

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 19-0162.01 Michael Dohr x4347

SENATE BILL 19-100

SENATE SPONSORSHIP

Gardner,

HOUSE SPONSORSHIP

(None),

Senate Committees

State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF THE "UNIFORM CIVIL REMEDIES FOR**
102 **UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES ACT".**

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://leg.colorado.gov/>.)

Colorado Commission on Uniform State Laws. The bill creates the "Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act". An individual whose body is shown in whole or in part in an intimate image and who has suffered harm from a person's intentional disclosure or threatened disclosure of that intimate image without the depicted individual's consent has a cause of action against that person if

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

1 (1) "CONSENT" MEANS AFFIRMATIVE, CONSCIOUS, AND
2 VOLUNTARY AUTHORIZATION BY AN INDIVIDUAL WITH LEGAL CAPACITY
3 TO GIVE AUTHORIZATION.

4 (2) "DEPICTED INDIVIDUAL" MEANS AN INDIVIDUAL WHOSE BODY
5 IS SHOWN IN WHOLE OR IN PART IN AN INTIMATE IMAGE.

6 (3) "DISCLOSURE" MEANS TRANSFER, PUBLICATION, OR
7 DISTRIBUTION TO ANOTHER PERSON. "DISCLOSE" HAS A CORRESPONDING
8 MEANING.

9 (4) "IDENTIFIABLE" MEANS RECOGNIZABLE BY A PERSON OTHER
10 THAN THE DEPICTED INDIVIDUAL:

11 (a) FROM AN INTIMATE IMAGE ITSELF; OR

12 (b) FROM THE INTIMATE IMAGE AND IDENTIFYING CHARACTERISTIC
13 DISPLAYED IN CONNECTION WITH THE INTIMATE IMAGE.

14 (5) "IDENTIFYING CHARACTERISTIC" MEANS INFORMATION THAT
15 MAY BE USED TO IDENTIFY A DEPICTED INDIVIDUAL.

16 (6) "INDIVIDUAL" MEANS A HUMAN BEING.

17 (7) "INTIMATE IMAGE" MEANS A PHOTOGRAPH, FILM, VIDEO
18 RECORDING, OR OTHER SIMILAR MEDIUM THAT SHOWS:

19 (a) THE UNCOVERED GENITALS, PUBIC AREA, ANUS, OR FEMALE
20 POSTPUBESCENT NIPPLE OF A DEPICTED INDIVIDUAL; OR

21 (b) THE DEPICTED INDIVIDUAL ENGAGING IN OR BEING SUBJECTED
22 TO SEXUAL CONDUCT.

23 (8) "PERSON" MEANS AN INDIVIDUAL, ESTATE, BUSINESS OR
24 NONPROFIT ENTITY, PUBLIC CORPORATION, GOVERNMENT OR
25 GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR OTHER
26 LEGAL ENTITY.

27 (9) "SEXUAL CONDUCT" INCLUDES:

- 1 (a) MASTURBATION;
- 2 (b) GENITAL, ANAL, OR ORAL SEX;
- 3 (c) SEXUAL PENETRATION OF, OR WITH, AN OBJECT;
- 4 (d) BESTIALITY; OR
- 5 (e) THE TRANSFER OF SEMEN ONTO A DEPICTED INDIVIDUAL.

6 **13-21-1403. Civil action - definitions.** (1) IN THIS SECTION,
7 UNLESS THE CONTEXT OTHERWISE REQUIRES:

8 (a) "HARM" MEANS PHYSICAL HARM, ECONOMIC HARM, AND
9 EMOTIONAL DISTRESS WHETHER OR NOT ACCOMPANIED BY PHYSICAL OR
10 ECONOMIC HARM;

11 (b) "PRIVATE" MEANS:

12 (I) CREATED OR OBTAINED UNDER CIRCUMSTANCES IN WHICH THE
13 DEPICTED INDIVIDUAL HAD A REASONABLE EXPECTATION OF PRIVACY; OR

14 (II) MADE ACCESSIBLE THROUGH THEFT, BRIBERY, EXTORTION,
15 FRAUD, FALSE PRETENSES, VOYEURISM, OR EXCEEDING AUTHORIZED
16 ACCESS TO AN ACCOUNT, MESSAGE, FILE, DEVICE, RESOURCE, OR
17 PROPERTY.

