

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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.

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, AS DEFINED IN SECTION 18-3-401 (2), OF AN IDENTIFIED OR
12 IDENTIFIABLE PERSON EIGHTEEN YEARS OF AGE OR OLDER, WITHOUT THE
13 DEPICTED PERSON'S CONSENT, AFTER THE DEPICTED PERSON
14 COMMUNICATED TO THE ACTOR AN EXPECTATION THAT THE IMAGE WOULD
15 REMAIN PRIVATE, OR WHEN THE DEPICTED PERSON OTHERWISE HAD A
16 REASONABLE EXPECTATION THAT THE IMAGE WOULD REMAIN PRIVATE,
17 AND SUCH CONDUCT RESULTS IN EMOTIONAL DISTRESS OF THE PERSON;
18 EXTORTION OF THE PERSON; OR PECUNIARY BENEFIT TO 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) NOTHING IN THIS SECTION PRECLUDES PUNISHMENT UNDER
7 ANY SECTION OF LAW PROVIDING FOR GREATER PUNISHMENT.

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

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

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

23 (5) "SOCIAL MEDIA" MEANS ANY ELECTRONIC MEDIUM, INCLUDING
24 AN INTERACTIVE COMPUTER SERVICE, TELEPHONE NETWORK, OR DATA
25 NETWORK, THAT ALLOWS USERS TO CREATE, SHARE, AND VIEW
26 USER-GENERATED CONTENT, INCLUDING BUT NOT LIMITED TO VIDEOS,
27 STILL PHOTOGRAPHS, BLOGS, VIDEO BLOGS, PODCASTS, INSTANT

1 MESSAGES, ELECTRONIC MAIL, OR INTERNET WEB SITE PROFILES.

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

4 **24-72-308.4. Sealing of criminal conviction records**
5 **information for posting an intimate photograph of a person on the**
6 **internet.** (1) (a) IF A PERSON WAS CONVICTED OF POSTING A PRIVATE
7 IMAGE IN VIOLATION OF SECTION 18-7-107, C.R.S., AND THE PERSON HAS
8 COMPLETED THE SENTENCE, INCLUDING PAYMENT OF THE FINE, AND THE
9 PERSON HAS NOT BEEN CONVICTED OF ANOTHER CRIMINAL OFFENSE FOR
10 AT LEAST FIVE YEARS AFTER THE DATE HE OR SHE COMPLETED HIS OR HER
11 SENTENCE, HE OR SHE MAY PETITION THE DISTRICT COURT OF THE DISTRICT
12 IN WHICH THE CONVICTION RECORD PERTAINING TO THE DEFENDANT'S
13 CONVICTION FOR POSTING INTIMATE PHOTOGRAPHS OF PERSONS IS
14 LOCATED FOR THE SEALING OF THE CONVICTION RECORDS, EXCEPT FOR
15 BASIC IDENTIFYING INFORMATION.

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

20 (I) THE PETITION IS FILED; AND

21 (II) THE FILING FEE IS PAID.

22 (c) A PETITION TO SEAL A CONVICTION RECORD PURSUANT TO THIS
23 SECTION MUST INCLUDE A LISTING OF EACH CUSTODIAN OF THE RECORDS
24 TO WHOM THE SEALING ORDER IS DIRECTED AND ANY INFORMATION THAT
25 ACCURATELY AND COMPLETELY IDENTIFIES THE RECORDS TO BE SEALED.
26 THE DEFENDANT SHALL SUBMIT A VERIFIED COPY OF THE DEFENDANT'S
27 CRIMINAL HISTORY WITH THE PETITION AT THE TIME OF FILING, CURRENT

