

# House Bill 2393

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Attorney General Ellen Rosenblum)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Removes requirement that intimate image be disclosed through Internet website for crime of unlawful dissemination of an intimate image. Defines "identifiable" for purposes of crime.

Creates civil cause of action for certain persons injured by commission of unlawful dissemination of an intimate image.

Modifies crime of harassment. Removes manner of committing crime by distributing visual recording of sexually explicit conduct of person under 18 years of age.

## A BILL FOR AN ACT

1  
2 Relating to the dissemination of intimate images; creating new provisions; and amending ORS  
3 163.472 and 166.065.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 163.472 is amended to read:

6 163.472. (1) A person commits the crime of unlawful dissemination of an intimate image if:

7 (a) The person, with the intent to harass, humiliate or injure another person, knowingly causes  
8 to be disclosed [*through an Internet website*] an identifiable image of the other person whose intimate  
9 parts are visible or who is engaged in sexual conduct;

10 (b) The person knows or reasonably should have known that the other person does not consent  
11 to the disclosure;

12 (c) The other person is harassed, humiliated or injured by the disclosure; and

13 (d) A reasonable person would be harassed, humiliated or injured by the disclosure.

14 (2)(a) Except as provided in paragraph (b) of this subsection, unlawful dissemination of an inti-  
15 mate image is a Class A misdemeanor.

16 (b) Unlawful dissemination of an intimate image is a Class C felony if the person has a prior  
17 conviction under this section at the time of the offense.

18 (3) As used in this section:

19 (a) "Disclose" includes, but is not limited to, transfer, publish, distribute, exhibit, advertise and  
20 offer.

21 **(b) "Identifiable" means that a reasonable person would be able to recognize the individ-**  
22 **ual depicted in the image as the other person.**

23 [(b)] (c) "Image" includes, but is not limited to, a photograph, film, videotape, recording, digital  
24 picture and other visual reproduction, regardless of the manner in which the image is stored.

25 [(c)] (d) "Information content provider" has the meaning given that term in 47 U.S.C. 230(f).

26 [(d)] (e) "Interactive computer service" has the meaning given that term in 47 U.S.C. 230(f).

27 [(e)] (f) "Intimate parts" means uncovered human genitals, pubic areas or female nipples.

28 [(f)] (g) "Sexual conduct" means sexual intercourse or oral or anal sexual intercourse, as those

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 terms are defined in ORS 163.305, or masturbation.

2 (4) This section does not apply to:

3 (a) Activity by law enforcement agencies investigating and prosecuting criminal offenses;

4 (b) Legitimate medical, scientific or educational activities;

5 (c) Legal proceedings, when disclosure is consistent with common practice in civil proceedings  
6 or necessary for the proper functioning of the criminal justice system;

7 (d) The reporting of unlawful conduct to a law enforcement agency;

8 (e) Disclosures that serve a lawful public interest;

9 (f) Disclosures of images:

10 (A) Depicting the other person voluntarily displaying, in a public area, the other person's inti-  
11 mate parts or engaging in sexual conduct; or

12 (B) Originally created for a commercial purpose with the consent of the other person; or

13 (g) The provider of an interactive computer service for an image of intimate parts provided by  
14 an information content provider.

15 **SECTION 2. (1) Irrespective of any criminal prosecution or the result thereof, a person**  
16 **depicted in an image disclosed in violation of ORS 163.472, or that person's parent or guard-**  
17 **ian, representative or estate, shall have a civil action to secure an injunction, damages or**  
18 **other appropriate relief against any and all persons whose actions are unlawful under ORS**  
19 **163.472.**

20 (2) Upon prevailing in such action, the plaintiff may recover:

21 (a) The greater of:

22 (A) Special and general damages, including damages for emotional distress; or

23 (B) Statutory damages of \$5,000 against each defendant found liable under this section;

24 (b) An amount equal to any economic gain received by the defendant for the disclosure;  
25 and

26 (c) Punitive damages.

27 (3) The court may award reasonable attorney fees to the prevailing plaintiff in an action  
28 under this section.