18 (2) EXCEPT AS OTHERWISE PROVIDED IN SECTION 13-21-1404, A
19 DEPICTED INDIVIDUAL WHO IS IDENTIFIABLE AND WHO HAS SUFFERED
20 HARM FROM A PERSON'S INTENTIONAL DISCLOSURE OR THREATENED
21 DISCLOSURE OF AN INTIMATE IMAGE THAT WAS PRIVATE WITHOUT THE
22 DEPICTED INDIVIDUAL'S CONSENT HAS A CAUSE OF ACTION AGAINST THE
23 PERSON IF THE PERSON KNEW OR ACTED WITH RECKLESS DISREGARD FOR
24 WHETHER:

25 (a) THE DEPICTED INDIVIDUAL DID NOT CONSENT TO THE
26 DISCLOSURE;

27 (b) THE INTIMATE IMAGE WAS PRIVATE; AND

1 (c) THE DEPICTED INDIVIDUAL WAS IDENTIFIABLE.

2 (3) THE FOLLOWING CONDUCT BY A DEPICTED INDIVIDUAL DOES
3 NOT ESTABLISH BY ITSELF THAT THE INDIVIDUAL CONSENTED TO THE
4 DISCLOSURE OF THE INTIMATE IMAGE WHICH IS THE SUBJECT OF THE
5 ACTION OR THAT THE INDIVIDUAL LACKED A REASONABLE EXPECTATION
6 OF PRIVACY:

7 (a) CONSENT TO THE CREATION OF THE IMAGE; OR

8 (b) PREVIOUS CONSENSUAL DISCLOSURE OF THE IMAGE.

9 (4) A DEPICTED INDIVIDUAL WHO DOES NOT CONSENT TO SEXUAL
10 CONDUCT OR THE UNCOVERING OF THE PART OF THE BODY DEPICTED IN
11 THE INTIMATE IMAGE OF THE INDIVIDUAL RETAINS A REASONABLE
12 EXPECTATION OF PRIVACY EVEN IF THE IMAGE WAS CREATED WHEN THE
13 INDIVIDUAL WAS IN A PUBLIC PLACE.

14 **13-21-1404. Exceptions to liability - definitions.** (1) IN THIS
15 SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

16 (a) "CHILD" MEANS AN UNEMANCIPATED INDIVIDUAL WHO IS LESS
17 THAN EIGHTEEN YEARS OF AGE.

18 (b) "PARENT" MEANS AN INDIVIDUAL RECOGNIZED AS A PARENT
19 UNDER LAW OF THIS STATE OTHER THAN THIS PART 14.

20 (2) A PERSON IS NOT LIABLE UNDER THIS PART 14 IF THE PERSON
21 PROVES THAT DISCLOSURE OF, OR A THREAT TO DISCLOSE, THE INTIMATE
22 IMAGE WAS:

23 (a) MADE IN GOOD FAITH IN:

24 (I) LAW ENFORCEMENT;

25 (II) A LEGAL PROCEEDING; OR

26 (III) MEDICAL EDUCATION OR TREATMENT; OR

27 (b) MADE IN GOOD FAITH IN THE REPORTING OR INVESTIGATION OF:

- 1 (I) UNLAWFUL CONDUCT;
2 (II) UNSOLICITED AND UNWELCOME CONDUCT;
3 (III) RELATED TO A MATTER OF PUBLIC CONCERN OR PUBLIC
4 INTEREST; OR
5 (IV) REASONABLY INTENDED TO ASSIST THE DEPICTED
6 INDIVIDUAL.

7 (3) SUBJECT TO SUBSECTION (4) OF THIS SECTION, A DEFENDANT
8 WHO IS A PARENT, LEGAL GUARDIAN, OR INDIVIDUAL WITH LEGAL
9 CUSTODY OF A CHILD IS NOT LIABLE UNDER THIS PART 14 FOR A
10 DISCLOSURE OR THREATENED DISCLOSURE OF AN INTIMATE IMAGE OF THE
11 CHILD.

12 (4) IF A DEFENDANT ASSERTS AN EXCEPTION TO LIABILITY UNDER
13 SUBSECTION (3) OF THIS SECTION, THE EXCEPTION DOES NOT APPLY IF THE
14 PLAINTIFF PROVES THE DISCLOSURE WAS:

- 15 (a) PROHIBITED BY LAW OTHER THAN THIS PART 14; OR
16 (b) MADE FOR THE PURPOSES OF SEXUAL AROUSAL, SEXUAL
17 GRATIFICATION, HUMILIATION, DEGRADATION, OR MONETARY OR
18 COMMERCIAL GAIN.

19 (5) DISCLOSURE OF, OR A THREAT TO DISCLOSE, AN INTIMATE
20 IMAGE IS NOT A MATTER OF PUBLIC CONCERN OR PUBLIC INTEREST SOLELY
21 BECAUSE THE DEPICTED INDIVIDUAL IS A PUBLIC FIGURE.

