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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 2741

03/08/2016 Authored by Lesch

The bill was read for the first time and referred to the Committee on Public Safety and Crime Prevention Policy and Finance

1.1 A bill for an act
1.2 relating to public safety; creating a civil cause of action for the nonconsensual
1.3 dissemination of private sexual images and nonconsensual sexual solicitation;
1.4 amending the crime of stalking to include nonconsensual sexual solicitation;
1.5 expanding the definition of qualified domestic violence-related offense;
1.6 establishing criminal penalties for nonconsensual dissemination of private sexual
1.7 images and nonconsensual sexual solicitation; clarifying the law of criminal
1.8 defamation; amending Minnesota Statutes 2014, sections 609.02, subdivision 16;
1.9 609.748, subdivision 1; 609.749, subdivision 2; 609.765; proposing coding for
1.10 new law in Minnesota Statutes, chapters 604; 617.

1.11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.12 Section 1. [604.30] DEFINITIONS.

1.13 (a) For the purposes of sections 604.30 and 604.31, the following terms have the
1.14 meanings given.

1.15 (b) "Dissemination" means distribution to one or more persons or publication by
1.16 any publicly available medium.

1.17 (c) "Image" means a photograph, film, video recording, or digital photograph
1.18 or recording.

1.19 (d) "Intimate parts" means the fully unclothed, partially unclothed, or transparently
1.20 clothed genitals, pubic area, anus of an individual, or if the individual is female, a partially
1.21 or fully exposed nipple.

1.22 (e) "Personal information" includes any identifier that permits physical contact or
1.23 communication with the person depicted in the image, including:

1.24 (1) the person's first and last name, first initial and last name, or first name and
1.25 last initial;

1.26 (2) the person's home, school, or work address;

2.1 (3) the person's telephone number, e-mail address, or social media account
 2.2 information; or

2.3 (4) the person's geolocation data.

2.4 (f) "Sexual act" means either sexual contact or sexual penetration.

2.5 (g) "Sexual contact" means the intentional touching of another's intimate parts.

2.6 (h) "Sexual penetration" means any of the following acts:

2.7 (1) sexual intercourse, cunnilingus, fellatio, or anal intercourse; or

2.8 (2) any intrusion, however slight, into the genital or anal openings of an individual
 2.9 by another's body part or an object used by another for this purpose.

2.10 (i) "Social media" means any electronic medium, including an interactive computer
 2.11 service, telephone network, or data network, that allows users to create, share, and view
 2.12 user-generated content.

2.13 **Sec. 2. [604.31] CAUSE OF ACTION FOR NONCONSENSUAL**
 2.14 **DISSEMINATION OF PRIVATE SEXUAL IMAGES; SEXUAL SOLICITATION.**

2.15 **Subdivision 1. Nonconsensual dissemination of private sexual images.** (a) A
 2.16 cause of action against a person for the nonconsensual dissemination of private sexual
 2.17 images exists when:

2.18 (1) a person has threatened to disseminate an image or has intentionally disseminated
 2.19 an image without the consent of the person depicted in the image;

2.20 (2) the image is of an individual engaged in a sexual act or whose intimate parts are
 2.21 exposed in whole or in part; and

2.22 (3) the image was obtained or created under circumstances in which a reasonable
 2.23 person would know or understand that the image was to remain private.

2.24 (b) The fact that the individual depicted in the image consented to the creation of the
 2.25 image or to the voluntary private transmission of the image is not a defense to liability for
 2.26 a person who has disseminated the image without consent.

2.27 **Subd. 2. Nonconsensual sexual solicitation.** A person who uses the personal
 2.28 information of another to invite, encourage, or solicit sexual acts without the individual's
 2.29 consent and knows or has reason to know it will cause the person whose personal
 2.30 information is used to feel harassed, frightened, threatened, oppressed, persecuted, or
 2.31 intimidated, is liable for damages to the individual whose personal information was
 2.32 published or disseminated publicly.

