikeout in carets~~>> indicates a section removed from the bill.

- 1 The bill as proposed to be amended is reprinted as follows:  
2 Section 1. Section 13-1425, Arizona Revised Statutes, is amended to  
3 read:  
4 13-1425. Unlawful disclosure of images depicting states of nudity  
5 or specific sexual activities; classification;  
6 definitions  
7 A. It is unlawful for a person to intentionally disclose an image of  
8 another person who is identifiable from the image itself or from information  
9 displayed in connection with the image if all of the following apply:  
10 1. The person in the image is depicted in a state of nudity or is  
11 engaged in specific sexual activities.  
12 2. The depicted person has a reasonable expectation of privacy.  
13 Evidence that a person has sent an image to another person using an electronic  
14 device does not, on its own, remove the person's reasonable expectation of  
15 privacy for that image. Unless the realistic pictorial representation is  
16 created or modified by the depicted person, this paragraph does not apply to  
17 an image that is a realistic pictorial representation.  
18 3. The image is disclosed with the intent to harm, harass, intimidate,  
19 threaten or coerce the depicted person.  
20 B. This section does not apply to any of the following:  
21 1. The reporting of unlawful conduct.  
22 2. Lawful and common practices of law enforcement, criminal reporting,  
23 legal proceedings or medical treatment.  
24 3. Images involving voluntary exposure in a public or commercial  
25 setting.  
26 4. An interactive computer service, as defined in 47 United States Code  
27 section 230(f)(2), or an information service or cable service, as defined in

1 47 United States Code section 153, with regard to content wholly provided by  
2 another party.

3 5. Any disclosure that is made with the consent of the person who is  
4 depicted in the image.

5 C. THIS SECTION DOES NOT APPLY IF IT IS CLEAR TO A REASONABLE VIEWER  
6 THAT THE IMAGE, RECORDING OR VIDEO HAS BEEN BOTH:

7 1. DIGITALLY MANIPULATED.

8 2. CREATED FOR THE PURPOSES OF ANY OF THE FOLLOWING:

9 (a) PARODY.

10 (b) COMEDY.

11 (c) ARTISTIC EXPRESSION.

12 (d) CRITICISM OF MATTERS OF PUBLIC CONCERN.

13 ~~6.~~ D. A violation of this section is a class 5 felony, except that a  
14 violation of this section is a:

15 1. Class 4 felony if the image is disclosed by electronic means.

16 2. Class 1 misdemeanor if a person threatens to disclose but does not  
17 disclose an image that if disclosed would be a violation of this section or if  
18 the image is a realistic pictorial representation.

19 ~~7.~~ E. For the purposes of this section:

20 1. "Disclose" means display, distribute, publish, advertise or offer.

21 2. "Disclosed by electronic means" means delivery to an email address,  
22 mobile device, tablet or other electronic device and includes disclosure on a  
23 website.

24 3. "Harm" means physical injury, financial injury or serious emotional  
25 distress.

26 4. "IDENTIFIABLE PERSON" MEANS A PERSON WHO IS RECOGNIZABLE BY ANY  
27 PERSON, INCLUDING THE PERSON HIMSELF, BY ANY PART OF THE PERSON OR BY ANY  
28 OTHER INFORMATION THAT IS PART OF THE DEPICTION.

29 ~~4.~~ 5. "Image" means a photograph, videotape, film, digital recording  
30 or realistic pictorial representation.

31 ~~5.~~ 6. "Realistic pictorial representation":

32 (a) Means an image that is created or modified to reasonably appear to  
33 be an actual image of an identifiable person depicted in a state of nudity or  
34 engaged in specific sexual activities that did not actually occur.

35 (b) Does not include an image made in the public interest, including  
36 scientific or educational activities, a newsworthy event or an issue of public  
37 concern.

38 ~~6.~~ 7. "Reasonable expectation of privacy" means the person exhibits an  
39 actual expectation of privacy and the expectation is reasonable.

40 ~~7.~~ 8. "Specific sexual activities" has the same meaning prescribed in  
41 section 11-811, subsection E, paragraph 18, subdivisions (a) and (b).

42 ~~8.~~ 9. "State of nudity" has the same meaning prescribed in section  
43 11-811, subsection E, paragraph 14, subdivision (a).

44 Sec. 2. Heading change; transfer and renumber

45 A. The chapter heading of title 18, chapter 7, Arizona Revised  
46 Statutes, is changed from "GOVERNMENT INFORMATION TECHNOLOGY USE" to "SEXUAL  
47 MATERIAL ON THE INTERNET".

