

COMMITTEE ON JUDICIARY AND ELECTIONS
SENATE AMENDMENTS TO H.B. 2133
(Reference to House 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
5 nudity or specific sexual activities;
6 classification; definitions

7 A. It is unlawful for a person to intentionally disclose an image
8 of another person who is identifiable from the image itself or from
9 information displayed in connection with the image if all of the following
10 apply:

11 1. The person in the image is depicted in a state of nudity or is
12 engaged in specific sexual activities.

13 2. The depicted person has a reasonable expectation of privacy.
14 Evidence that a person has sent an image to another person using an
15 electronic device does not, on its own, remove the person's reasonable
16 expectation of privacy for that image. Unless the realistic pictorial
17 representation is created or modified by the depicted person, this
18 paragraph does not apply to an image that is a realistic pictorial
19 representation.

20 3. The image is disclosed with the intent to harm, harass,
21 intimidate, threaten or coerce the depicted person.

22 B. This section does not apply to any of the following:

23 1. The reporting of unlawful conduct.

24 2. Lawful and common practices of law enforcement, criminal
25 reporting, legal proceedings or medical treatment.

26 3. Images involving voluntary exposure in a public or commercial
27 setting.

28 4. An interactive computer service, as defined in 47 United States
29 Code section 230(f)(2), or an information service or cable service, as
30 defined in 47 United States Code section 153, with regard to content
31 wholly provided by another party.

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

3 C. A violation of this section is a class 5 felony, except that a
4 violation of this section is a:

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

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

9 D. For the purposes of this section:

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

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

15 3. "Harm" means physical injury, financial injury or serious
16 emotional distress.

17 4. "IDENTIFIABLE INDIVIDUAL" MEANS A PERSON WHO IS RECOGNIZABLE BY
18 ANY PERSON, INCLUDING THE PERSON THEMSELF, BY ANY PART OF THE PERSON OR BY
19 ANY OTHER INFORMATION THAT IS PART OF THE DEPICTION.

20 ~~4.~~ 5. "Image" means a photograph, videotape, film, digital
21 recording, ~~or~~ realistic pictorial representation OR SYNTHETIC DEPICTION OF
22 AN IDENTIFIABLE INDIVIDUAL.

23 ~~5.~~ 6. "Realistic pictorial representation":

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

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

31 ~~6.~~ 7. "Reasonable expectation of privacy" means the person
32 exhibits an actual expectation of privacy and the expectation is
33 reasonable.

34 ~~7.~~ 8. "Specific sexual activities" has the same meaning prescribed
35 in section 11-811, subsection E, paragraph 18, subdivisions (a) and (b).

36 ~~8.~~ 9. "State of nudity" has the same meaning prescribed in section
37 11-811, subsection E, paragraph 14, subdivision (a).

38 10. "SYNTHETIC DEPICTION" MEANS ANY VISUAL DEPICTION THAT IS
39 CREATED OR ALTERED THROUGH THE USE OF ARTIFICIAL INTELLIGENCE, DIGITAL
40 MANIPULATION OR OTHER TECHNOLOGY AND THAT APPEARS TO DEPICT AN
41 IDENTIFIABLE INDIVIDUAL BUT THAT DOES NOT REPRESENT AN ACTUAL EVENT OR
42 CONDUCT INVOLVING THAT INDIVIDUAL.

43 Sec. 2. Heading change; transfer and renumber

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

1 B. Title 18, chapter 7, Arizona Revised Statutes, is transferred
2 and renumbered for placement in title 44, Arizona Revised Statutes, as
3 chapter 30. Title 18, chapter 7, article 1, Arizona Revised Statutes, is
4 transferred and renumbered for placement in title 44, chapter 30, Arizona
5 Revised Statutes, as article 1. Section 18-701, Arizona Revised Statutes,
6 is transferred and renumbered for placement in title 44, chapter 30,
7 article 1, Arizona Revised Statutes, as section 44-7301.

