

2017 Bill 202

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Third Session, 29th Legislature, 66 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 202**

## **PROTECTING VICTIMS OF NON-CONSENSUAL DISTRIBUTION OF INTIMATE IMAGES ACT**

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MR. CYR

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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## BILL 202

2017

### PROTECTING VICTIMS OF NON-CONSENSUAL DISTRIBUTION OF INTIMATE IMAGES ACT

*(Assented to \_\_\_\_\_, 2017)*

HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of Alberta, enacts as follows:

#### **Definitions**

**1** In this Act,

- (a) “child” means a person who is under the age of 18 years;
- (b) “intimate image” means a visual recording of a person made by any means, including a photograph, film or video recording,
  - (i) in which the person depicted in the image
    - (A) is nude, or is exposing his or her genital organs or anal region or her breasts, or
    - (B) is engaged in explicit sexual activity,
  - (ii) which was recorded in circumstances that gave rise to a reasonable expectation of privacy in respect of that image, and
  - (iii) if the image has been distributed, in which the person depicted in the image retained a reasonable expectation of privacy at the time it was distributed;

- (c) “parent”, when used in reference to a child, includes any individual who has lawful custody of, or a lawful right of access to, the child.

### **Interpretation**

**2** For the purpose of this Act, a person distributes an intimate image if that person knowingly publishes, transmits, sells, advertises or otherwise makes the image available to a person other than the person depicted in the image.

### **Distribution of intimate images without consent**

**3** A person who distributes an intimate image of another person knowing that the person depicted in the image did not consent to the distribution, or is reckless as to whether or not that person consented to the distribution, commits a tort against that other person.

### **Action without proof of damage**

**4** An action for the distribution of an intimate image without consent may be brought without proof of damage.

### **Expectation of privacy**

**5** In an action for the distribution of an intimate image without consent, the person depicted in the image does not lose the expectation of privacy in respect of the image if that person

- (a) consented to another person recording the images, or
- (b) provided the image to another person,

in circumstances where that other person knew or ought reasonably to have known that the image was not distributed to any other person.

### **Defence**

**6** It is a defence to an action for the distribution of an intimate image without consent if the distribution of the intimate image is in the public interest and does not extend beyond what is in the public interest.

## **Remedies**

**7** In an action for the distribution of an intimate image without consent, the court may

- (a) award damages to the plaintiff, including general, special, aggravated and punitive damages,
- (b) order the defendant to account to the plaintiff for any profits that have accrued to the defendant as a result of the distribution of the intimate image without consent,
- (c) issue an injunction on such terms and with such conditions that the court determines appropriate in the circumstances, and
- (d) make any other order that the court considered just and reasonable in the circumstances.

## **Limit of liability**

**8** Where a defendant in an action for the distribution of an intimate image without consent is a child, a parent of the defendant shall not be jointly and severally liable for any damages awarded to the plaintiff unless the court is satisfied that the parent directly participated in the distribution of the intimate image without consent.

## **Damages**

**9** In awarding damages in an action for the distribution of an intimate image without consent, the court may make an order prohibiting the publication of the name of any party to the action or any information likely to identify a party if it considers the making of the order to be in the interests of justice.

## **Application of Act**

**10** Nothing in this Act

- (a) affects any proceedings against any person for a penalty or forfeiture under any Act of the Legislature in respect of any wrongful act, or
- (b) renders enforceable any agreement for indemnity that would not have been enforceable if this Act had not been passed.



**Amends SA 2012 cE-0.3**

**11(1) The *Education Act* is amended by this section.**

**(2) Section 1 is amended**

**(a) in subsection (1) by adding the following after clause (n):**

(n.1) “intimate image” means an intimate image as defined in the *Protecting Victims of Non-Consensual Distribution of Intimate Images Act*;

**(b) by adding the following after subsection (1):**

(1.1) Without limiting the generality of the definition of “bullying” in subsection (1)(d), bullying includes the distribution of an intimate image of another person knowing that the person depicted in the image did not consent to the distribution, or being reckless as to whether or not that person consented to the distribution.