29 (4) The parent, parents or legal guardian of an unemancipated minor shall be liable for  
30 any judgment recovered against such minor under this section, in an amount not to exceed  
31 \$5,000.

32 (5) A civil action under this section does not affect a right or remedy available under any  
33 other law of this state.

34 **SECTION 3.** ORS 166.065 is amended to read:

35 166.065. (1) A person commits the crime of harassment if the person intentionally:

36 (a) Harasses or annoys another person by:

37 (A) Subjecting such other person to offensive physical contact; or

38 (B) Publicly insulting such other person by abusive words or gestures in a manner intended and  
39 likely to provoke a violent response; [or]

40 [(C) Distributing a visual recording, as defined in ORS 163.665, of the other person engaged in  
41 sexually explicit conduct, as defined in ORS 163.665, or in a state of nudity, as defined in ORS 163.700,  
42 when the other person is under 18 years of age at the time of the recording;]

43 (b) Subjects another to alarm by conveying a false report, known by the conveyor to be false,  
44 concerning death or serious physical injury to a person, which report reasonably would be expected  
45 to cause alarm; or

1 (c) Subjects another to alarm by conveying a telephonic, electronic or written threat to inflict  
 2 serious physical injury on that person or to commit a felony involving the person or property of that  
 3 person or any member of that person's family, which threat reasonably would be expected to cause  
 4 alarm.

5 (2)(a) A person is criminally liable for harassment if the person knowingly permits any telephone  
 6 or electronic device under the person's control to be used in violation of subsection (1) of this sec-  
 7 tion.

8 (b) Harassment that is committed under the circumstances described in subsection (1)(c) of this  
 9 section is committed in either the county in which the communication originated or the county in  
 10 which the communication was received.

11 (3) Harassment is a Class B misdemeanor.

12 (4) Notwithstanding subsection (3) of this section, harassment is a Class A misdemeanor if a  
 13 person violates:

14 (a) Subsection (1)(a)(A) of this section by subjecting another person to offensive physical contact  
 15 and:

16 (A) The offensive physical contact consists of touching the sexual or other intimate parts of the  
 17 other person; or

18 (B)(i) The victim of the offense is a family or household member of the person; and

19 (ii) The offense is committed in the immediate presence of, or is witnessed by, the person's or  
 20 the victim's minor child or stepchild or a minor child residing within the household of the person  
 21 or victim; **or**

22 *[(b) Subsection (1)(a)(C) of this section; or]*

23 *[(c)]* (b) Subsection (1)(c) of this section and:

24 (A) The person has a previous conviction under subsection (1)(c) of this section and the victim  
 25 of the current offense was the victim or a member of the family of the victim of the previous offense;

26 (B) At the time the offense was committed, the victim was protected by a stalking protective  
 27 order, a restraining order as defined in ORS 24.190 or any other court order prohibiting the person  
 28 from contacting the victim;

29 (C) At the time the offense was committed, the person reasonably believed the victim to be un-  
 30 der 18 years of age and more than three years younger than the person; or

31 (D)(i) The person conveyed a threat to kill the other person or any member of the family of the  
 32 other person;

33 (ii) The person expressed the intent to carry out the threat; and

34 (iii) A reasonable person would believe that the threat was likely to be followed by action.

35 *[(5) It is not a defense to a charge under subsection (1)(a)(C) of this section that the defendant did  
 36 not know the age of the victim.]*

37 *[(6)]* (5) The Oregon Criminal Justice Commission shall classify harassment as described in  
 38 subsection (4)(a)(B) of this section as a person Class A misdemeanor under the rules of the com-  
 39 mission.

40 *[(7)(a)]* (6)(a) As used in this section:

41 (A) "Electronic threat" means a threat conveyed by electronic mail, the Internet, a telephone  
 42 text message or any other transmission of information by wire, radio, optical cable, cellular system,  
 43 electromagnetic system or other similar means.

44 (B) "Family or household member" has the meaning given that term in ORS 135.230.

45 (b) For purposes of subsection (4) of this section, an offense is witnessed if the offense is seen

1 or directly perceived in any other manner by the minor child.

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