

Unofficial Draft Copy

As of: March 30, 2016 (2:31pm)

LC1j02

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act providing for the crime of unlawful distribution of sexual images and recordings regarding the distribution of photographs of a sexual nature where the person depicted has a reasonable expectation of privacy--- ORIGINAL DRAFT."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Unlawful Distribution of Sexual Images or Recordings.** (1) A person commits the offense of unlawful distribution of sexual images or recordings if that person purposefully or knowingly distributes or disseminates any visual or print medium, including a medium by use of electronic communication, of another person who is:

(a) identifiable from the visual medium, as defined in 45-5-625, or print medium itself or information displayed in connection with the image;

(b) engaged in sexual conduct, actual or simulated, as defined in 45-5-625, or whose intimate parts are exposed; and

(2) Knows or consciously disregarded a substantial and unjustified risk that the depicted person has not consented to such a disclosure. The person depicted has a reasonable expectation of privacy. Evidence that a person has sent this

Unofficial Draft Copy

As of: March 30, 2016 (2:31pm)

LC1j02

visual or print medium to another person using an electronic device does not, on its own, remove the person depicted's reasonable expectation of privacy for that medium.

(3) This section does not apply to:

(a) Any disclosure made with the consent of the person who is depicted in the image;

(b) Lawful and common practices of law enforcement regarding criminal reporting, investigation of unlawful activity when permitted or required by law, or regarding medical treatment;

(c) The reporting of unlawful conduct;

(d) Lawful and common practices necessary for medical treatment; and

(e) Images involving voluntary exposure in a public or commercial setting.

(5) A person convicted of an offense under this section shall be fined an amount not to exceed \$500 or be incarcerated in the county jail for a term not to exceed 6 months, or both. Upon a second conviction, a person shall be fined an amount not to exceed \$1,000 or be incarcerated for a term not to exceed 1 year, or both. Upon a third or subsequent conviction, a person shall be fined an amount not to exceed \$10,000 or be incarcerated for a term not to exceed 5 years, or both.

(6) An individual whose private intimate parts or sexual conduct has been posted in accordance with this section may bring a civil action against the person who caused the posting, and is entitled to injunctive relief, the greater of \$10,000 or actual

Unofficial Draft Copy

As of: March 30, 2016 (2:31pm)

LC1j02

damages incurred as a result of the posting of the private images, punitive damages and reasonable attorney's fees and costs.

- END -

{Name : Julianne Burkhardt
Title : Legislative Attorney
Agency : Legislative Services
Phone : 4025
E-Mail : jburkhardt@mt.gov}

Unofficial Draft Copy

As of: March 30, 2016 (2:06pm)

LC1j2a

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act providing the crime of unlawful distribution of sexual images and recordings regarding the distribution of photographs of a sexual nature where the person depicted has a reasonable expectation of privacy."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Unlawful Distribution of Sexual Images or Recordings.** (1) A person commits the offense of unlawful distribution of sexual images or recordings if that person purposefully or knowingly distributes or disseminates any visual or print medium, including a medium by use of electronic communication, of another person who is:

(a) identifiable from the visual medium, as defined in 45-5-625, or print medium itself or information displayed in connection with the image;

(b) engaged in sexual conduct, actual or simulated, as defined in 45-5-625, or whose intimate parts are exposed; and

(2) Knows or consciously disregarded a substantial and unjustified risk that the depicted person has not consented to such a disclosure and the person depicted has a reasonable expectation of privacy.

(3) This section does not apply to:

Unofficial Draft Copy

As of: March 30, 2016 (2:06pm)

LC1j2a

(a) Any disclosure made with the consent of the person who is depicted in the image;

(b) Lawful and common practices of law enforcement regarding criminal reporting, investigation of unlawful activity when permitted or required by law, or regarding medical treatment;

(c) The reporting of unlawful conduct;

(d) Lawful and common practices necessary for medical treatment; and

(e) Images involving voluntary exposure in a public or commercial setting.

(5) A person convicted of an offense under this section shall be fined an amount not to exceed \$500 or be incarcerated in the county jail for a term not to exceed 6 months, or both. Upon a second conviction, a person shall be fined an amount not to exceed \$1,000 or be incarcerated for a term not to exceed 1 year, or both. Upon a third or subsequent conviction, a person shall be fined an amount not to exceed \$10,000 or be incarcerated for a term not to exceed 5 years, or both.

(6) An individual whose private intimate parts or sexual conduct has been posted in accordance with this section may bring a civil action against the person who caused the posting, and is entitled to injunctive relief, the greater of \$10,000 or actual damages incurred as a result of the posting of the private images, punitive damages and reasonable attorney's fees and costs.

Unofficial Draft Copy

As of: March 30, 2016 (2:06pm)

LC1j2a

- END -

{Name : Julianne Burkhardt
Title : Legislative Attorney
Agency : Legislative Services
Phone : 4025
E-Mail : jburkhardt@mt.gov}

Unofficial Draft Copy

As of: March 30, 2016 (2:26pm)

LC1j2b

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act revising laws related to privacy in communications; providing the distribution of sexual images when the person depicted has not created to the creation of the image is illegal; amending section 45-8-213, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-8-213, MCA, is amended to read:

"45-8-213. Privacy in communications. (1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person knowingly or purposely:

(a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with a person by electronic communication and uses obscene, lewd, or profane language, suggests a lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of the person. The use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend.

(b) uses an electronic communication to attempt to extort money or any other thing of value from a person or to disturb by

Unofficial Draft Copy

As of: March 30, 2016 (2:26pm)

LC1j2b

repeated communications the peace, quiet, or right of privacy of a person at the place where the communications are received;

(c) records or causes to be recorded a conversation by use of a hidden electronic or mechanical device that reproduces a human conversation without the knowledge of all parties to the conversation. This subsection (1)(c) does not apply to:

(i) elected or appointed public officials or to public employees when the transcription or recording is done in the performance of official duty;

(ii) persons speaking at public meetings;

(iii) persons given warning of the transcription or recording, and if one person provides the warning, either party may record; or

(iv) a health care facility, as defined in 50-5-101, or a government agency that deals with health care if the recording is of a health care emergency telephone communication made to the facility or agency;

(d) distributes or disseminates any visual or print medium, including a medium by use of electronic communication, of another person who is:

(i) identifiable from the visual medium, as defined in 45-5-625, or print medium itself or information displayed in connection with the image;

(ii) engaged in sexual conduct, actual or simulated, as defined in 45-5-625, or whose intimate parts are exposed; and

(iii) has not consented to the creation of the visual or print medium or is incapable of consent, as defined in 45-5-503.

Unofficial Draft Copy

As of: March 30, 2016 (2:26pm)

LC1j2b

(2) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person purposely intercepts an electronic communication. This subsection does not apply to elected or appointed public officials or to public employees when the interception is done in the performance of official duty or to persons given warning of the interception.

(3) (a) A person convicted of the offense of violating privacy in communications shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) On a second conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed \$1,000, or both.

(c) On a third or subsequent conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$10,000, or both.

(4) "Electronic communication" means any transfer between persons of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system."

{*Internal References to 45-8-213:*
39-2-307 39-2-307 45-5-209 45-5-220
45-8-212 46-3-112 }

- END -

{Name : Julianne Burkhardt

Unofficial Draft Copy

As of: March 30, 2016 (2:26pm)

LC1j2b

Title : Legislative Attorney
Agency : Legislative Services
Phone : 4025
E-Mail : jburkhardt@mt.gov }