Introduced by Representatives Rachelson of Burlington, Ram of Burlington, Burke of Brattleboro, Chesnut-Tangeman of Middletown Springs, Christie of Hartford, Gonzalez of Winooski, Jewett of Ripton, Krowinski of Burlington, LaLonde of South Burlington, Lenes of Shelburne, Masland of Thetford, McCullough of Williston, Morris of Bennington, Olsen of Londonderry, Russell of Rutland City, Till of Jericho, Townsend of South Burlington, Trieber of Rockingham, Wright of Burlington, Yantachka of Charlotte, and Zagar of Barnard

Referred to Committee on

Date:

Subject: Crimes; lewd and indecent conduct; voyeurism

Statement of purpose of bill as introduced: This bill proposes to create criminal sanctions and civil remedies for the display or disclosure of sexually explicit images without the subject’s knowledge and consent.

An act relating to disclosure of sexually explicit images without consent

It is hereby enacted by the General Assembly of the State of Vermont:
Sec. 1. 13 V.S.A. § 2605 is amended to read:

§ 2605. VOYEURISM

(a) As used in this section:

(1) “Bona fide private investigator or bona fide security guard” means an individual lawfully providing services, whether licensed or unlicensed, pursuant to 26 V.S.A. §§ 3151 and 3151a.

(2) “Female breast” means any portion of the female breast below the top of the areola.

(3) “Circumstances in which a person has a reasonable expectation of privacy” means circumstances in which a reasonable person would believe that his or her intimate areas or engagement in sexual conduct would not be visible to the public, regardless of whether that person is in a public or private area. This definition includes circumstances in which:

(A) a person knowingly disrobes or engages in sexual conduct in front of another, but does not expect nor give consent for the other person to photograph, film, or record his or her intimate areas or sexual conduct;

(B) a person knowingly disrobes or engages in sexual conduct in front of another and gives consent for the other person to photograph, film, or record his or her intimate areas or sexual conduct, but not to display or disclose the photograph, film, or recording to a third party.
(4) “Intimate areas” means the naked or undergarment-clad genitals, pubic area, buttocks, or female breast of a person.

(5) “Place where a person has a reasonable expectation of privacy” means:

(A) a place in which a reasonable person would believe that he or she could disrobe in privacy, without his or her undressing being viewed by another; or

(B) a place in which a reasonable person would expect to be safe from unwanted intrusion or surveillance.

(6) “Sexual conduct” shall have the same meaning as in section 2821 of this title.

(7) “Surveillance” means secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person.

(7)(8) “View” means the intentional looking upon another person for more than a brief period of time, in other than a casual or cursory manner, with the unaided eye or a device designed or intended to improve visual acuity.

(b) No person shall intentionally view, photograph, film, or record in any format:

(1) the intimate areas of another person without that person’s knowledge and consent while the person being viewed, photographed, filmed, or recorded
is in a place where he or she would have a reasonable expectation of
privacy; or

(2) the intimate areas of another person without that person’s knowledge
and consent and under circumstances in which the person has a reasonable
expectation of privacy.

(c) No person shall intentionally or knowingly display or disclose to a
third party:

(1) any image recorded in violation of subsection (b), (d), or (e) of
this section;

(2) any photograph, film, or recording of another person whose intimate
areas are exposed or who is engaged in sexual conduct under circumstances in
which a person has a reasonable expectation of privacy without the subject’s
knowledge and consent to the display or disclosure;

(3) any digital or otherwise altered image of another person to
fraudulently portray that person with exposed intimate areas or engaged in
sexual conduct without the subject’s knowledge and consent to the display
or disclosure.

(d) No person shall intentionally conduct surveillance or intentionally
photograph, film, or record in any format a person without that person’s
knowledge and consent while the person being surveilled, photographed,
filmed, or recorded is in a place where he or she would have a reasonable
expectation of privacy within a home or residence. Bona fide private
investigators and bona fide security guards engaged in otherwise lawful
activities within the scope of their employment are exempt from
this subsection.

(e) No person shall intentionally photograph, film, or record in any format
a person without that person’s knowledge and consent while that person is in a
place where a person has a reasonable expectation of privacy and that person is
engaged in a sexual act as defined in section 3251 of this title conduct.

(f) This section shall apply to a person who intentionally views,
photographs, films, or records the intimate areas of a person as part of a
security or theft prevention policy or program at a place of business.

(g) This section shall not apply to:

(1) to a law enforcement officer conducting official law enforcement
activities in accordance with state and federal law; or

(2) to official activities of the Department of Corrections, a law
enforcement agency, the Agency of Human Services, or a court for security
purposes or during the investigation of alleged misconduct by a person in the
custody of the Department of Corrections, a law enforcement agency, the
Agency of Human Services, or a court; or
(2) if the photograph, film, or recording was created under an agreement
by the person appearing in the image for its public use, display, or disclosure
or otherwise intended by that person for public use, display, or disclosure.

(h) This section is not intended to infringe upon the freedom of the press to
gather and disseminate news as guaranteed by the First Amendment to the
Constitution of the United States.

(i) It shall be an affirmative defense to a violation of subsection (b) of this
section that the defendant was a bona fide private investigator or bona fide
security guard conducting surveillance in the ordinary course of business, and
the violation was unintentional and incidental to otherwise legal surveillance.

However, an unintentional and incidental violation of subsection (b) of this
section shall not be a defense to a violation of subsection (c) of this section.