2.33 **Subd. 3. Damages.** The court may award the following damages to a prevailing
 2.34 plaintiff from a person found liable under subdivision 1 or 2:

3.1 (1) general and special damages, including all finance losses due to the dissemination
3.2 of the image and damages for mental anguish;

3.3 (2) an amount equal to any profit made from the dissemination of the image by the
3.4 person who intentionally disclosed the image;

3.5 (3) a civil penalty awarded to the plaintiff of an amount up to \$10,000; and

3.6 (4) court costs, fees, and reasonable attorney fees.

3.7 Subd. 4. **Injunction; temporary relief.** (a) A court may issue a temporary or
3.8 permanent injunction or restraining order to prevent further harm to the plaintiff.

3.9 (b) The court may issue a civil fine for the violation of a court order in an amount up
3.10 to \$1,000 per day for failure to comply with an order granted under this section.

3.11 Subd. 5. **Confidentiality.** The court shall allow confidential filings to protect the
3.12 privacy of the plaintiff in cases filed under this section.

3.13 Subd. 6. **Liability; exceptions.** (a) No person shall be found liable under this
3.14 section when:

3.15 (1) the dissemination is made for the purpose of a criminal investigation or
3.16 prosecution that is otherwise lawful;

3.17 (2) the dissemination is for the purpose of, or in connection with, the reporting of
3.18 unlawful conduct;

3.19 (3) the dissemination is made in the course of seeking or receiving medical
3.20 treatment, and the image is protected from further distribution;

3.21 (4) the image involves voluntary exposure in a public or was obtained in a
3.22 commercial setting for the purpose of the legal sale of goods or services, including the
3.23 creation of artistic products for sale or display;

3.24 (5) the image relates to a matter of public concern and dissemination serves a lawful
3.25 public purpose;

3.26 (6) the dissemination is for legitimate scientific research or educational purposes; or

3.27 (7) the dissemination is made for legal proceedings and, is consistent with common
3.28 practice in civil proceedings, necessary for the proper functioning of the criminal justice
3.29 system, or protected by court order which prohibits any further dissemination.

3.30 (b) This section does not alter or amend the liabilities and protections granted by
3.31 United States Code, title 47, section 230, and shall be construed in a manner consistent
3.32 with federal law.

3.33 (c) A cause of action arising under this section does not prevent the use of any other
3.34 cause of action or remedy available under the law.

3.35 Subd. 7. **Jurisdiction.** A court has jurisdiction over a cause of action filed pursuant
3.36 to this section if the plaintiff or respondent resides in this state.

4.1 Subd. 8. Venue. A cause of action arising under this section may be filed in either:
 4.2 (1) the county of residence of the respondent or plaintiff or in the jurisdiction of the
 4.3 plaintiff's designated address if the plaintiff participates in the address confidentiality
 4.4 program established by chapter 5B; or
 4.5 (2) the county where any image is produced, reproduced, or stored in violation
 4.6 of this section.

4.7 **EFFECTIVE DATE.** This section is effective August 1, 2016, and applies to causes
 4.8 of action commenced on or after that date.

4.9 Sec. 3. Minnesota Statutes 2014, section 609.02, subdivision 16, is amended to read:

4.10 Subd. 16. **Qualified domestic violence-related offense.** "Qualified domestic
 4.11 violence-related offense" includes a violation of or an attempt to violate sections 518B.01,
 4.12 subdivision 14 (violation of domestic abuse order for protection); 609.185 (first-degree
 4.13 murder); 609.19 (second-degree murder); 609.221 (first-degree assault); 609.222
 4.14 (second-degree assault); 609.223 (third-degree assault); 609.2231 (fourth-degree assault);
 4.15 609.224 (fifth-degree assault); 609.2242 (domestic assault); 609.2245 (female genital
 4.16 mutilation); 609.2247 (domestic assault by strangulation); 609.342 (first-degree criminal
 4.17 sexual conduct); 609.343 (second-degree criminal sexual conduct); 609.344 (third-degree
 4.18 criminal sexual conduct); 609.345 (fourth-degree criminal sexual conduct); 609.377
 4.19 (malicious punishment of a child); 609.713 (terroristic threats); 609.748, subdivision 6
 4.20 (violation of harassment restraining order); 609.749 (stalking); 609.78, subdivision 2
 4.21 (interference with an emergency call); 617.261 (nonconsensual dissemination of private
 4.22 sexual images); and 629.75 (violation of domestic abuse no contact order); and similar
 4.23 laws of other states, the United States, the District of Columbia, tribal lands, and United
 4.24 States territories.

