

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 14-0998.01 Michael Dohr x4347

HOUSE BILL 14-1378

HOUSE SPONSORSHIP

Stephens and Pabon, Fischer, Landgraf, McNulty, Navarro, Szabo

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING PROHIBITING THE POSTING OF A PRIVATE IMAGE ON**
102 **SOCIAL MEDIA WITHOUT CONSENT TO CAUSE SERIOUS**
103 **EMOTIONAL DISTRESS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill makes it a crime for a person 18 years of age or older, with the intent to cause serious emotional distress, to post, add to a post, or otherwise distribute through the use of social media any photograph, video, or other image containing the intimate parts of an identified or

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
April 25, 2014

identifiable person 18 years of age or older, without the depicted person's consent, after the depicted person communicated to the actor an expectation that the image would remain private and such conduct results in serious emotional distress. The crime is a class 1 misdemeanor. In addition to any other sentence, the court shall impose a fine of at least \$10,000 and order the image removed from the internet.

A person convicted of the crime may apply to have the conviction record sealed if he or she has not been convicted of another crime in 5 years after the completion of his or her sentence.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 18-7-107 as
3 follows:

4 **18-7-107. Posting a private image - definitions.** (1) (a) AN
5 ACTOR WHO IS EIGHTEEN YEARS OF AGE OR OLDER COMMITS THE OFFENSE
6 OF POSTING A PRIVATE IMAGE IF HE OR SHE, WITH THE INTENT TO HARASS
7 OR HUMILIATE THE PERSON, WHICH CAUSES EMOTIONAL DISTRESS, OR FOR
8 EXTORTION PURPOSES, OR FOR PECUNIARY GAIN, POSTS OR ADDS TO A
9 POST, WHICH IS THEN DISTRIBUTED THROUGH THE USE OF SOCIAL MEDIA,
10 ANY PHOTOGRAPH, VIDEO, OR OTHER IMAGE CONTAINING THE INTIMATE
11 PARTS OF AN IDENTIFIED OR IDENTIFIABLE PERSON EIGHTEEN YEARS OF
12 AGE OR OLDER, WITHOUT THE DEPICTED PERSON'S CONSENT, AFTER THE
13 DEPICTED PERSON COMMUNICATED TO THE ACTOR AN EXPECTATION THAT
14 THE IMAGE WOULD REMAIN PRIVATE, OR WHEN THE DEPICTED PERSON
15 OTHERWISE HAD A REASONABLE EXPECTATION THAT THE IMAGE WOULD
16 REMAIN PRIVATE, AND SUCH CONDUCT RESULTS IN EMOTIONAL DISTRESS
17 OF THE PERSON; EXTORTION OF THE PERSON; OR PECUNIARY BENEFIT TO
18 THE ACTOR.

19 (b) POSTING A PRIVATE IMAGE IS A CLASS 1 MISDEMEANOR.
20 NOTWITHSTANDING THE PROVISIONS OF SECTION 18-1.3-501 (1) (a), IN

1 ADDITION TO ANY OTHER SENTENCE THE COURT MAY IMPOSE, THE COURT
2 SHALL FINE THE DEFENDANT UP TO TEN THOUSAND DOLLARS AND SHALL
3 ORDER THE PERSON OR THE ENTITY WHERE THE PHOTOS ARE POSTED OR
4 PUBLISHED TO REMOVE ALL PHOTOGRAPHS OF THE VICTIM THAT SHOW THE
5 VICTIM'S INTIMATE PARTS.

6 (2) IT SHALL NOT BE AN OFFENSE UNDER THIS SECTION IF THE
7 PHOTOGRAPH, VIDEO, OR IMAGE IS RELATED TO A NEWSWORTHY EVENT.

8 (3) NOTHING IN THIS SECTION PRECLUDES PUNISHMENT UNDER
9 ANY SECTION OF LAW PROVIDING FOR GREATER PUNISHMENT.

10 (4) (a) AN INDIVIDUAL WHOSE PRIVATE IMAGES HAVE BEEN
11 POSTED IN ACCORDANCE WITH THIS SECTION MAY BRING A CIVIL ACTION
12 AGAINST THE PERSON WHO CAUSED THE POSTING OF THE PRIVATE IMAGES
13 AND IS ENTITLED TO INJUNCTIVE RELIEF, THE GREATER OF TEN THOUSAND
14 DOLLARS OR ACTUAL DAMAGES INCURRED AS A RESULT OF THE POSTING
15 OF THE PRIVATE IMAGES, EXEMPLARY DAMAGES, AND REASONABLE
16 ATTORNEY'S FEES AND COSTS.