(j)(1) For a first offense, a person who violates subsection (b), (d), or (e) of
this section shall be imprisoned not more than two years or fined not more than
$1,000.00, or both. For a second or subsequent offense, a person who violates
subsection (b), (d), or (e) of this section shall be imprisoned not more than
three years or fined not more than $5,000.00, or both.

(2) A person who violates subsection (c) subdivision (c)(1) of this
section shall be imprisoned not more than five years or fined not more than
$5,000.00, or both. A person who violates subdivision (c)(2) or (c)(3) of this
section shall be imprisoned not more than three years or fined not more than $3,000.00, or both.

(k)(1) A plaintiff shall have a private cause of action against a defendant who, without the plaintiff’s knowledge and consent, causes the plaintiff emotional distress or economic loss by intentionally displaying or disclosing to a third party:

(A) any image of the plaintiff recorded in violation of subsection (b), (d), or (e) of this section; or

(B) any photograph, film, or recording of the plaintiff whose intimate areas are exposed or who is engaged in sexual conduct under circumstances in which a person has a reasonable expectation of privacy;

(C) any digital or otherwise altered image of the plaintiff to fraudulently portray the plaintiff with exposed intimate areas or engaged in sexual conduct without the plaintiff’s knowledge and consent to the display or disclosure.

(2) In addition to any other relief available at law, the Court may order equitable relief, including a temporary restraining order, a preliminary injunction, or a permanent injunction ordering the defendant to cease display or disclosure of the image. The Court may grant injunctive relief maintaining the confidentiality of a plaintiff using a pseudonym.
The Court may also grant, after holding a properly noticed hearing, reasonable attorney’s fees and costs to the prevailing plaintiff.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2015.

Sec. 1. 13 V.S.A. § 2605 is amended to read:

§ 2605. VOYEURISM

(a) As used in this section:

    * * *

(6) “Sexual conduct” shall have the same meaning as in section 2821 of this title.

(7) “Surveillance” means secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person.

(8) “View” means the intentional looking upon another person for more than a brief period of time, in other than a casual or cursory manner, with the unaided eye or a device designed or intended to improve visual acuity.

    * * *

(e) No person shall intentionally photograph, film, or record in any format a person without that person’s knowledge and consent while that person is in a place where a person has a reasonable expectation of privacy and that person is engaged in a sexual act as defined in section 3251 of this title.
Sec. 2. 13 V.S.A. § 2606 is added to read:

§ 2606. DISCLOSURE OF SEXUALLY EXPLICIT IMAGES WITHOUT CONSENT

(a) As used in this section:

(1) “Disclose” includes transfer, publish, distribute, exhibit, or reproduce.

(2) “Minor” means a person less than 18 years of age.

(3) “Nude” means any one or more of the following uncovered parts of the human body:

(A) genitals;

(B) pubic area;

(C) buttocks; or

(D) female breast below the top of the areola.

(4) “Sexual conduct” shall have the same meaning as in section 2821 of this title.

(5) “Visual image” includes a photograph, film, videotape, recording, or digital reproduction.

(b)(1) No person shall knowingly disclose a visual image of an identifiable person who is nude or who is engaged in sexual conduct when the actor knows or should have known that the depicted person did not consent to the disclosure. A person may be identifiable from the image itself or information
displayed in connection with the image. Consent to recording of the visual image does not, by itself, constitute consent for disclosure of the image. Except as provided in subdivision (3) of this subsection, a person who violates this subdivision shall be imprisoned not more than six months or fined not more than $1,000.00, or both.

(2) No person shall violate subdivision (1) of this subsection with the intent to harm the person depicted in the image. Except as provided in subdivision (3) of this subsection, a person who violates this subdivision shall be imprisoned not more than two years or fined not more than $2,000.00, or both.

(3) A delinquency petition shall be filed in the Family Division of the Superior Court for a minor who violates subdivision (1) or (2) of this subsection. The minor may be referred to the Juvenile Diversion Program of the district in which the action is filed.

(4) No person shall violate subdivision (1) of this subsection with the intent of disclosing the image for profit or knowingly maintain an Internet website, online service, online application, or mobile application for the purpose of disclosing such images. A person who violates this subdivision shall be imprisoned not more than five years or fined not more than $10,000.00, or both.
(c) A person who maintains an Internet website, online service, online application, or mobile application that contains a visual image of an identifiable person who is nude or who is engaged in sexual conduct shall not solicit or accept a fee or other consideration to remove, delete, correct, modify, or refrain from posting or disclosing the visual image if requested by the depicted person.

(d) This section shall not apply to:

(1) Images involving voluntary exposure nudity or sexual conduct in public or commercial settings, or in a place where a person does not have a reasonable expectation of privacy.

(2) Disclosures made in the public interest, including the reporting of unlawful conduct, or lawful and common practices of law enforcement, criminal reporting, corrections, legal proceedings, or medical treatment.

(3) Disclosures of materials that constitute a matter of public concern.

(4) Interactive computer services, as defined in 47 U.S.C. § 230(f)(2), or information services or telecommunications services, as defined in 47 U.S.C. § 153, for content provided by another person. This subdivision shall not preclude other remedies available at law.

(e)(1) A plaintiff shall have a private cause of action against a defendant who violates subsection (b) of this section and causes the plaintiff emotional distress or economic loss.
(2) In addition to any other relief available at law, the Court may order equitable relief, including a temporary restraining order, a preliminary injunction, or a permanent injunction ordering the defendant to cease display or disclosure of the image. The Court may grant injunctive relief maintaining the confidentiality of a plaintiff using a pseudonym.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2015.