4.25 **EFFECTIVE DATE.** This section is effective August 1, 2016, and applies to crimes
 4.26 committed on or after that date.

4.27 Sec. 4. Minnesota Statutes 2014, section 609.748, subdivision 1, is amended to read:

4.28 Subdivision 1. **Definition.** For the purposes of this section, the following terms have
 4.29 the meanings given them in this subdivision.

4.30 (a) "Harassment" includes:

4.31 (1) a single incident of physical or sexual assault, a single incident of stalking
 4.32 under section 609.749, subdivision 2, clause (8), a single incident of nonconsensual
 4.33 dissemination of private sexual images under section 617.261, or repeated incidents of

5.1 intrusive or unwanted acts, words, or gestures that have a substantial adverse effect or are
 5.2 intended to have a substantial adverse effect on the safety, security, or privacy of another,
 5.3 regardless of the relationship between the actor and the intended target;

5.4 (2) targeted residential picketing; and

5.5 (3) a pattern of attending public events after being notified that the actor's presence
 5.6 at the event is harassing to another.

5.7 (b) "Respondent" includes any adults or juveniles alleged to have engaged in
 5.8 harassment or organizations alleged to have sponsored or promoted harassment.

5.9 (c) "Targeted residential picketing" includes the following acts when committed on
 5.10 more than one occasion:

5.11 (1) marching, standing, or patrolling by one or more persons directed solely at a
 5.12 particular residential building in a manner that adversely affects the safety, security, or
 5.13 privacy of an occupant of the building; or

5.14 (2) marching, standing, or patrolling by one or more persons which prevents an
 5.15 occupant of a residential building from gaining access to or exiting from the property on
 5.16 which the residential building is located.

5.17 **EFFECTIVE DATE.** This section is effective August 1, 2016.

5.18 Sec. 5. Minnesota Statutes 2014, section 609.749, subdivision 2, is amended to read:

5.19 Subd. 2. **Stalking crimes.** A person who stalks another by committing any of the
 5.20 following acts is guilty of a gross misdemeanor:

5.21 (1) directly or indirectly, or through third parties, manifests a purpose or intent to
 5.22 injure the person, property, or rights of another by the commission of an unlawful act;

5.23 (2) follows, monitors, or pursues another, whether in person or through any available
 5.24 technological or other means;

5.25 (3) returns to the property of another if the actor is without claim of right to the
 5.26 property or consent of one with authority to consent;

5.27 (4) repeatedly makes telephone calls, sends text messages, or induces a victim to
 5.28 make telephone calls to the actor, whether or not conversation ensues;

5.29 (5) makes or causes the telephone of another repeatedly or continuously to ring;

5.30 (6) repeatedly mails or delivers or causes the delivery by any means, including
 5.31 electronically, of letters, telegrams, messages, packages, through assistive devices for
 5.32 people with vision impairments or hearing loss, or any communication made through any
 5.33 available technologies or other objects; or

6.1 (7) knowingly makes false allegations against a peace officer concerning the
 6.2 officer's performance of official duties with intent to influence or tamper with the officer's
 6.3 performance of official duties; or

6.4 (8) uses another's personal information, without consent, to invite, encourage, or
 6.5 solicit another to engage in a sexual act with the person.

6.6 For purposes of this clause, "personal information" and "sexual act" have the meanings
 6.7 given in section 617.261, subdivision 7.

6.8 **EFFECTIVE DATE.** This section is effective August 1, 2016, and applies to crimes
 6.9 committed on or after that date.

6.10 Sec. 6. Minnesota Statutes 2014, section 609.765, is amended to read:

6.11 **609.765 CRIMINAL DEFAMATION.**

6.12 Subdivision 1. **Definition.** Defamatory matter is anything which exposes a person
 6.13 or a group, class or association to hatred, contempt, ridicule, degradation or disgrace in
 6.14 society, or injury to business or occupation.

