

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**Senate Bill 240**

SENATORS FERNS, BOSO, WELD, CLINE AND RUCKER,

*original sponsors*

[Passed April 8, 2017; in effect 90 days from passage]



1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §61-8-28a, relating to creating the offense of nonconsensual disclosure of  
3 privately taken images of another that show intimate parts of the depicted person or show  
4 the depicted person engaged in sexually explicit conduct; defining terms; setting forth  
5 elements of the crime; providing for criminal penalties; providing circumstances in which  
6 this section does not apply; and excluding providers of interactive computer services,  
7 information services, and telecommunications services from liability under this section.

*Be it enacted by the Legislature of West Virginia:*

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
2 section, designated §61-8-28a, to read as follows:

**ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.**

**§61-8-28a. Nonconsensual disclosure of private intimate images; definitions; and penalties.**

1 (a) As used in this section:

2 (1) "Disclose" means to publish, publicly display, distribute, deliver, circulate or  
3 disseminate by any means, including, but not limited to, electronic transmission.

4 (2) "Image" means a photograph, videotape, motion picture film, digital recording or any  
5 product of any mechanical or electronic recording process or device that can preserve, for later  
6 viewing, a visual image.

7 (3) "Intimate parts" means a person's genitalia, pubic area, anus or female post-pubescent  
8 breasts.

9 (4) To "publicly disclose" means to disclose an image to one or more persons other than  
10 those persons whom the person depicted understood would view the image at the time it was  
11 captured.

12 (b) No person may knowingly and intentionally disclose, cause to be disclosed or threaten  
13 to disclose, with the intent to harass, intimidate, threaten, humiliate, embarrass, or coerce, an

14 image of another which shows the intimate parts of the depicted person or shows the depicted  
15 person engaged in sexually explicit conduct which was captured under circumstances where the  
16 person depicted had a reasonable expectation that the image would not be publicly disclosed.

17 (c) (1) A person convicted of a violation of subsection (b) of this section is guilty of a  
18 misdemeanor and, upon conviction thereof, shall be confined in jail for not more than one year,  
19 fined not less than \$1,000 nor more than \$5,000, or both confined and fined.

20 (2) Notwithstanding the provisions of subdivision (1) of this subsection, a person convicted  
21 of a second or subsequent violation of subsection (b) of this section is guilty of a felony and, upon  
22 conviction thereof, shall be imprisoned in a state correctional facility for not more than three years,  
23 fined not less than \$2,500 nor more than \$10,000, or both imprisoned and fined.

24 (d) The provisions of this section do not apply to:

25 (1) Images disclosed with the prior written consent of the person depicted;

26 (2) Images depicting the person voluntarily exposing himself or herself in a public or  
27 commercial setting; or

28 (3) Disclosures made through the reporting of illegal conduct or the lawful and common  
29 practices of law enforcement, criminal reporting, legal proceeding or medical treatment.

30 (e) Nothing in this section shall be construed to impose liability on the provider of an  
31 interactive computer service as defined by 47 U. S. C. §230(f)(2), an information service as  
32 defined by 47 U. S. C. §153(24), or telecommunications service as defined by 47 U. S. C.  
33 §153(53), for content provided by another person.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, Senate Committee*

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*Chairman, House Committee*

Originated in the Senate.

In effect 90 days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the.....  
Day of ....., 2017.

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*Governor*