17 (b) AN INDIVIDUAL WHOSE PRIVATE IMAGES HAVE BEEN POSTED IN
18 ACCORDANCE WITH THIS SECTION SHALL RETAIN A PROTECTABLE RIGHT OF
19 AUTHORSHIP REGARDING THE COMMERCIAL USE OF THE PRIVATE IMAGE.

20 (5) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO IMPOSE
21 LIABILITY ON THE PROVIDER OF AN INTERACTIVE COMPUTER SERVICE, AS
22 DEFINED IN THE 47 U.S.C. 230 (f) (2), AN INFORMATION SERVICE, AS
23 DEFINED IN 47 U.S.C. 153, OR A TELECOMMUNICATIONS SERVICE, AS
24 DEFINED IN 47 U.S.C. 153, FOR CONTENT PROVIDED BY ANOTHER PERSON.

25 (6) FOR PURPOSES OF THIS SECTION, UNLESS THE CONTEXT
26 OTHERWISE REQUIRES:

27 (a) "INTIMATE PARTS" MEANS EXTERNAL GENITALIA OR THE

1 PERINEUM OR THE ANUS OR THE BUTTOCKS OR THE PUBES OF ANY PERSON
2 OR THE BREAST OF A FEMALE.

3 (b) "SOCIAL MEDIA" MEANS ANY ELECTRONIC MEDIUM, INCLUDING
4 AN INTERACTIVE COMPUTER SERVICE, TELEPHONE NETWORK, OR DATA
5 NETWORK, THAT ALLOWS USERS TO CREATE, SHARE, AND VIEW
6 USER-GENERATED CONTENT, INCLUDING BUT NOT LIMITED TO VIDEOS,
7 STILL PHOTOGRAPHS, BLOGS, VIDEO BLOGS, PODCASTS, INSTANT
8 MESSAGES, ELECTRONIC MAIL, OR INTERNET WEB SITE PROFILES.

9 SECTION 2. In Colorado Revised Statutes, add 24-72-308.4 as
10 follows:

11 24-72-308.4. Sealing of criminal conviction records
12 information for posting an intimate photograph of a person on the
13 internet. (1) (a) IF A PERSON WAS CONVICTED OF POSTING A PRIVATE
14 IMAGE IN VIOLATION OF SECTION 18-7-107, C.R.S., AND THE PERSON HAS
15 COMPLETED THE SENTENCE, INCLUDING PAYMENT OF THE FINE, AND THE
16 PERSON HAS NOT BEEN CONVICTED OF ANOTHER CRIMINAL OFFENSE FOR
17 AT LEAST FIVE YEARS AFTER THE DATE HE OR SHE COMPLETED HIS OR HER
18 SENTENCE, HE OR SHE MAY PETITION THE DISTRICT COURT OF THE DISTRICT
19 IN WHICH THE CONVICTION RECORD PERTAINING TO THE DEFENDANT'S
20 CONVICTION FOR POSTING INTIMATE PHOTOGRAPHS OF PERSONS IS
21 LOCATED FOR THE SEALING OF THE CONVICTION RECORDS, EXCEPT FOR
22 BASIC IDENTIFYING INFORMATION.

23 (b) IF A PETITION IS FILED PURSUANT TO PARAGRAPH (a) OF THIS
24 SUBSECTION (1) FOR THE SEALING OF A RECORD OF CONVICTION FOR
25 POSTING A PRIVATE IMAGE IN VIOLATION OF SECTION 18-7-107, C.R.S.,
26 THE COURT SHALL ORDER THE RECORD SEALED AFTER:

27 (I) THE PETITION IS FILED; AND

1 (II) THE FILING FEE IS PAID.

