

1 A bill to be entitled
2 An act relating to cyberharassment; amending s.
3 784.049, F.S.; revising legislative findings; revising
4 definitions; providing that sexual cyberharassment
5 includes dissemination of an image through electronic
6 means other than publication on a website; requiring
7 that a person have a reasonable expectation of privacy
8 in an image for the publication or dissemination of
9 the image to qualify as sexual cyberharassment;
10 providing that certain actions do not eliminate such
11 an expectation of privacy; providing an effective
12 date.

13
14 Be It Enacted by the Legislature of the State of Florida:

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16 Section 1. Section 784.049, Florida Statutes, is amended
17 to read:

18 784.049 Sexual cyberharassment.—

19 (1) The Legislature finds that:

20 (a) A person depicted in a sexually explicit image taken
21 with the person's consent may retain ~~has~~ a reasonable
22 expectation that the image will remain private despite sharing
23 the image with another person, such as an intimate partner.

24 (b) It is becoming a common practice for persons to
25 publish a sexually explicit image of another to Internet

26 | websites or to disseminate such an image through electronic
27 | means without the depicted person's consent, contrary to the
28 | depicted person's reasonable expectation of privacy, for no
29 | legitimate purpose, with the intent of causing substantial
30 | emotional distress to the depicted person.

31 | (c) When such images are published on Internet websites,
32 | the images ~~they~~ are able to be viewed indefinitely by persons
33 | worldwide and are able to be easily reproduced and shared.

34 | (d) The publication or dissemination of such images
35 | through the use of ~~an~~ Internet websites or electronic means
36 | creates a permanent record of the depicted person's private
37 | nudity or private sexually explicit conduct.

38 | (e) The existence of such images on Internet websites or
39 | the dissemination of such images without the consent of all
40 | parties depicted in the images causes those depicted in such
41 | images significant psychological harm.

42 | (f) Safeguarding the psychological well-being and privacy
43 | interests of persons depicted in such images is compelling.

44 | (2) As used in this section, the term:

45 | (a) "Image" includes, but is not limited to, any
46 | photograph, picture, motion picture, film, video, or
47 | representation.

48 | (b) "Personal identification information" means any
49 | information that identifies an individual, and includes, but is
50 | not limited to, any name, postal or electronic mail address,

51 telephone number, social security number, date of birth, or any
52 unique physical representation ~~has the same meaning as provided~~
53 ~~in s. 817.568.~~

54 (c) "Sexually cyberharass" means to publish to an Internet
55 website or disseminate through electronic means to another
56 person a sexually explicit image of a person that contains or
57 conveys the personal identification information of the depicted
58 person ~~to an Internet website~~ without the depicted person's
59 consent, contrary to the depicted person's reasonable
60 expectation that the image would remain private, for no
61 legitimate purpose, with the intent of causing substantial
62 emotional distress to the depicted person. Evidence that the
63 depicted person sent a sexually explicit image to another person
64 does not, on its own, eliminate his or her reasonable
65 expectation of privacy for that image.

66 (d) "Sexually explicit image" means any image depicting
67 nudity, as defined in s. 847.001, or depicting a person engaging
68 in sexual conduct, as defined in s. 847.001.

69 (3) (a) Except as provided in paragraph (b), a person who
70 willfully and maliciously sexually cyberharasses another person
71 commits a misdemeanor of the first degree, punishable as
72 provided in s. 775.082 or s. 775.083.

73 (b) A person who has one prior conviction for sexual
74 cyberharassment and who commits a second or subsequent sexual
75 cyberharassment commits a felony of the third degree, punishable

76 | as provided in s. 775.082, s. 775.083, or s. 775.084.

77 | (4) (a) A law enforcement officer may arrest, without a
78 | warrant, any person that he or she has probable cause to believe
79 | has violated this section.

80 | (b) Upon proper affidavits being made, a search warrant
81 | may be issued to further investigate violations of this section,
82 | including warrants issued to search a private dwelling.

83 | (5) An aggrieved person may initiate a civil action
84 | against a person who violates this section to obtain all
85 | appropriate relief in order to prevent or remedy a violation of
86 | this section, including the following:

87 | (a) Injunctive relief.

88 | (b) Monetary damages to include \$5,000 or actual damages
89 | incurred as a result of a violation of this section, whichever
90 | is greater.

91 | (c) Reasonable attorney fees and costs.

92 | (6) The criminal and civil penalties of this section do
93 | not apply to:

94 | (a) A provider of an interactive computer service as
95 | defined in 47 U.S.C. s. 230(f), information service as defined
96 | in 47 U.S.C. s. 153, or communications service as defined in s.
97 | 202.11, that provides the transmission, storage, or caching of
98 | electronic communications or messages of others; other related
99 | telecommunications or commercial mobile radio service; or
100 | content provided by another person; or

101 (b) A law enforcement officer, as defined in s. 943.10, or
102 any local, state, federal, or military law enforcement agency,
103 that publishes a sexually explicit image in connection with the
104 performance of his or her duties as a law enforcement officer,
105 or law enforcement agency.

106 (7) A violation of this section is committed within this
107 state if any conduct that is an element of the offense, or any
108 harm to the depicted person resulting from the offense, occurs
109 within this state.

110 Section 2. This act shall take effect October 1, 2019.