1 THROUGH AT LEAST THE TWENTIETH DAY PRIOR TO THE DATE OF THE
2 FILING OF THE PETITION, TO THE COURT BUT NO LATER THAN THE TENTH
3 DAY AFTER THE PETITION IS FILED. THE DEFENDANT IS RESPONSIBLE FOR
4 OBTAINING AND PAYING FOR THE VERIFIED COPY OF HIS OR HER CRIMINAL
5 HISTORY. WHENEVER A COURT ENTERS AN ORDER SEALING CONVICTION
6 RECORDS PURSUANT TO THIS SECTION, THE DEFENDANT SHALL PROVIDE
7 THE COLORADO BUREAU OF INVESTIGATION AND EACH CUSTODIAN OF THE
8 CONVICTION RECORDS WITH A COPY OF THE ORDER AND SHALL PAY TO THE
9 BUREAU ANY COSTS RELATED TO THE SEALING OF HIS OR HER CRIMINAL
10 CONVICTION RECORDS THAT ARE IN THE CUSTODY OF THE BUREAU.
11 THEREAFTER, THE DEFENDANT MAY REQUEST AND THE COURT MAY GRANT
12 AN ORDER SEALING THE CIVIL CASE IN WHICH THE CONVICTION RECORDS
13 WERE SEALED.

14 (d) AN ORDER SEALING CONVICTION RECORDS DOES NOT DENY
15 ACCESS TO THE CRIMINAL RECORDS OF A DEFENDANT BY ANY COURT, LAW
16 ENFORCEMENT AGENCY, CRIMINAL JUSTICE AGENCY, PROSECUTING
17 ATTORNEY, OR PARTY OR AGENCY REQUIRED BY LAW TO CONDUCT A
18 CRIMINAL HISTORY RECORD CHECK ON AN INDIVIDUAL. AN ORDER SEALING
19 CONVICTION RECORDS DOES NOT VACATE A CONVICTION. A CONVICTION
20 SEALED PURSUANT TO THIS SECTION MAY BE USED BY A CRIMINAL JUSTICE
21 AGENCY, LAW ENFORCEMENT AGENCY, COURT, OR PROSECUTING
22 ATTORNEY FOR ANY LAWFUL PURPOSE RELATING TO THE INVESTIGATION
23 OR PROSECUTION OF ANY CASE, INCLUDING BUT NOT LIMITED TO ANY
24 SUBSEQUENT CASE THAT IS FILED AGAINST THE DEFENDANT, OR FOR ANY
25 OTHER LAWFUL PURPOSE WITHIN THE SCOPE OF HIS, HER, OR ITS DUTIES. IF
26 A DEFENDANT IS CONVICTED OF A NEW CRIMINAL OFFENSE AFTER AN
27 ORDER SEALING CONVICTION RECORDS IS ENTERED, THE COURT SHALL

1 ORDER THE CONVICTION RECORDS TO BE UNSEALED. A PARTY OR AGENCY
2 REQUIRED BY LAW TO CONDUCT A CRIMINAL HISTORY RECORD CHECK IS
3 AUTHORIZED TO USE ANY SEALED CONVICTION FOR THE LAWFUL PURPOSE
4 FOR WHICH THE CRIMINAL HISTORY RECORD CHECK IS REQUIRED BY LAW.

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

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

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

18 (h) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (d) OF THIS
19 SUBSECTION (1), INSPECTION OF THE RECORDS INCLUDED IN AN ORDER
20 SEALING CONVICTION RECORDS MAY THEREAFTER BE PERMITTED BY THE
21 COURT ONLY UPON PETITION BY THE DEFENDANT.

22 (i) (I) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (d) OF THIS
23 SUBSECTION (1), EMPLOYERS, STATE AND LOCAL GOVERNMENT AGENCIES,
24 OFFICIALS, LANDLORDS, AND EMPLOYEES SHALL NOT, IN ANY APPLICATION
25 OR INTERVIEW OR IN ANY OTHER WAY, REQUIRE AN APPLICANT TO
26 DISCLOSE ANY INFORMATION CONTAINED IN SEALED CONVICTION
27 RECORDS. AN APPLICANT NEED NOT, IN ANSWER TO ANY QUESTION

1 CONCERNING CONVICTION RECORDS THAT HAVE BEEN SEALED, INCLUDE
2 A REFERENCE TO OR INFORMATION CONCERNING THE SEALED CONVICTION
3 RECORDS AND MAY STATE THAT THE APPLICANT HAS NOT BEEN
4 CRIMINALLY CONVICTED.

