

2015 DRAFTING REQUEST

Assembly Amendment (AA-AB521)

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May Contact: By/Representing:
Subject: Criminal Law - sex offenses Drafter: phurley
Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: Rep.Spiros@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Does not apply to certain internet or communications providers

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	phurley 12/2/2015	anienaja 12/4/2015	_____	sbasford 12/4/2015	sbasford 12/4/2015	

FE Sent For:

<END>

#10

Nothing in this Act shall be construed to impose liability on the provider of an interactive computer service, as defined in 47 U.S.C. 230(f)(2), or an information service or a telecommunications service, as defined in 47 U.S.C. 153, for content provided by another person solely by a third party.

~~the following version would read~~

insert into () and (3) 1

ALJ14

(3) Joint board

The Commission shall convene a Federal-State joint board to recommend appropriate changes to part 36 of the Commission's rules with respect to recovery of costs pursuant to charges, practices, classifications, and regulations under the jurisdiction of the Commission.

(June 19, 1934, ch. 652, title II, § 229, as added Pub. L. 103-414, title III, § 301, Oct. 25, 1994, 108 Stat. 4292.)

REFERENCES IN TEXT

The Communications Assistance for Law Enforcement Act, referred to in subsecs. (a) and (e), is title I of Pub. L. 103-414, Oct. 25, 1994, 108 Stat. 4279, which is classified generally to subchapter I (§1001 et seq.) of chapter 9 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

This chapter, referred to in subsecs. (d) and (e)(2), was in the original "this Act", meaning act June 19, 1934, ch. 652, 48 Stat. 1064, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

§ 230. Protection for private blocking and screening of offensive material

(a) Findings

The Congress finds the following:

(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.

(2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.

(3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.

(5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

(b) Policy

'It is the policy of the United States—

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

(4) to remove disincentives for the development and utilization of blocking and filtering

technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and

(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

(c) Protection for "Good Samaritan" blocking and screening of offensive material

(1) Treatment of publisher or speaker

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

(2) Civil liability

No provider or user of an interactive computer service shall be held liable on account of—

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).¹

(d) Obligations of interactive computer service

A provider of interactive computer service shall, at the time of entering an agreement with a customer for the provision of interactive computer service and in a manner deemed appropriate by the provider, notify such customer that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist the customer in limiting access to material that is harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.

(e) Effect on other laws

(1) No effect on criminal law

Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, or any other Federal criminal statute.

(2) No effect on intellectual property law

Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

(3) State law

Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

(4) No effect on communications privacy law

Nothing in this section shall be construed to limit the application of the Electronic Com-

¹ So in original. Probably should be "subparagraph (A)."

munications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

(f) Definitions

As used in this section:

(1) Internet

The term "Internet" means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(2) Interactive computer service

The term "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(3) Information content provider

The term "information content provider" means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

(4) Access software provider

The term "access software provider" means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

- (A) filter, screen, allow, or disallow content;
- (B) pick, choose, analyze, or digest content; or
- (C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

(June 19, 1934, ch. 652, title II, § 230, as added Pub. L. 104-104, title V, § 509, Feb. 8, 1996, 110 Stat. 137; amended Pub. L. 105-277, div. C, title XIV, § 1404(a), Oct. 21, 1998, 112 Stat. 2681-739.)

REFERENCES IN TEXT

The Electronic Communications Privacy Act of 1986, referred to in subsec. (e)(4), is Pub. L. 99-508, Oct. 21, 1986, 100 Stat. 1848, as amended. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 2510 of Title 18, Crimes and Criminal Procedure, and Tables.

CODIFICATION

Section 509 of Pub. L. 104-104, which directed amendment of title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) by adding section 230 at end, was executed by adding the section at end of part I of title II of the Act to reflect the probable intent of Congress and amendments by sections 101(a), (b), and 151(a) of Pub. L. 104-104 designating §§ 201 to 229 as part I and adding parts II (§ 251 et seq.) and III (§ 271 et seq.) to title II of the Act.

AMENDMENTS

1996—Subsec. (d), Pub. L. 105-277, § 1404(a)(3), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1), Pub. L. 105-277, § 1404(a)(1), inserted "or 231" after "section 223".

Subsecs. (e), (f), Pub. L. 105-277, § 1404(a)(2), redesignated subsecs. (d) and (e) as (e) and (f), respectively.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-277 effective 30 days after Oct. 21, 1998, see section 1406 of Pub. L. 105-277, set out as a note under section 223 of this title.

§ 231. Restriction of access by minors to materials commercially distributed by means of World Wide Web that are harmful to minors

(a) Requirement to restrict access

(1) Prohibited conduct

Whoever knowingly and with knowledge of the character of the material, in interstate or foreign commerce by means of the World Wide Web, makes any communication for commercial purposes that is available to any minor and that includes any material that is harmful to minors shall be fined not more than \$50,000, imprisoned not more than 6 months, or both.