6.15 Subd. 2. **Acts constituting.** Whoever with knowledge of its false and defamatory
 6.16 character orally, in writing or by any other means, communicates any false and defamatory
 6.17 matter to a third person without the consent of the person defamed is guilty of criminal
 6.18 defamation and may be sentenced to imprisonment for not more than one year or to
 6.19 payment of a fine of not more than \$3,000, or both.

6.20 Subd. 3. **Justification.** Violation of subdivision 2 is justified if:

6.21 (1) ~~the defamatory matter is true and is communicated with good motives and for~~
 6.22 ~~justifiable ends; or~~

6.23 (2) the communication is absolutely privileged; or

6.24 (3) (2) the communication consists of fair comment made in good faith with respect
 6.25 to persons participating in matters of public concern; or

6.26 (4) (3) the communication consists of a fair and true report or a fair summary of any
 6.27 judicial, legislative or other public or official proceedings; or

6.28 (5) (4) the communication is between persons each having an interest or duty with
 6.29 respect to the subject matter of the communication and is made with intent to further
 6.30 such interest or duty.

6.31 Subd. 4. **Testimony required.** No person shall be convicted on the basis of an oral
 6.32 communication of defamatory matter except upon the testimony of at least two other
 6.33 persons that they heard and understood the oral statement as defamatory or upon a plea
 6.34 of guilty.

7.1 **EFFECTIVE DATE.** This section is effective the day following the final enactment.

7.2 Sec. 7. **[617.261] NONCONSENSUAL DISSEMINATION OF PRIVATE**
7.3 **SEXUAL IMAGES.**

7.4 Subdivision 1. **Crime.** It is a crime to intentionally disseminate or threaten to
7.5 disseminate an image of another person who is engaged in a sexual act or whose intimate
7.6 parts are exposed, in whole or in part; when:

7.7 (1) the actor knows or should know that the person depicted in the image does not
7.8 consent to the dissemination; and

7.9 (2) the image was obtained or created under circumstances in which a reasonable
7.10 person would know or understand that the image was to remain private.

7.11 Subd. 2. **Penalties; aggravating factors.** (a) Except as provided in paragraphs (b)
7.12 to (d), whoever violates subdivision 1 is guilty of a gross misdemeanor.

7.13 (b) Whoever violates subdivision 1 may be sentenced to imprisonment for not
7.14 more than three years or to payment of a fine of \$5,000, or both, if one of the following
7.15 aggravating factors is present:

7.16 (1) the person depicted in the image suffers financial loss due to the dissemination
7.17 of the image;

7.18 (2) the actor disseminates the image with intent to profit from the dissemination;

7.19 (3) the actor maintains an Internet Web site, online service, online application, or
7.20 mobile application for the purpose of disseminating the image;

7.21 (4) the actor posts the image on a pornographic Web site;

7.22 (5) the actor disseminates the image with intent to harass the person depicted
7.23 in the image;

7.24 (6) the actor obtains or attempts to obtain a benefit by threatening dissemination
7.25 of the image;

7.26 (7) the actor obtained the image by committing a violation of section 609.52,
7.27 609.746, 609.89, or 609.891;

7.28 (8) the actor pairs the image with the personal information of the person depicted in
7.29 the image; or

7.30 (9) the actor has previously been convicted under this chapter.

7.31 (c) Whoever violates subdivision 1 may be sentenced to imprisonment for not more
7.32 than five years or to payment of a fine of \$10,000, or both, if the person depicted in the
7.33 image is a minor and the actor is more than 36 months older than the minor.

7.34 (d) Whoever violates subdivision 1 may be sentenced to imprisonment for not more
7.35 than seven years or to payment of a fine of \$15,000, or both, if either:

- 8.1 (1) the person depicted in the image is a minor and the actor is more than 36 months
8.2 older than the minor, and one of the aggravating factors in paragraph (b) is present; or
8.3 (2) two or more aggravating factors in paragraph (b) are present.

8.4 Subd. 3. **Reasonable expectation of privacy.** For purposes of subdivision 1, clause
8.5 (2), a person who, within the context of a private or confidential relationship, consented to
8.6 the capture or possession of an image involving engaging in a sexual act or exposure of
8.7 intimate parts, retains a reasonable expectation of privacy with regard to the dissemination
8.8 of the image beyond that relationship.