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

16 (III) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I)
17 OF THIS PARAGRAPH (i), THE DEPARTMENT OF EDUCATION MAY REQUIRE
18 A LICENSED EDUCATOR OR AN APPLICANT FOR AN EDUCATOR'S LICENSE
19 WHO FILES A PETITION TO SEAL A CRIMINAL RECORD TO NOTIFY THE
20 DEPARTMENT OF EDUCATION OF THE PENDING PETITION TO SEAL. THE
21 DEPARTMENT HAS THE RIGHT TO INQUIRE INTO THE FACTS OF THE
22 CRIMINAL OFFENSE FOR WHICH THE PETITION TO SEAL IS PENDING. THE
23 EDUCATOR OR APPLICANT HAS NO RIGHT TO PRIVACY OR PRIVILEGE THAT
24 JUSTIFIES HIS OR HER REFUSAL TO ANSWER ANY QUESTIONS CONCERNING
25 THE ARREST AND CRIMINAL RECORDS INFORMATION CONTAINED IN THE
26 PENDING PETITION TO SEAL.

27 (IV) ANY MEMBER OF THE PUBLIC MAY PETITION THE COURT TO

1 UNSEAL ANY FILE THAT HAS BEEN PREVIOUSLY SEALED UPON A SHOWING
2 THAT CIRCUMSTANCES HAVE COME INTO EXISTENCE SINCE THE ORIGINAL
3 SEALING, AND, AS A RESULT, THE PUBLIC INTEREST IN DISCLOSURE NOW
4 OUTWEIGHS THE DEFENDANT'S INTEREST IN PRIVACY.

5 (j) THE OFFICE OF THE STATE COURT ADMINISTRATOR SHALL POST
6 ON ITS WEB SITE A LIST OF ALL PETITIONS TO SEAL CONVICTION RECORDS
7 THAT ARE FILED WITH A DISTRICT COURT. A DISTRICT COURT MAY NOT
8 GRANT A PETITION TO SEAL CONVICTION RECORDS UNTIL AT LEAST THIRTY
9 DAYS AFTER THE POSTING. AFTER THE EXPIRATION OF THIRTY DAYS
10 FOLLOWING THE POSTING, THE PETITION TO SEAL CONVICTION RECORDS
11 AND INFORMATION PERTINENT THERETO SHALL BE REMOVED FROM THE
12 WEB SITE OF THE OFFICE OF THE STATE COURT ADMINISTRATOR.

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

15 (l) NOTWITHSTANDING ANY PROVISION IN THIS SECTION TO THE
16 CONTRARY, IN REGARD TO ANY CONVICTION OF A DEFENDANT RESULTING
17 FROM A SINGLE CASE IN WHICH THE DEFENDANT IS CONVICTED OF MORE
18 THAN ONE OFFENSE, RECORDS OF THE CONVICTION MAY BE SEALED
19 PURSUANT TO THE PROVISIONS OF THIS SECTION ONLY IF THE RECORDS OF
20 EVERY CONVICTION OF THE DEFENDANT RESULTING FROM THAT CASE MAY
21 BE SEALED PURSUANT TO THE PROVISIONS OF THIS PART 3.

22 (2) **Rules of discovery - rules of evidence - witness testimony.**
23 COURT ORDERS SEALING RECORDS OF OFFICIAL ACTIONS PURSUANT TO
24 THIS SECTION DO NOT LIMIT THE OPERATIONS OF:

25 (a) THE COLORADO RULES OF CIVIL PROCEDURE RELATED TO
26 DISCOVERY OR THE COLORADO RULES OF EVIDENCE PROMULGATED BY
27 THE SUPREME COURT OF COLORADO OR ANY OTHER STATE OR FEDERAL

1 COURT; OR

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

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

6 **24-72-609. Sealing of criminal conviction records information**
7 **for posting an intimate photograph of a person on the internet.**

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

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

22 (I) THE PETITION IS FILED; AND

23 (II) THE FILING FEE IS PAID.

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

1 said date.

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