48 B. Title 18, chapter 7, Arizona Revised Statutes, is transferred and  
49 renumbered for placement in title 44, Arizona Revised Statutes, as chapter  
50 30. Title 18, chapter 7, article 1, Arizona Revised Statutes, is transferred

1 and renumbered for placement in title 44, chapter 30, Arizona Revised  
2 Statutes, as article 1. Section 18-701, Arizona Revised Statutes, is  
3 transferred and renumbered for placement in title 44, chapter 30, article 1,  
4 Arizona Revised Statutes, as section 44-7301.

5 Sec. 3. Title 44, chapter 30, article 1, Arizona Revised Statutes, as  
6 transferred and renumbered, is amended by adding section 44-7302, to read:

7 44-7302. Sexual material on the internet; verification and  
8 consent requirements; records; applicability; civil  
9 penalties; definitions

10 A. A COMMERCIAL ENTITY THAT KNOWINGLY AND INTENTIONALLY PUBLISHES OR  
11 DISTRIBUTES, AND ALLOWS THE PUBLICATION OR DISTRIBUTION OF, SEXUAL MATERIAL ON  
12 AN INTERNET WEBSITE SHALL DO ALL OF THE FOLLOWING:

13 1. REQUIRE EACH PERSON WHO UPLOADS OR PLACES THE SEXUAL MATERIAL ON AN  
14 INTERNET WEBSITE TO VERIFY, USING REASONABLE VERIFICATION METHODS, EITHER OF  
15 THE FOLLOWING:

16 (a) THAT EACH INDIVIDUAL WHO IS DEPICTED IN THE SEXUAL MATERIAL HAS  
17 PROVIDED EXPLICIT INFORMED CONSENT TO THE CREATION, DISTRIBUTION AND  
18 PUBLICATION OF THE SEXUAL MATERIAL AND WAS AT LEAST EIGHTEEN YEARS OF AGE AT  
19 THE TIME THE SEXUAL MATERIAL WAS CREATED.

20 (b) THAT THE SEXUAL MATERIAL WAS CREATED BEFORE THE ENACTMENT OF THE  
21 CHILD PROTECTION AND OBSCENITY ENFORCEMENT ACT OF 1988 (P.L. 100-690; 102  
22 STAT. 4485) BY USING ANY OF THE FOLLOWING:

23 (i) AN AFFIDAVIT FROM THE UPLOADER OR CUSTODIAN OF RECORDS.

24 (ii) CONTEMPORANEOUS PUBLICATION OR COPYRIGHT RECORDS.

25 (iii) TECHNICAL METADATA.

26 (iv) ANY OTHER EVIDENCE THAT REASONABLY ESTABLISHES THE DATE THE SEXUAL  
27 MATERIAL WAS FIRST FIXED IN A TANGIBLE MEDIUM.

28 2. MAINTAIN RECORDS OF THE VERIFICATION FOR AT LEAST SEVEN YEARS.

29 3. IMPLEMENT REASONABLE MEASURES TO PREVENT THE UPLOADING OF SEXUAL  
30 MATERIAL THAT DOES NOT HAVE VERIFIED CONSENT, INCLUDING USING AUTOMATED  
31 DETECTION TOOLS WHERE FEASIBLE.

32 B. THIS SECTION DOES NOT APPLY TO ANY OF THE FOLLOWING:

33 1. A NEWS OR PUBLIC INTEREST BROADCAST OR PUBLICATION.

34 2. MATERIAL THAT IS DISTRIBUTED FOR BONA FIDE SCIENTIFIC, MEDICAL OR  
35 EDUCATIONAL PURPOSES.

36 3. AN INTERNET SERVICE PROVIDER, AN INTERNET SERVICE PROVIDER'S  
37 AFFILIATES OR SUBSIDIARIES, A SEARCH ENGINE OR A CLOUD SERVICE PROVIDER THAT  
38 SOLELY PROVIDES ACCESS OR A CONNECTION TO OR FROM A WEBSITE OR OTHER  
39 INFORMATION OR CONTENT ON THE INTERNET OR ON A FACILITY, SYSTEM OR NETWORK  
40 THAT IS NOT UNDER THAT INTERNET SERVICE PROVIDER'S CONTROL, INCLUDING  
41 TRANSMISSION, DOWNLOADING, INTERMEDIATE STORAGE, ACCESS SOFTWARE OR OTHER  
42 SERVICES TO THE EXTENT THAT THE INTERNET SERVICE PROVIDER, SEARCH ENGINE OR  
43 CLOUD SERVICE PROVIDER IS NOT RESPONSIBLE FOR THE CREATION OR DIRECT HOSTING  
44 OF THE SEXUAL MATERIAL.

