

HOUSE COMMITTEE OF REFERENCE REPORT

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Chairman of Committee

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Date

April 24, 2014

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB14-1378 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

- 1 Amend printed bill, page 2, strike lines 4 through 14 and substitute:  
2 **"18-7-107. Posting a private image - definitions.** (1) (a) AN  
3 ACTOR WHO IS EIGHTEEN YEARS OF AGE OR OLDER COMMITS THE OFFENSE  
4 OF POSTING A PRIVATE IMAGE IF HE OR SHE, WITH THE INTENT TO HARASS  
5 OR HUMILIATE THE PERSON, WHICH CAUSES EMOTIONAL DISTRESS, OR FOR  
6 EXTORTION PURPOSES, OR FOR PECUNIARY GAIN, POSTS OR ADDS TO A  
7 POST, WHICH IS THEN DISTRIBUTED THROUGH THE USE OF SOCIAL MEDIA,  
8 ANY PHOTOGRAPH, VIDEO, OR OTHER IMAGE CONTAINING THE INTIMATE  
9 PARTS, AS DEFINED IN SECTION 18-3-401 (2), OF AN IDENTIFIED OR  
10 IDENTIFIABLE PERSON EIGHTEEN YEARS OF AGE OR OLDER, WITHOUT THE  
11 DEPICTED PERSON'S CONSENT, AFTER THE DEPICTED PERSON  
12 COMMUNICATED TO THE ACTOR AN EXPECTATION THAT THE IMAGE WOULD  
13 REMAIN PRIVATE, OR WHEN THE DEPICTED PERSON OTHERWISE HAD A  
14 REASONABLE EXPECTATION THAT THE IMAGE WOULD REMAIN PRIVATE,  
15 AND SUCH CONDUCT RESULTS IN EMOTIONAL DISTRESS OF THE PERSON;  
16 EXTORTION OF THE PERSON; OR PECUNIARY BENEFIT TO THE ACTOR."
- 17 Page 2, line 18, after "DEFENDANT" insert "UP TO".
- 18 Page 3, after line 3 insert:  
19 "(3) (a) AN INDIVIDUAL WHOSE PRIVATE IMAGES HAVE BEEN  
20 POSTED IN ACCORDANCE WITH THIS SECTION MAY BRING A CIVIL ACTION  
21 AGAINST THE PERSON WHO CAUSED THE POSTING OF THE PRIVATE IMAGES  
22 AND IS ENTITLED TO INJUNCTIVE RELIEF, THE GREATER OF TEN THOUSAND  
23 DOLLARS OR ACTUAL DAMAGES INCURRED AS A RESULT OF THE POSTING  
24 OF THE PRIVATE IMAGES, EXEMPLARY DAMAGES, AND REASONABLE  
25 ATTORNEY'S FEES AND COSTS.

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

4 (4) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO IMPOSE  
5 LIABILITY ON THE PROVIDER OF AN INTERACTIVE COMPUTER SERVICE, AS  
6 DEFINED IN THE 47 U.S.C. 230 (f) (2), AN INFORMATION SERVICE, AS  
7 DEFINED IN 47 U.S.C. 153, OR A TELECOMMUNICATIONS SERVICE, AS  
8 DEFINED IN 47 U.S.C. 153, FOR CONTENT PROVIDED BY ANOTHER  
9 PERSON."

10 Renumber succeeding subsection accordingly.

11 Page 8, after line 11 insert:

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

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

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

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

30 (I) THE PETITION IS FILED; AND

31 (II) THE FILING FEE IS PAID."

32 Renumber succeeding sections accordingly.

33 Page 8, line 13, strike "2014," and substitute "2014; except that section  
34 2 takes effect only if Senate Bill 14-206 does not become law, and section  
35 3 of this act takes effect only if Senate Bill 14-206 becomes law."

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