2 (c) A PETITION TO SEAL A CONVICTION RECORD PURSUANT TO THIS
3 SECTION MUST INCLUDE A LISTING OF EACH CUSTODIAN OF THE RECORDS
4 TO WHOM THE SEALING ORDER IS DIRECTED AND ANY INFORMATION THAT
5 ACCURATELY AND COMPLETELY IDENTIFIES THE RECORDS TO BE SEALED.
6 THE DEFENDANT SHALL SUBMIT A VERIFIED COPY OF THE DEFENDANT'S
7 CRIMINAL HISTORY WITH THE PETITION AT THE TIME OF FILING, CURRENT
8 THROUGH AT LEAST THE TWENTIETH DAY PRIOR TO THE DATE OF THE
9 FILING OF THE PETITION, TO THE COURT BUT NO LATER THAN THE TENTH
10 DAY AFTER THE PETITION IS FILED. THE DEFENDANT IS RESPONSIBLE FOR
11 OBTAINING AND PAYING FOR THE VERIFIED COPY OF HIS OR HER CRIMINAL
12 HISTORY. WHENEVER A COURT ENTERS AN ORDER SEALING CONVICTION
13 RECORDS PURSUANT TO THIS SECTION, THE DEFENDANT SHALL PROVIDE
14 THE COLORADO BUREAU OF INVESTIGATION AND EACH CUSTODIAN OF THE
15 CONVICTION RECORDS WITH A COPY OF THE ORDER AND SHALL PAY TO THE
16 BUREAU ANY COSTS RELATED TO THE SEALING OF HIS OR HER CRIMINAL
17 CONVICTION RECORDS THAT ARE IN THE CUSTODY OF THE BUREAU.
18 THEREAFTER, THE DEFENDANT MAY REQUEST AND THE COURT MAY GRANT
19 AN ORDER SEALING THE CIVIL CASE IN WHICH THE CONVICTION RECORDS
20 WERE SEALED.

21 (d) AN ORDER SEALING CONVICTION RECORDS DOES NOT DENY
22 ACCESS TO THE CRIMINAL RECORDS OF A DEFENDANT BY ANY COURT, LAW
23 ENFORCEMENT AGENCY, CRIMINAL JUSTICE AGENCY, PROSECUTING
24 ATTORNEY, OR PARTY OR AGENCY REQUIRED BY LAW TO CONDUCT A
25 CRIMINAL HISTORY RECORD CHECK ON AN INDIVIDUAL. AN ORDER SEALING
26 CONVICTION RECORDS DOES NOT VACATE A CONVICTION. A CONVICTION
27 SEALED PURSUANT TO THIS SECTION MAY BE USED BY A CRIMINAL JUSTICE

1 AGENCY, LAW ENFORCEMENT AGENCY, COURT, OR PROSECUTING
2 ATTORNEY FOR ANY LAWFUL PURPOSE RELATING TO THE INVESTIGATION
3 OR PROSECUTION OF ANY CASE, INCLUDING BUT NOT LIMITED TO ANY
4 SUBSEQUENT CASE THAT IS FILED AGAINST THE DEFENDANT, OR FOR ANY
5 OTHER LAWFUL PURPOSE WITHIN THE SCOPE OF HIS, HER, OR ITS DUTIES. IF
6 A DEFENDANT IS CONVICTED OF A NEW CRIMINAL OFFENSE AFTER AN
7 ORDER SEALING CONVICTION RECORDS IS ENTERED, THE COURT SHALL
8 ORDER THE CONVICTION RECORDS TO BE UNSEALED. A PARTY OR AGENCY
9 REQUIRED BY LAW TO CONDUCT A CRIMINAL HISTORY RECORD CHECK IS
10 AUTHORIZED TO USE ANY SEALED CONVICTION FOR THE LAWFUL PURPOSE
11 FOR WHICH THE CRIMINAL HISTORY RECORD CHECK IS REQUIRED BY LAW.

12 (e) A DEFENDANT MAY PETITION THE COURT FOR THE SEALING OF
13 CONVICTION RECORDS PURSUANT TO THIS SECTION ONLY ONCE DURING
14 ANY TWELVE-MONTH PERIOD. THE COURT SHALL DISMISS A SECOND OR
15 SUBSEQUENT PETITION FILED WITHIN ANY TWELVE-MONTH PERIOD.

16 (f) A PETITION TO SEAL CONVICTION RECORDS PURSUANT TO THIS
17 SECTION MUST INCLUDE A LISTING OF EACH CUSTODIAN OF THE RECORDS
18 TO WHOM THE SEALING ORDER IS DIRECTED AND ANY INFORMATION THAT
19 ACCURATELY AND COMPLETELY IDENTIFIES THE RECORDS TO BE SEALED.

