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April 2, 2024

ENGROSSED HOUSE
BILL NO. 3639

By: Hasenbeck of the House

and

Treat of the Senate

An Act relating to crimes and punishments; amending 21 O.S. 2021, Section 1040.13b, which relates to the Oklahoma Law on Obscenity and Child Pornography; modifying scope of certain unlawful acts; clarifying penalty provisions; increasing penalty for certain unlawful acts; providing for the prosecution of other unlawful acts; making certain acts unlawful; providing penalty; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 21 O.S. 2021, Section 1040.13b, is amended to read as follows:

Section 1040.13b A. As used in this section:

1. "Image" includes a photograph, film, videotape, digital recording or other depiction or portrayal of an object, including a human body;

2. "Intimate parts" means the fully unclothed, partially unclothed or transparently clothed genitals, pubic area or female adult nipple; and

1 3. "Sexual act" means sexual intercourse including genital,
2 anal or oral sex.

3 B. A person commits nonconsensual dissemination of private
4 sexual images when he or she:

5 1. Intentionally disseminates an image of another person:

6 a. ~~who is at least eighteen (18) years of age,~~

7 b. ~~who is identifiable from the image itself or~~

8 ~~information displayed in connection with the image,~~

9 ~~and~~

10 c. who is engaged in a sexual act or whose intimate parts

11 are exposed, in whole or in part;

12 2. ~~Disseminates the image with the intent to harass, intimidate~~
13 ~~or coerce the person, or under circumstances in which a reasonable~~
14 ~~person would know or understand that dissemination of the image~~
15 ~~would harass, intimidate or coerce the person;~~

16 3. Obtains the image under circumstances in which a reasonable
17 person would know or understand that the image was to remain
18 private; and

19 4. ~~Knows or a reasonable person should have known that the~~
20 ~~person in 3. Disseminates~~ the image ~~has not consented to the~~
21 ~~dissemination~~ without the effective consent of the depicted person.

22 C. The provisions of this section shall not apply to the
23 intentional dissemination of an image of another identifiable person
24

1 who is engaged in a sexual act or whose intimate parts are exposed
2 when:

3 1. The dissemination is made for the purpose of a criminal
4 investigation that is otherwise lawful;

5 2. The dissemination is for the purpose of, or in connection
6 with, the reporting of unlawful conduct;

7 3. The images involve voluntary exposure in public or
8 commercial settings; or

9 4. The dissemination serves a lawful purpose.

10 D. Nothing in this section shall be construed to impose
11 liability upon the following entities solely as a result of content
12 or information provided by another person:

13 1. An interactive computer service, as defined in 47 U.S.C.,
14 Section 230(f)(2);

15 2. A wireless service provider, as defined in Section 332(d) of
16 the Telecommunications Act of 1996, 47 U.S.C., Section 151 et seq.,
17 Federal Communications Commission rules, and the Omnibus Budget
18 Reconciliation Act of 1993, Pub. L. No. 103-66; or

19 3. A telecommunications network or broadband provider.

20 E. A person convicted under this section is subject to the
21 forfeiture provisions in Section 1040.54 of this title.

22 F. Any person who violates the provisions of subsection B of
23 this section shall, upon conviction, be guilty of a misdemeanor
24 punishable by imprisonment in a county jail for not more than one

1 (1) year or by a fine of not more than One Thousand Dollars
2 (\$1,000.00), or both such fine and imprisonment.

3 G. Any person who violates or attempts to violate the
4 provisions of subsection B of this section and who gains or attempts
5 to gain ~~financially~~ any property or who gains or attempts to gain
6 anything of value as a result of the nonconsensual dissemination or
7 threatened dissemination of private sexual images shall, upon
8 conviction, be guilty of a felony punishable by imprisonment in the
9 custody of the Department of Corrections for not more than ~~four (4)~~
10 five (5) years. A second or subsequent violation of this subsection
11 shall be a felony punishable by imprisonment in the custody of the
12 Department of Corrections for not more than ten (10) years and the
13 offender shall be required to register as a sex offender under the
14 Sex Offenders Registration Act.

15 H. The state shall not have the discretion to file a
16 misdemeanor charge, pursuant to Section 234 of Title 22 of the
17 Oklahoma Statutes, for a violation pursuant to subsection G of this
18 section.

19 I. The court shall have the authority to order the defendant to
20 remove the disseminated image should the court find it is in the
21 power of the defendant to do so.

22 J. Nothing in this section shall prohibit the prosecution of a
23 person pursuant to the provisions of Section 1021.2, 1021.3, 1024.1,
24 1024.2, or 1040.12a of this title or any other applicable statute.

1 K. Any person who violates the provisions of subsection B of
2 this section by disseminating three or more images within a six-
3 month period shall, upon conviction, be guilty of a felony
4 punishable by imprisonment in the custody of the Department of
5 Corrections for not more than ten (10) years.

6 SECTION 2. This act shall become effective November 1, 2024.

7 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
8 April 2, 2024 - DO PASS
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