



Legislation Text

File #: Int 1267-2016, Version: A

Int. No. 1267-A

By Council Members Lancman, Garodnick, Richards, Chin, Dromm, Cumbo, Cornegy, Johnson, Crowley, Williams, Menchaca, Salamanca, Maisel, Gibson, Levin, Rodriguez, Rosenthal, Treyger, Cohen and Espinal

A Local Law to amend the administrative code of the city of New York, in relation to prohibiting certain disclosures of intimate images

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 10 of the administrative code of the city of New York is amended by adding a new section 10-177 to read as follows:

§ 10-177 Unlawful disclosure of an intimate image.

a. Definitions. As used in this section, the following terms have the following meanings:

Consent. The term “consent” means permission that is knowingly, intelligently and voluntarily given for the particular disclosure at issue.

Covered recipient. The term “covered recipient” means an individual who gains possession of, or access to, an intimate image from a depicted individual, including through the recording of the intimate image.

Depicted individual. The term “depicted individual” means an individual depicted in a photograph, film, videotape, recording or any other reproduction of an image that portrays such individual (i) with fully or partially exposed intimate body parts, (ii) with another individual whose intimate body parts are exposed, as recorded immediately before or after the occurrence of sexual activity between those individuals, or (iii) engaged in sexual activity.

Disclose. The term “disclose” means to disseminate as defined in subdivision 5 of section 250.40 of the penal law, or to publish as defined in subdivision 6 of section 250.40 of the penal law.

Intimate body parts. The term “intimate body parts” means the genitals, pubic area or anus of any person, or the female nipple or areola of a person who is 11 years old or older.

Intimate image. The term “intimate image” means a photograph, film, videotape, recording or any other reproduction of an image of a depicted individual that has been disclosed or threatened to be disclosed in a manner in which, or to a person or audience to whom, the depicted individual intended it would not be disclosed, at the time at which the covered recipient gained possession of, or access to, the intimate image. An intimate image does not include any image taken in a public place as defined in section 240.00 of the penal law, except if, at the time the image was recorded, an individual in the depicted individual’s position would reasonably have believed that no one other than the covered recipient could view the applicable intimate body parts or sexual activity while such body parts were exposed or such activity was occurring.

Sexual activity. The term “sexual activity” means sexual intercourse as defined in subdivision 1 of section 130.00 of the penal law, oral sexual conduct or anal sexual conduct as those terms are defined in subdivision 2 of section 130.00 of the penal law, touching of the sexual or other intimate parts of a person for the purpose of gratifying sexual desire, sexual penetration with any object or the transmission or appearance of semen upon any part of the depicted individual’s body.

b. Unlawful disclosure of an intimate image.

1. It is unlawful for a covered recipient to disclose an intimate image, without the depicted individual’s consent, with the intent to cause economic, physical or substantial emotional harm to such depicted individual, where such depicted individual is or would be identifiable to another individual either from the intimate image or from the circumstances under which such image is disclosed.

2. It is unlawful for a covered recipient to make a threat to violate paragraph 1 of this subdivision, provided that for the purposes of this paragraph a depicted individual shall be considered to be identifiable where the covered recipient states or implies that such person would be so identifiable.

c. Criminal penalty. Any individual who violates subdivision b of this section shall be guilty of a

misdemeanor punishable by up to one year in jail, or a fine of up to \$1,000, or both.

d. Civil cause of action.

1. Any individual who suffers harm from a violation of subdivision b of this section shall have a civil cause of action in any court of competent jurisdiction against the individual who violated that subdivision.

2. The defendant may be held liable to the plaintiff for any or all of the following relief:

(a) Compensatory and punitive damages;

(b) Injunctive and declaratory relief;

(c) Attorneys' fees and costs; and

(d) Such other relief as a court may deem appropriate.

3. This subdivision shall not be construed to require that a criminal charge be brought, or a criminal conviction be obtained, as a condition of bringing a civil action or receiving a civil judgment pursuant to this subdivision.

e. Provisos. The prohibitions contained in subdivision b do not apply if:

1. Such disclosure or threat of disclosure is made in the course of reporting unlawful activity, in the course of a legal proceeding or by law enforcement personnel in the conduct of their authorized duties;

2. Such disclosure is made by a provider of an interactive computer service, as defined in paragraph (2) of subsection (f) of section 230 of title 47 of the United States code, with regard to content provided by another information content provider, as defined in paragraph (3) of such subsection; or

3. Such disclosure or threat of disclosure is made in relation to a matter of legitimate public concern or is otherwise protected by the first amendment of the United States constitution.

§ 2. This local law takes effect immediately, provided that subdivision c of section 10-177 of the administrative code of the city of New York, as added by this local law, takes effect 60 days after it becomes law.

9/19/17 12:02 PM