45 [4. A MOTION PICTURE THAT WAS PRODUCED BEFORE THE EFFECTIVE DATE OF  
46 THIS SECTION AND THAT WAS RATED BY THE MOTION PICTURE ASSOCIATION OR ITS  
47 PREDECESSOR, THE MOTION PICTURE ASSOCIATION OF AMERICA.

48 5. A TELEVISION PROGRAM OR TELEVISION SERIES THAT WAS PRODUCED BEFORE  
49 THE EFFECTIVE DATE OF THIS SECTION.]

1 C. A COMMERCIAL ENTITY THAT PUBLISHES OR DISTRIBUTES SEXUAL MATERIAL ON  
2 AN INTERNET WEBSITE WITHOUT COMPLYING WITH SUBSECTION A OF THIS SECTION AND IN  
3 VIOLATION OF THIS SECTION IS SUBJECT TO:  
4 1. A CIVIL PENALTY OF \$10,000 FOR EACH DAY OF THE VIOLATION.  
5 2. ACTUAL DAMAGES.  
6 3. COSTS AND REASONABLE ATTORNEY FEES.  
7 4. ADDITIONAL RELIEF, INCLUDING INJUNCTIVE RELIEF.  
8 D. THIS SECTION DOES NOT APPLY IF IT IS CLEAR TO A REASONABLE VIEWER  
9 THAT THE IMAGE, RECORDING OR VIDEO HAS BEEN BOTH:  
10 1. DIGITALLY MANIPULATED.  
11 2. CREATED FOR THE PURPOSES OF ANY OF THE FOLLOWING:  
12 (a) PARODY.  
13 (b) COMEDY.  
14 (c) ARTISTIC IMPRESSION.  
15 (d) CRITICISM OF MATTERS OF PUBLIC CONCERN.  
16 E. THE ATTORNEY GENERAL MAY BRING AN ACTION TO ENFORCE THIS SECTION  
17 AND, IN ADDITION TO ANY PENALTY PROVIDED FOR IN SECTION 13-3553, MAY SEEK  
18 CIVIL PENALTIES OF UP TO \$250,000 IF A MINOR IS DEPICTED IN THE SEXUAL  
19 MATERIAL THAT IS PUBLISHED OR DISTRIBUTED IN VIOLATION OF THIS SECTION.  
20 F. THE FOLLOWING PERSONS MAY BRING A CIVIL ACTION PURSUANT TO THIS  
21 SECTION:  
22 1. THE ATTORNEY GENERAL.  
23 2. AN INDIVIDUAL WHO IS DEPICTED IN THE SEXUAL MATERIAL AND WHO DID NOT  
24 CONSENT TO THE DEPICTION.  
25 G. FOR THE PURPOSES OF THIS SECTION:  
26 1. "COMMERCIAL ENTITY" HAS THE SAME MEANING PRESCRIBED IN SECTION  
27 44-7301.  
28 2. "CONSENT" MEANS AFFIRMATIVE, CONSCIOUS AND VOLUNTARY AUTHORIZATION  
29 THAT IS GIVEN BY AN INDIVIDUAL AND THAT IS DOCUMENTED AND VERIFIABLE.  
30 3. "DIRECT HOSTING":  
31 (a) MEANS STORING SEXUAL MATERIAL ON SERVERS, SYSTEMS OR NETWORKS THAT  
32 ARE CONTROLLED OR OPERATED BY THE COMMERCIAL ENTITY WHERE THE COMMERCIAL  
33 ENTITY ENABLES USERS TO UPLOAD THE MATERIAL AND MAKES THE MATERIAL ACCESSIBLE  
34 FOR VIEWING, DOWNLOADING, SHARING OR DISTRIBUTION BY OTHER ~~[USES]~~ [USERS] OR  
35 THE PUBLIC THROUGH THE ENTITY'S WEBSITE, APPLICATION OR PLATFORM.  
36 (b) DOES NOT INCLUDE ANY OF THE FOLLOWING:  
37 (i) TRANSITORY DIGITAL NETWORK COMMUNICATIONS OR THE MERE PROVISION OF  
38 INTERNET CONNECTIVITY OR ACCESS.  
39 (ii) SYSTEM CACHING OR INTERMEDIATE STORAGE THAT IS INCIDENTAL TO  
40 TRANSMISSION.  
41 (iii) INFORMATION LOCATION TOOLS, INCLUDING SEARCH ENGINES, THAT ONLY  
42 INDEX, LINK TO OR REFERENCE CONTENT THAT IS HOSTED BY A THIRD PARTY WITHOUT  
43 STORING THE MATERIAL ON THE COMMERCIAL ENTITY'S CONTROLLED SYSTEMS.  
44 4. "DISTRIBUTE" HAS THE SAME MEANING PRESCRIBED IN SECTION 44-7301.  
45 5. "IDENTIFIABLE INDIVIDUAL" MEANS A PERSON WHO IS RECOGNIZABLE BY ANY  
46 PERSON, INCLUDING THE PERSON HIMSELF, BY ANY PART OF THE PERSON OR BY ANY  
47 OTHER INFORMATION THAT IS PART OF THE DEPICTION.  
48 6. "PUBLISH" HAS THE SAME MEANING PRESCRIBED IN SECTION 44-7301.