(2) Intentional violations

In addition to the penalties under paragraph (1), whoever intentionally violates such paragraph shall be subject to a fine of not more than \$50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

(3) Civil penalty

In addition to the penalties under paragraphs (1) and (2), whoever violates paragraph (1) shall be subject to a civil penalty of not more than \$50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

(b) Inapplicability of carriers and other service providers

For purposes of subsection (a) of this section, a person shall not be considered to make any communication for commercial purposes to the extent that such person is—

- (1) a telecommunications carrier engaged in the provision of a telecommunications service;
- (2) a person engaged in the business of providing an Internet access service;
- (3) a person engaged in the business of providing an Internet information location tool; or

(4) similarly engaged in the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication made by another person, without selection or alteration of the content of the communication, except that such person's deletion of a particular communication or material made by another person in a manner consistent with subsection (c) of this section or section 230 of this title shall not constitute such selection or alteration of the content of the communication.

(c) Affirmative defense

(1) Defense

It is an affirmative defense to prosecution under this section that the defendant, in good faith, has restricted access by minors to material that is harmful to minors—

- (A) by requiring use of a credit card, debit account, adult access code, or adult personal identification number;
- (B) by accepting a digital certificate that verifies age; or



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-3069/1
PJH:amn

2015 ASSEMBLY BILL 521

November 13, 2015 - Introduced by Representatives SPIROS, MURSAU, HORLACHER, E. BROOKS, T. LARSON, SUBECK, KAHL, ALLEN, KULP, ZAMARRIPA, KREMER, DUCHOW and CRAIG, cosponsored by Senators VUKMIR and WANGGAARD. Referred to Committee on Criminal Justice and Public Safety.

1 **AN ACT to amend** 942.08 (1) (c), 942.08 (2) (a), 942.09 (1) (a), 942.09 (1) (c), 942.09
2 (2) (am) 1., 2. and 3., 942.09 (2) (bm) (intro.), 972.11 (2) (b) (intro.) and 972.11
3 (2) (d) 1. (intro.); and **to create** 942.09 (1) (ae) and 942.09 (1) (ag) of the statutes;
4 **relating to:** invasions of privacy and providing a criminal penalty.

Analysis by the Legislative Reference Bureau

This bill prohibits certain acts that violate a person's right to privacy. Current law prohibits installing or using a surveillance device that has been installed in a private place to observe a nude or partially nude person without that person's consent. The bill clarifies that a surveillance device need only be capable of observing the activities of a person and need not be primarily designed for that purpose. Under the bill, a person may not install or use in a private place a surveillance device to view a nude or partially nude person in a private place without that person's consent.

Under current law, a person who captures a representation of a nude or partially nude person without the person's consent and while that person has a reasonable expectation of privacy, or a person who makes, exhibits, or distributes a reproduction of such a representation of the nude or partially nude person, is guilty of a Class I felony.

Under the bill, a person is guilty of a Class I felony if he or she makes, reproduces, exhibit, or distributes a video or audio representation of a person who is nude or partially nude; of a person's clothed, covered, or partially clothed or covered genitalia or buttock that is not otherwise visible to the public; of a person urinating, defecating, or using a feminine hygiene product; or of a person engaged in sexual

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intercourse or sexual contact, and if the same conditions of lack of consent and expectation of privacy exist.

The bill defines consent as “words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to the act,” and establishes that a person under the age of 18 is incapable of consent. Under the bill, a person suffering from a mental illness or defect that impairs his or her capacity to appraise personal conduct and a person who is unconscious or otherwise physically unable to communicate unwillingness to an act are presumed incapable of giving consent.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 942.08 (1) (c) of the statutes is amended to read:

2 942.08 (1) (c) “Surveillance device” means any device, instrument, apparatus,
3 implement, mechanism or contrivance used, designed to be used ~~or primarily~~
4 ~~intended to be used to observe, or capable of observing,~~ the activities of a person.

5 “Surveillance device” includes a peephole.

6 **SECTION 2.** 942.08 (2) (a) of the statutes is amended to read:

7 942.08 (2) (a) Knowingly installs a surveillance device in any private place, or
8 uses a surveillance device ~~that has been installed to observe~~ in a private place, with
9 the intent to observe any nude or partially nude person without the consent of the
10 person observed.

11 **SECTION 3.** 942.09 (1) (a) of the statutes is amended to read:

12 942.09 (1) (a) “Captures a representation” means takes a photograph, makes
13 a motion picture, videotape, recording, or other visual or audio representation, or
14 records or stores in any medium data that represents a visual image.

15 **SECTION 4.** 942.09 (1) (ae) of the statutes is created to read:

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1 942.09 (1) (ae) "Consent" means words or overt actions by a person who is
2 competent to give informed consent indicating a freely given agreement to the act.
3 A person who has not attained the age of 18 is incapable of consent. The following
4 persons are presumed incapable of consent but the presumption may be rebutted by
5 competent evidence, subject to the provisions of s. 972.11 (2):

6 1. A person suffering from a mental illness or defect that impairs capacity to
7 appraise personal conduct.

8 2. A person who is unconscious or for any other reason is physically unable to
9 communicate unwillingness to an act.

10 **SECTION 5.** 942.09 (1) (ag) of the statutes is created to read:

11 942.09 (1) (ag) "Intimate representation" means any of the following:

12 1. A representation of a nude or partially nude person.