20 (g) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (d) OF THIS
21 SUBSECTION (1), UPON THE ENTRY OF AN ORDER TO SEAL THE CONVICTION
22 RECORDS, THE DEFENDANT AND ALL CRIMINAL JUSTICE AGENCIES MAY
23 PROPERLY REPLY, UPON AN INQUIRY IN THE MATTER, THAT PUBLIC
24 CONVICTION RECORDS DO NOT EXIST WITH RESPECT TO THE DEFENDANT.

25 (h) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (d) OF THIS
26 SUBSECTION (1), INSPECTION OF THE RECORDS INCLUDED IN AN ORDER
27 SEALING CONVICTION RECORDS MAY THEREAFTER BE PERMITTED BY THE

1 COURT ONLY UPON PETITION BY THE DEFENDANT.

2 (i) (I) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (d) OF THIS
3 SUBSECTION (1), EMPLOYERS, STATE AND LOCAL GOVERNMENT AGENCIES,
4 OFFICIALS, LANDLORDS, AND EMPLOYEES SHALL NOT, IN ANY APPLICATION
5 OR INTERVIEW OR IN ANY OTHER WAY, REQUIRE AN APPLICANT TO
6 DISCLOSE ANY INFORMATION CONTAINED IN SEALED CONVICTION
7 RECORDS. AN APPLICANT NEED NOT, IN ANSWER TO ANY QUESTION
8 CONCERNING CONVICTION RECORDS THAT HAVE BEEN SEALED, INCLUDE
9 A REFERENCE TO OR INFORMATION CONCERNING THE SEALED CONVICTION
10 RECORDS AND MAY STATE THAT THE APPLICANT HAS NOT BEEN
11 CRIMINALLY CONVICTED.

12 (II) THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (i)
13 DO NOT PRECLUDE THE BAR COMMITTEE OF THE COLORADO STATE BOARD
14 OF LAW EXAMINERS FROM MAKING FURTHER INQUIRIES INTO THE FACT OF
15 A CONVICTION THAT COMES TO THE ATTENTION OF THE BAR COMMITTEE
16 THROUGH OTHER MEANS. THE BAR COMMITTEE OF THE COLORADO STATE
17 BOARD OF LAW EXAMINERS HAS A RIGHT TO INQUIRE INTO THE MORAL AND
18 ETHICAL QUALIFICATIONS OF AN APPLICANT, AND THE APPLICANT DOES
19 NOT HAVE A RIGHT TO PRIVACY OR PRIVILEGE THAT JUSTIFIES HIS OR HER
20 REFUSAL TO ANSWER A QUESTION CONCERNING SEALED CONVICTION
21 RECORDS THAT HAVE COME TO THE ATTENTION OF THE BAR COMMITTEE
22 THROUGH OTHER MEANS.

23 (III) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I)
24 OF THIS PARAGRAPH (i), THE DEPARTMENT OF EDUCATION MAY REQUIRE
25 A LICENSED EDUCATOR OR AN APPLICANT FOR AN EDUCATOR'S LICENSE
26 WHO FILES A PETITION TO SEAL A CRIMINAL RECORD TO NOTIFY THE
27 DEPARTMENT OF EDUCATION OF THE PENDING PETITION TO SEAL. THE

1 DEPARTMENT HAS THE RIGHT TO INQUIRE INTO THE FACTS OF THE
2 CRIMINAL OFFENSE FOR WHICH THE PETITION TO SEAL IS PENDING. THE
3 EDUCATOR OR APPLICANT HAS NO RIGHT TO PRIVACY OR PRIVILEGE THAT
4 JUSTIFIES HIS OR HER REFUSAL TO ANSWER ANY QUESTIONS CONCERNING
5 THE ARREST AND CRIMINAL RECORDS INFORMATION CONTAINED IN THE
6 PENDING PETITION TO SEAL.

7 (IV) ANY MEMBER OF THE PUBLIC MAY PETITION THE COURT TO
8 UNSEAL ANY FILE THAT HAS BEEN PREVIOUSLY SEALED UPON A SHOWING
9 THAT CIRCUMSTANCES HAVE COME INTO EXISTENCE SINCE THE ORIGINAL
10 SEALING, AND, AS A RESULT, THE PUBLIC INTEREST IN DISCLOSURE NOW
11 OUTWEIGHS THE DEFENDANT'S INTEREST IN PRIVACY.