1           7. "REASONABLE VERIFICATION METHODS":  
2           (a) MEANS ANY COMMERCIALY REASONABLE METHOD THAT IS REGULARLY USED BY  
3 BUSINESSES TO VERIFY CONSENT, AGE OR THE DATE THE SEXUAL MATERIAL WAS CREATED,  
4 WITHOUT REQUIRING OR ALLOWING THE USE OF ANY GOVERNMENT-ISSUED DIGITAL  
5 IDENTIFICATION SYSTEM.  
6           (b) INCLUDES:  
7           (i) AN AFFIDAVIT THAT ATTESTS TO THE CONSENT AND AGE OF EACH DEPICTED  
8 PERSON OR THAT ATTESTS TO THE DATE THE SEXUAL MATERIAL WAS CREATED IF THE  
9 SEXUAL MATERIAL WAS CREATED BEFORE THE ENACTMENT OF THE CHILD PROTECTION AND  
10 OBSCENITY ENFORCEMENT ACT OF 1988 (P.L. 100-690; 102 STAT. 4485).  
11           (ii) A VERIFICATION THROUGH AN INDEPENDENT THIRD PARTY.  
12           (iii) ANY OTHER COMMERCIALY REASONABLE METHOD.  
13           8. "SEXUAL MATERIAL" INCLUDES[~~:-~~  
14 ~~(a)~~] SEXUAL MATERIAL THAT IS HARMFUL TO MINORS AS DEFINED IN SECTION  
15 44-7301[~~:-~~  
16 ~~(b)~~] [AND MAY INCLUDE] A SYNTHETIC DEPICTION [INVOLVING SEXUAL MATERIAL  
17 OF AN IDENTIFIABLE INDIVIDUAL].  
18           9. "SYNTHETIC DEPICTION" MEANS ANY VISUAL DEPICTION THAT IS CREATED OR  
19 ALTERED THROUGH THE USE OF ARTIFICIAL INTELLIGENCE, DIGITAL MANIPULATION OR  
20 OTHER TECHNOLOGY AND THAT APPEARS TO DEPICT AN IDENTIFIABLE INDIVIDUAL BUT  
21 THAT DOES NOT REPRESENT AN ACTUAL EVENT OR CONDUCT INVOLVING THAT INDIVIDUAL.  
22           [10. "TELEVISION PROGRAM OR TELEVISION SERIES" MEANS A REOCCURRING OR  
23 EPISODIC PRODUCTION THAT IS INTENDED IN ITS PILOT OR INITIAL RUN TO BE  
24 BROADCAST ON A FREE OR SUBSCRIPTION TELEVISION SERVICE, CABLE, SATELLITE OR  
25 STREAMING PLATFORM AND THAT HAS A RUNNING TIME OF TWENTY MINUTES OR MORE IN  
26 LENGTH, INCLUDING COMMERCIAL ADVERTISEMENT AND INTERSTITIAL PROGRAMMING.]  
27           Sec. 4. Severability  
28           If a provision of this act or its application to any person or  
29 circumstance is held invalid, the invalidity does not affect other provisions  
30 or applications of the act that can be given effect without the invalid  
31 provision or application, and to this end the provisions of this act are  
32 severable.  
33           Sec. 5. Short title  
34           This act may be cited as the "Protect Act".

35 Enroll and engross to conform  
36 Amend title to conform

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