13 2. A representation of clothed, covered, or partially clothed or covered genitalia
14 or buttock that is not otherwise visible to the public.

15 3. A representation of a person urinating, defecating, or using a feminine
16 hygiene product.

17 4. A representation of person engaged in sexual intercourse or sexual contact,
18 as defined in s. 940.225 (5) (b) or (c).

19 **SECTION 6.** 942.09 (1) (c) of the statutes is amended to read:

20 942.09 (1) (c) "Representation" means a photograph, exposed film, motion
21 picture, videotape, recording, other visual or audio representation, or data that
22 represents a visual image or audio recording.

23 **SECTION 7.** 942.09 (2) (am) 1., 2. and 3. of the statutes are amended to read:

24 942.09 (2) (am) 1. Captures ~~a~~ an intimate representation that depicts nudity
25 ~~without the knowledge and consent of the person who is depicted nude while that~~

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SECTION 7

1 person is nude in a circumstance under circumstances in which he or she has a
2 reasonable expectation of privacy, if the person knows or has reason to know that the
3 person who is depicted nude does not know of and consent to the capture of the
4 intimate representation.

5 2. Makes a reproduction of ~~a~~ an intimate representation that the person knows
6 or has reason to know was captured in violation of subd. 1. and that depicts the nudity
7 depicted in the an intimate representation captured in violation of subd. 1., if the
8 person depicted nude in the reproduction did not consent to the making of the
9 reproduction.

10 3. Possesses, distributes, or exhibits ~~a~~ an intimate representation that was
11 captured in violation of subd. 1. or a reproduction made in violation of subd. 2., if the
12 person knows or has reason to know that the intimate representation was captured
13 in violation of subd. 1. or the reproduction was made in violation of subd. 2., and if
14 the person who is depicted nude in the intimate representation or reproduction did
15 not consent to the possession, distribution, or exhibition.

16 SECTION 8. 942.09 (2) (bm) (intro.) of the statutes is amended to read:

17 942.09 (2) (bm) (intro.) Notwithstanding par. (am), if the person depicted nude
18 in ~~a~~ an intimate representation or reproduction is a child and the capture,
19 possession, exhibition, or distribution of the intimate representation, or making,
20 possession, exhibition, or distribution of the reproduction, does not violate s. 948.05
21 or 948.12, a parent, guardian, or legal custodian of the child may do any of the
22 following:

23 SECTION 9. 972.11 (2) (b) (intro.) of the statutes is amended to read:

24 972.11 (2) (b) (intro.) If the defendant is accused of a crime under s. 940.225,
25 942.09, 948.02, 948.025, 948.05, 948.051, 948.06, 948.07, 948.08, 948.085, 948.09, or

Handwritten notes: 942.09 (2) (bm) (intro.)

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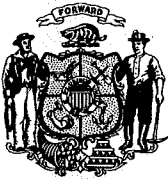
1 948.095, or under s. 940.302 (2), if the court finds that the crime was sexually
2 motivated, as defined in s. 980.01 (5), any evidence concerning the complaining
3 witness's prior sexual conduct or opinions of the witness's prior sexual conduct and
4 reputation as to prior sexual conduct shall not be admitted into evidence during the
5 course of the hearing or trial, nor shall any reference to such conduct be made in the
6 presence of the jury, except the following, subject to s. 971.31 (11):

7 **SECTION 10.** 972.11 (2) (d) 1. (intro.) of the statutes is amended to read:

8 972.11 (2) (d) 1. (intro.) If the defendant is accused of a crime under s. 940.225,
9 942.09, 948.02, 948.025, 948.05, 948.06, 948.085, or 948.095, evidence of the manner
10 of dress of the complaining witness at the time when the crime occurred is admissible
11 only if it is relevant to a contested issue at trial and its probative value substantially
12 outweighs all of the following:

13

(END)



State of Wisconsin
2015 - 2016 LEGISLATURE

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ASSEMBLY AMENDMENT,
TO ASSEMBLY BILL 521

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12-8

At the locations indicated, amend the bill as follows:

1. Page 4, line 22: after that line insert:

“SECTION 8g. 942.09 (2) (dm) of the statutes is created to read:

942.09 (2) (dm) This subsection does not apply to a provider of an interactive computer service, as defined in 47 USC 230 (f) (2), or to an information service or telecommunications service, as defined in 47 USC 153, if the intimate representation or reproduction is provided to the interactive computer service, information service, or telecommunications service by a third party.

SECTION 8p. 942.09 (3m) (b) 4. of the statutes is amended to read:

942.09 (3m) (b) 4. A provider of ~~electronic communication services that provides Internet access service to customers~~ an interactive computer service, as defined in 47 USC 230 (f) (2), or to an information service or telecommunications service, as defined in 47 USC 153, if the private representation is provided to the

interactive computer service, information service, or telecommunications service by
a third party.”

Plan
History: 1995 a. 249; 2001 a. 16; 2001 a. 33 ss. 2 to 13; Stats. 2001 s. 942.09; 2001 a. 109; 2007 a. 118; 2013 a. 243.

(END)