

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 240**

BY SENATORS FERNS, BOSO, WELD, CLINE AND RUCKER

[Originating in the Committee on the Judiciary;

reported on February 20, 2017]

1 A BILL 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 offenses of nonconsensual disclosure of  
3 privately taken images of a sexual nature causing or threatening the nonconsensual  
4 disclosure of such an image; defining terms; setting forth elements of the crime; and  
5 providing for criminal penalties.

*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, publically 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 persons other than those persons  
10 whom the person depicted understood would view the image at the time it was captured.

11 (b) No person may knowingly and intentionally disclose, cause to be disclosed or threaten  
12 to disclose, an image of another which shows the intimate parts of the depicted person or shows  
13 the depicted person engaged in sexually explicit conduct which was captured under  
14 circumstances where the person depicted had a reasonable expectation that the image would not  
15 be publically disclosed.

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

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

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

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

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

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

29 (e) Nothing in this section shall be construed to impose liability on the provider of an  
30 interactive computer service as defined by 47 U. S. C. §230(f)(2), an information service as  
31 defined by 47 U. S. C. §153(24), or telecommunications service as defined by 47 U. S. C.  
32 §153(53), for content provided by another person where the provider of the interactive computer  
33 service or information services was without knowledge that disclosure was nonconsensual.