**(3) Section 36(1) is amended by striking out “or” at the end of clause (b), by adding “or” at the end of clause (c) and by adding the following after clause (c):**

(d) the student has distributed an intimate image of another person in the circumstances described in section 1(1.1).

**(4) Section 37(1) is amended by striking out “or” at the end of clause (b), by adding “or” at the end of clause (c) and by adding the following after clause (c):**

(d) the student has distributed an intimate image of another person in the circumstances described in section 1(1.1).

## Explanatory Notes

**11(1)** Amends chapter E-0.3 of the Statutes of Alberta, 2012.

(2) Definitions.

(3) Section 36(1) presently reads:

### *Suspension*

*36(1) A teacher or a principal may suspend a student in accordance with subsection (2) or (3) if in the opinion of the teacher or principal*

- (a) the student has failed to comply with section 31,*
- (b) the student has failed to comply with the code of conduct established under section 33(2), or*
- (c) the student's conduct, whether or not the conduct occurs within the school building or during the school day, is injurious to the physical or mental well-being of others in the school.*

(4) Section 37(1) presently reads:

### *Expulsion*

*37(1) If a student is suspended in accordance with section 36, the principal may recommend, prior to the end of the student's suspension, that the board expel the student if*

- (a) the student has displayed an attitude of wilful, blatant and repeated refusal to comply with section 31,*

**Amends RSA 2000 cS-3**

**12(1) The *School Act* is amended by this section.**

**(2) Section 1 is amended**

**(a) in subsection (1) by adding the following after clause (n):**

(n.1) “intimate image” means an intimate image as defined in the *Protecting Victims of Non-Consensual Distribution of Intimate Images Act*;

**(b) by adding the following after subsection (1):**

(1.1) Without limiting the generality of the definition of “bullying” in subsection (1)(b.1), bullying includes the distribution of an intimate image of another person knowing that the person depicted in the image did not consent to the distribution, or being reckless as to whether or not that person consented to the distribution.

**(3) Section 24 is amended**

**(a) in subsection (1) by striking out “or” at the end of clause (b), by adding “or” at the end of clause (c) and by adding the following after clause (c):**

(d) the student has distributed an intimate image of another person in the circumstances described in section 1(1.1).

**(b) in subsection (7) by striking out “or” at the end of clause (b), by adding “or” at the end of clause (c) and by adding the following after clause (c):**

(d) the student has distributed an intimate image of another person in the circumstances described in section 1(1.1).

- (b) *the student has displayed an attitude of wilful, blatant and repeated refusal to comply with the code of conduct established under section 33(2), or*
- (c) *the student's conduct, whether or not the conduct occurs within the school building or during the school day, is injurious to the physical or mental well-being of others in the school.*

**12(1)** Amends chapter S-3 of the Revised Statutes of Alberta, 2000.

(2) Definitions.

(3) Section 24 presently reads in part:

*Suspension*

*24(1) A teacher or a principal may suspend a student in accordance with subsection (2) or (3) if in the opinion of the teacher or principal*

- (a) *the student has failed to comply with section 12,*
  - (b) *the student has failed to comply with the code of conduct established under section 45.1(2), or*
  - (c) *the student's conduct, whether not the conduct occurs within the school building or during the school day, is injurious to the physical or mental well-being of others in the school.*
- (7) *The principal may recommend the board expel the student if*
- (a) *the student has displayed an attitude of wilful, blatant and repeated refusal to comply with section 12,*

**Coming into force**

**13** This Act comes into force 3 months after the day on which it receives Royal Assent.

- (b) *the student has displaced an attitude of wilful, blatant and repeated refusal to comply with the code of conduct established under section 45.1(2), or*
- (c) *the student's conduct, whether or not the conduct occurs within the school building or during the school day, is injurious to the physical or mental well-being of others in the school.*

**13** Coming into force.