12 (j) THE OFFICE OF THE STATE COURT ADMINISTRATOR SHALL POST
13 ON ITS WEB SITE A LIST OF ALL PETITIONS TO SEAL CONVICTION RECORDS
14 THAT ARE FILED WITH A DISTRICT COURT. A DISTRICT COURT MAY NOT
15 GRANT A PETITION TO SEAL CONVICTION RECORDS UNTIL AT LEAST THIRTY
16 DAYS AFTER THE POSTING. AFTER THE EXPIRATION OF THIRTY DAYS
17 FOLLOWING THE POSTING, THE PETITION TO SEAL CONVICTION RECORDS
18 AND INFORMATION PERTINENT THERETO SHALL BE REMOVED FROM THE
19 WEB SITE OF THE OFFICE OF THE STATE COURT ADMINISTRATOR.

20 (k) NOTHING IN THIS SECTION AUTHORIZES THE PHYSICAL
21 DESTRUCTION OF ANY CONVICTION RECORDS.

22 (l) NOTWITHSTANDING ANY PROVISION IN THIS SECTION TO THE
23 CONTRARY, IN REGARD TO ANY CONVICTION OF A DEFENDANT RESULTING
24 FROM A SINGLE CASE IN WHICH THE DEFENDANT IS CONVICTED OF MORE
25 THAN ONE OFFENSE, RECORDS OF THE CONVICTION MAY BE SEALED
26 PURSUANT TO THE PROVISIONS OF THIS SECTION ONLY IF THE RECORDS OF
27 EVERY CONVICTION OF THE DEFENDANT RESULTING FROM THAT CASE MAY

1 BE SEALED PURSUANT TO THE PROVISIONS OF THIS PART 3.

2 (2) **Rules of discovery - rules of evidence - witness testimony.**

3 COURT ORDERS SEALING RECORDS OF OFFICIAL ACTIONS PURSUANT TO
4 THIS SECTION DO NOT LIMIT THE OPERATIONS OF:

5 (a) THE COLORADO RULES OF CIVIL PROCEDURE RELATED TO
6 DISCOVERY OR THE COLORADO RULES OF EVIDENCE PROMULGATED BY
7 THE SUPREME COURT OF COLORADO OR ANY OTHER STATE OR FEDERAL
8 COURT; OR

9 (b) THE PROVISIONS OF SECTION 13-90-101, C.R.S., CONCERNING
10 WITNESS TESTIMONY.

11 **SECTION 3.** In Colorado Revised Statutes, **add 24-72-609** as
12 follows:

13 **24-72-609. Sealing of criminal conviction records information**
14 **for posting an intimate photograph of a person on the internet.**

15 (1) (a) IF A PERSON WHO WAS CONVICTED OF POSTING A PRIVATE IMAGE
16 IN VIOLATION OF SECTION 18-7-107, C.R.S., HAS COMPLETED THE
17 SENTENCE, INCLUDING PAYMENT OF THE FINE, AND HAS NOT BEEN
18 CONVICTED OF ANOTHER CRIMINAL OFFENSE FOR AT LEAST FIVE YEARS
19 AFTER THE DATE HE OR SHE COMPLETED HIS OR HER SENTENCE, HE OR SHE
20 MAY PETITION THE DISTRICT COURT OF THE DISTRICT IN WHICH THE
21 CONVICTION RECORD PERTAINING TO THE DEFENDANT'S CONVICTION FOR
22 POSTING AN INTIMATE PHOTOGRAPH OF A PERSON IS LOCATED FOR THE
23 SEALING OF THE CONVICTION RECORDS, EXCEPT FOR BASIC IDENTIFYING
24 INFORMATION.

25 (b) IF A PETITION IS FILED PURSUANT TO PARAGRAPH (a) OF THIS
26 SUBSECTION (1) FOR THE SEALING OF A RECORD OF CONVICTION FOR
27 POSTING A PRIVATE IMAGE IN VIOLATION OF SECTION 18-7-107, C.R.S.,

1 THE COURT SHALL ORDER THE RECORD SEALED AFTER:

2 (I) THE PETITION IS FILED; AND

3 (II) THE FILING FEE IS PAID.

4 **SECTION 4. Effective date - applicability.** This act takes effect
5 July 1, 2014; except that section 2 takes effect only if Senate Bill 14-206
6 does not become law, and section 3 of this act takes effect only if Senate
7 Bill 14-206 becomes law. and applies to offenses committed on or after
8 said date.

9 **SECTION 5. Safety clause.** The general assembly hereby finds,
10 determines, and declares that this act is necessary for the immediate
11 preservation of the public peace, health, and safety.