An Act amending title 14 of the Virgin Islands Code chapter 51 by designating the existing provisions as subchapter I and adding a subchapter II relating to the nonconsensual dissemination of sexually explicit images

PROPOSED BY: Senator Donna A. Frett-Gregory

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 14 of the Virgin Islands Code is amended designating the existing sections as subchapter I and adding a subchapter II that reads as follows:

“Subchapter II. Nonconsensual Pornography or Revenge Pornography

§ 1031. Short Title

This subchapter may be cited as “Revenge Porn Act”.

§ 1032. Definitions

As used in this subchapter chapter:

(1) “electronic communications device” means a computer, an internet web site or page, a video recorder, a digital camera, a fax machine, a telephone, a cellular telephone, a
pager, or any other device that can produce an electronically generated image, message, or signal.

(2) “Disseminate” means to post, email, text, distribute, transfer, transmit, circulate, share, forward, exhibit, sell, give, provide, procure, manufacture, or publish on an electronic communications device as defined in this subchapter.

(3) “Image” means a photograph, film, videotape, digital recording, or other depiction or portrayal of an object, including a human body.

(4) “Intimate parts” means the fully unclothed, partially unclothed, or transparently clothed genitals, pubic area, or anus, buttocks, or, if the person is female, a partially or fully exposed nipple, including exposure through transparent clothing.

(5) “Sexual act” means sexual penetration, masturbation, sexual activity, actual or simulated sexual intercourse, and sexual bestiality.

(6) “Simulated” means the explicit depiction of sexual conduct that creates the appearance of actual sexual conduct and during which a person engaging in the conduct exhibits any uncovered portion of the genitals, buttocks, or female nipple.

(7) “Sexual activity” means any:

(A) touching or fondling of another person or animal, either directly or through clothing, of the sex organs, anus, or breasts for sexual gratification or arousal;

(B) any transfer or transmission of semen upon any part of the clothed or unclothed body of another, for sexual gratification or arousal of the victim or another;

(C) an act of urination within a sexual context; or

(D) any bondage or fetter, sadism, masochism, or sadomasochism in any sexual context.
“Visual Depiction” means any photograph, developed or undeveloped film, video picture, negative or slide, digital or computer-generated image or picture, whether made or produced by electronic, mechanical or other means.

“Sexual images” means images, photographs, videos, or other likenesses depicting or simulating an intimate act or depicting any portion of a person's genitals, or of a woman's breast below the top of the areola, that is either uncovered or visible through less-than-fully opaque clothing, which images may reasonably be considered private, intimate, or inappropriate for distribution or publication without that person's consent.

§ 1033. Non-consensual dissemination of private sexual images

(a) A person commits non-consensual dissemination of private sexual images when the person:

(1) purposely, and with the intent to harass, intimidate, threaten, coerce, or cause harm to the emotional, financial, or physical welfare of the depicted person, disseminates an image of a person:

(A) who is 18 years of age and older;

(B) who is identifiable from the image itself or information displayed in connection with the image; and

(C) who is engaged in a sexual act or whose intimate parts are exposed, in whole or in part;

(2) obtains the image when a reasonable person would know or understand that the image was to remain private; and

(3) knows or should have known that the person in the image has not consented to the dissemination of the images.
§ 1034. Liability; Exceptions

(a) The intentional dissemination of an image of another identifiable person who is engaged in a sexual act or whose intimate parts are exposed is exempt from the provision of this section when:

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

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

(3) the images involve voluntarily exposed in public or commercial settings; or

(4) the dissemination serves a lawful public purpose or is done in compliance with a subpoena or court order.

(b) This subchapter does not impose liability upon the following entities solely because of content or information provided by another person:

(1) an interactive computer service, as defined in 47 U.S.C. § 230(f)(2);

(2) a wireless service provider; or

(3) a telecommunications network or broadband provider.

§ 1035. Punishment

(a) A person who is convicted for the first time for a violation of this subchapter is guilty of a misdemeanor and is subject to a term of imprisonment of not more than two years, or a fine of not more than $5,000, or both.

(b) A person who is convicted a second or any additional time for a violation of this subchapter, with the same or a different person, is guilty of a felony and is subject to a term of imprisonment of not more than five years, or a fine of not more than $10,000, or both.

§ 1036. Civil Remedies
A person whose private sexual images have been disseminated in violation of this subchapter may bring a civil action against the person who dissemination the private sexual images and is entitled to injunctive relief, the greater of $10,000 or actual damages incurred because of the dissemination of the private sexual images, exemplary damages, court fees and reasonable attorney’s fees and costs.

§ 1037. Forfeiture

After an opportunity to be heard by the court, a person who has been found guilty of committing the offense of non-consensual dissemination of private sexual material forfeits the to the Government of the Virgin Islands:

(1) Any profits or proceeds and any property the person has acquired or maintained that were obtained as a result of the non-consensual dissemination of the private sexual images;

(2) Any interest in, securities of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise that the person has established, operated, or controlled that was acquired or maintained because of the non-consensual dissemination of the private sexual images; or

(3) Any property to include computer, cellular phone, cameras, used in committing or facilitating the commission of the offense for which the person has been convicted.

BILL SUMMARY

This bill makes it a criminal offense to disseminate private sexual images of a person without that person’s consent. It also provides for the circumstances upon which the dissemination of private sexual images is not a criminal offense, the punishment for violation
of the law, civil remedies for the victim, and for the forfeiture any profits, proceeds, or property obtained from the dissemination of the private sexual images.

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