8.9 Subd. 4. **Venue.** Notwithstanding anything to the contrary in section 627.01, an
8.10 offense committed under this section may be prosecuted in:

- 8.11 (1) the county where the offense occurred;
8.12 (2) the county of residence of the actor or victim or in the jurisdiction of the victim's
8.13 designated address if the victim participates in the address confidentiality program
8.14 established by chapter 5B; or
8.15 (3) the county where any image is produced, reproduced, found, stored, received,
8.16 or possessed in violation of this section.

8.17 Subd. 5. **Exemptions.** Subdivision 1 does not apply when:

- 8.18 (1) the dissemination is made for the purpose of a criminal investigation or
8.19 prosecution that is otherwise lawful;
8.20 (2) the dissemination is for the purpose of, or in connection with, the reporting of
8.21 unlawful conduct;
8.22 (3) the dissemination is made in the course of seeking or receiving medical treatment
8.23 and the image is protected from further distribution;
8.24 (4) the image involves voluntary exposure in a public or was obtained in a
8.25 commercial setting for the purpose of the legal sale of goods or services, including the
8.26 creation of artistic products for sale or display;
8.27 (5) the image relates to a matter of public concern and dissemination serves a lawful
8.28 public purpose;
8.29 (6) the dissemination is for legitimate scientific research or educational purposes; or
8.30 (7) the dissemination is made for legal proceedings and, is consistent with common
8.31 practice in civil proceedings, necessary for the proper functioning of the criminal justice
8.32 system, or protected by court order which prohibits any further dissemination.

8.33 Subd. 6. **Immunity.** Nothing in this section shall be construed to impose liability
8.34 upon the following entities solely as a result of content or information provided by
8.35 another person:

9.1 (1) an interactive computer service as defined in United States Code, title 47, section
9.2 230, paragraph (f), clause (2);

9.3 (2) a provider of public mobile services or private radio services; or

9.4 (3) a telecommunications network or broadband provider.

9.5 Subd. 7. **Definitions.** (a) For purposes of this section, the following terms have
9.6 the meanings given.

9.7 (b) "Dissemination" means distribution to one or more persons or publication by
9.8 any publicly available medium.

9.9 (c) "Harass" means an act that would cause a substantial adverse effect on the safety,
9.10 security, or privacy of a reasonable person.

9.11 (d) "Image" means a photograph, film, video recording, or digital photograph
9.12 or recording.

9.13 (e) "Intimate parts" means the fully unclothed, partially unclothed, or transparently
9.14 clothed genitals, pubic area, anus of an individual, or if the individual is female, a partially
9.15 or fully exposed nipple.

9.16 (f) "Personal information" means any identifier that permits physical, online, or
9.17 wireless contact or communication with a person, including:

9.18 (1) a person's first and last name, first initial and last name, or first name and last
9.19 initial;

9.20 (2) a person's home, school, or work address;

9.21 (3) a person's telephone number, electronic mail address, or social media account
9.22 information; or

9.23 (4) a person's geolocation data.

9.24 (g) "Pornographic Web site" means an Internet Web site, online service, online
9.25 application, mobile application, or other online or mobile medium that contains images of
9.26 intimate parts or sexual acts intended to arouse sexual excitement in its audience.

9.27 (h) "Sexual act" means either sexual contact or sexual penetration.

9.28 (i) "Sexual contact" means the intentional touching of another's intimate parts.

9.29 (j) "Sexual penetration" means any of the following acts:

9.30 (1) sexual intercourse, cunnilingus, fellatio, or anal intercourse; or

9.31 (2) any intrusion, however slight, into the genital or anal openings of an individual
9.32 by another's body part or an object used by another for this purpose.

9.33 (k) "Social media" means any electronic medium, including an interactive computer
9.34 service, telephone network, or data network, that allows users to create, share, and view
9.35 user-generated content.

10.1 Subd. 8. **Other crimes.** Nothing in this section or section 609.035 or 609.04 shall
10.2 limit the power of the state to prosecute or punish a person for conduct that constitutes any
10.3 other crime under any other law of this state.

10.4 **EFFECTIVE DATE.** This section is effective August 1, 2016, and applies to crimes
10.5 committed on or after that date.