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

11 44-7302. Sexual material on the internet: verification and
12 consent requirements; records; applicability;
13 civil penalties; definitions

14 A. A COMMERCIAL ENTITY THAT KNOWINGLY AND INTENTIONALLY PUBLISHES
15 OR DISTRIBUTES, ~~[OR]~~ [AND] ALLOWS THE PUBLICATION OR DISTRIBUTION OF,
16 SEXUAL MATERIAL ON AN INTERNET WEBSITE SHALL DO ALL OF THE FOLLOWING:

17 1. REQUIRE EACH PERSON WHO UPLOADS OR PLACES THE SEXUAL MATERIAL ON
18 AN INTERNET WEBSITE TO VERIFY, USING REASONABLE CONSENT VERIFICATION
19 METHODS, THAT EACH INDIVIDUAL WHO IS DEPICTED IN THE SEXUAL MATERIAL:

20 (a) HAS PROVIDED EXPLICIT INFORMED CONSENT TO THE CREATION,
21 DISTRIBUTION AND PUBLICATION OF THE SEXUAL MATERIAL.

22 (b) WAS AT LEAST EIGHTEEN YEARS OF AGE AT THE TIME THE MATERIAL WAS
23 CREATED.

24 2. MAINTAIN RECORDS OF THE VERIFICATION FOR AT LEAST SEVEN YEARS.
25 ON REQUEST, THE ATTORNEY GENERAL MAY INSPECT THE RECORDS.

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

29 B. A COMMERCIAL ENTITY MAY NOT RETAIN ANY IDENTIFYING INFORMATION
30 OF THE DEPICTED PERSON AFTER THE VERIFICATION IS COMPLETE EXCEPT AS
31 REQUIRED FOR THE RECORDKEEPING REQUIREMENTS PRESCRIBED IN THIS SECTION.
32 THE COMMERCIAL ENTITY MAY NOT CAUSE OR ALLOW ANY IDENTIFYING INFORMATION
33 TO BE TRANSMITTED TO ANY FEDERAL, STATE OR LOCAL GOVERNMENT ENTITY.

34 C. THIS SECTION DOES NOT APPLY TO ANY OF THE FOLLOWING:

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

36 2. MATERIAL THAT IS DISTRIBUTED FOR BONA FIDE SCIENTIFIC, MEDICAL
37 OR EDUCATIONAL PURPOSES.

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

1 D. A COMMERCIAL ENTITY THAT PUBLISHES OR DISTRIBUTES SEXUAL
2 MATERIAL ON AN INTERNET WEBSITE WITHOUT OBTAINING VERIFIED CONSENT FROM A
3 DEPICTED INDIVIDUAL IN 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 E. THE ATTORNEY GENERAL MAY BRING AN ACTION TO ENFORCE THIS SECTION
9 AND, IN ADDITION TO ANY PENALTY PROVIDED FOR IN SECTION 13-3553, MAY SEEK
10 CIVIL PENALTIES OF UP TO \$250,000 IF A MINOR IS DEPICTED IN THE SEXUAL
11 MATERIAL THAT IS PUBLISHED OR DISTRIBUTED IN VIOLATION OF THIS SECTION.
12 F. THE FOLLOWING PERSONS MAY BRING A CIVIL ACTION PURSUANT TO THIS
13 SECTION:
14 1. THE ATTORNEY GENERAL.
15 2. AN INDIVIDUAL WHO IS DEPICTED IN THE SEXUAL MATERIAL AND WHO DID
16 NOT CONSENT TO THE DEPICTION.
17 G. FOR THE PURPOSES OF THIS SECTION:
18 1. "COMMERCIAL ENTITY" HAS THE SAME MEANING PRESCRIBED IN SECTION
19 44-7301.
20 2. "CONSENT" MEANS AFFIRMATIVE, CONSCIOUS AND VOLUNTARY
21 AUTHORIZATION THAT IS GIVEN BY AN INDIVIDUAL AND THAT IS DOCUMENTED AND
22 VERIFIABLE.
23 3. "DIRECT HOSTING":
24 (a) MEANS STORING SEXUAL MATERIAL ON SERVERS, SYSTEMS OR NETWORKS
25 THAT ARE CONTROLLED OR OPERATED BY THE COMMERCIAL ENTITY WHERE THE
26 COMMERCIAL ENTITY ENABLES USERS TO UPLOAD THE MATERIAL AND MAKES THE
27 MATERIAL ACCESSIBLE FOR VIEWING, DOWNLOADING, SHARING OR DISTRIBUTION BY
28 OTHER USES OR THE PUBLIC THROUGH THE ENTITY'S WEBSITE, APPLICATION OR
29 PLATFORM.
30 (b) DOES NOT INCLUDE ANY OF THE FOLLOWING:
31 (i) TRANSITORY DIGITAL NETWORK COMMUNICATIONS OR THE MERE PROVISION
32 OF INTERNET CONNECTIVITY OR ACCESS.
33 (ii) SYSTEM CACHING OR INTERMEDIATE STORAGE THAT IS INCIDENTAL TO
34 TRANSMISSION.
35 (iii) INFORMATION LOCATION TOOLS, INCLUDING SEARCH ENGINES, THAT
36 ONLY INDEX, LINK TO OR REFERENCE CONTENT THAT IS HOSTED BY A THIRD PARTY
37 WITHOUT STORING THE MATERIAL ON THE COMMERCIAL ENTITY'S CONTROLLED
38 SYSTEMS.
39 4. "DISTRIBUTE" HAS THE SAME MEANING PRESCRIBED IN SECTION 44-7301.
40 5. "IDENTIFIABLE INDIVIDUAL" MEANS A PERSON WHO IS RECOGNIZABLE BY
41 ANY PERSON, INCLUDING THE PERSON THEMSELF, BY ANY PART OF THE PERSON OR BY
42 ANY OTHER INFORMATION THAT IS PART OF THE DEPICTION.
43 6. "PUBLISH" HAS THE SAME MEANING PRESCRIBED IN SECTION 44-7301.
44 7. "REASONABLE CONSENT VERIFICATION METHODS":

1 (a) MEANS ANY COMMERCIALY REASONABLE METHOD THAT IS REGULARLY USED
2 BY BUSINESSES TO VERIFY CONSENT, WITHOUT REQUIRING OR ALLOWING THE USE OF
3 ANY GOVERNMENT-ISSUED DIGITAL IDENTIFICATION SYSTEM.

4 (b) INCLUDES:

5 (i) AN AFFIDAVIT THAT ATTESTS TO THE CONSENT AND AGE OF EACH
6 DEPICTED PERSON.

7 (ii) A VERIFICATION THROUGH AN INDEPENDENT THIRD PARTY.

8 (iii) ANY OTHER COMMERCIALY REASONABLE METHOD THAT DOES NOT RETAIN
9 IDENTIFYING INFORMATION AFTER THE VERIFICATION IS COMPLETE.

10 8. "SEXUAL MATERIAL" INCLUDES:

11 (a) SEXUAL MATERIAL THAT IS HARMFUL TO MINORS AS DEFINED IN SECTION
12 44-7301.

13 (b) A SYNTHETIC DEPICTION INVOLVING SEXUAL MATERIAL OF AN
14 IDENTIFIABLE INDIVIDUAL.

15 9. "SYNTHETIC DEPICTION" MEANS ANY VISUAL DEPICTION THAT IS CREATED
16 OR ALTERED THROUGH THE USE OF ARTIFICIAL INTELLIGENCE, DIGITAL
17 MANIPULATION OR OTHER TECHNOLOGY AND THAT APPEARS TO DEPICT AN
18 IDENTIFIABLE INDIVIDUAL BUT THAT DOES NOT REPRESENT AN ACTUAL EVENT OR
19 CONDUCT INVOLVING THAT INDIVIDUAL.

20 Sec. 4. Severability

21 If a provision of this act or its application to any person or
22 circumstance is held invalid, the invalidity does not affect other
23 provisions or applications of the act that can be given effect without the
24 invalid provision or application, and to this end the provisions of this
25 act are severable.

26 Sec. 5. Short title

27 This act may be cited as the "Protect Act".

28 Enroll and engross to conform

29 Amend title to conform

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