22 **13-21-1405. Plaintiff's privacy.** (1) IN AN ACTION UNDER THIS
23 PART 14:

- 24 (a) A PLAINTIFF MAY PROCEED USING A PSEUDONYM IN PLACE OF
25 THE TRUE NAME OF THE PLAINTIFF;
26 (b) THE COURT MAY EXCLUDE OR REDACT FROM ALL PLEADINGS
27 AND DOCUMENTS FILED IN THE ACTION OTHER IDENTIFYING

1 CHARACTERISTICS OF THE PLAINTIFF;

2 (c) A PLAINTIFF TO WHOM SUBSECTION (1)(a) OR (1)(b) OF THIS
3 SECTION APPLIES SHALL FILE WITH THE COURT AND SERVE ON THE
4 DEFENDANT A CONFIDENTIAL INFORMATION FORM THAT INCLUDES THE
5 EXCLUDED OR REDACTED PLAINTIFF'S NAME AND OTHER IDENTIFYING
6 CHARACTERISTICS; AND

7 (d) THE COURT MAY MAKE FURTHER ORDERS AS NECESSARY TO
8 PROTECT THE IDENTITY AND PRIVACY OF A PLAINTIFF.

9 **13-21-1406. Remedies.** (1) IN AN ACTION UNDER THIS PART 14,
10 A PREVAILING PLAINTIFF MAY RECOVER:

11 (a) THE GREATER OF:

12 (I) ECONOMIC AND NONECONOMIC DAMAGES PROXIMATELY
13 CAUSED BY THE DEFENDANT'S DISCLOSURES OR THREATENED
14 DISCLOSURES, INCLUDING DAMAGES FOR EMOTIONAL DISTRESS WHETHER
15 OR NOT ACCOMPANIED BY OTHER DAMAGES; OR

16 (II) (A) STATUTORY DAMAGES NOT TO EXCEED TEN THOUSAND
17 DOLLARS AGAINST EACH DEFENDANT FOUND LIABLE UNDER THIS PART 14
18 FOR ALL DISCLOSURES AND THREATENED DISCLOSURES BY THE
19 DEFENDANT OF WHICH THE PLAINTIFF KNEW OR REASONABLY SHOULD
20 HAVE KNOWN WHEN FILING THE ACTION OR WHICH BECAME KNOWN
21 DURING THE PENDENCY OF THE ACTION.

22 (B) IN DETERMINING THE AMOUNT OF STATUTORY DAMAGES
23 UNDER THIS SUBSECTION (1)(a)(II), CONSIDERATION MUST BE GIVEN TO
24 THE AGE OF THE PARTIES AT THE TIME OF THE DISCLOSURE OR
25 THREATENED DISCLOSURE, THE NUMBER OF DISCLOSURES OR THREATENED
26 DISCLOSURES MADE BY THE DEFENDANT, THE BREADTH OF DISTRIBUTION
27 OF THE IMAGE BY THE DEFENDANT, AND OTHER EXACERBATING OR

1 MITIGATING FACTORS.

2 (b) AN AMOUNT EQUAL TO ANY MONETARY GAIN MADE BY THE
3 DEFENDANT FROM DISCLOSURE OF THE INTIMATE IMAGE; AND

4 (c) PUNITIVE DAMAGES AS ALLOWED UNDER THE LAW OF THIS
5 STATE OTHER THAN THIS PART 14.

6 (2) IN AN ACTION UNDER THIS PART 14, THE COURT MAY AWARD
7 A PREVAILING PLAINTIFF:

8 (a) REASONABLE ATTORNEY FEES AND COSTS; AND

9 (b) ADDITIONAL RELIEF, INCLUDING INJUNCTIVE RELIEF.

10 (3) THIS PART 14 DOES NOT AFFECT A RIGHT OR REMEDY
11 AVAILABLE UNDER STATE LAW OTHER THAN THIS PART 14.

12 **13-21-1407. Statute of limitations.** (1) AN ACTION UNDER
13 SECTION 13-21-1403 (2) FOR:

14 (a) AN UNAUTHORIZED DISCLOSURE MAY NOT BE BROUGHT LATER
15 THAN FOUR YEARS FROM THE DATE THE DISCLOSURE WAS DISCOVERED OR
16 SHOULD HAVE BEEN DISCOVERED WITH THE EXERCISE OF REASONABLE
17 DILIGENCE; AND

18 (b) A THREAT TO DISCLOSE MAY NOT BE BROUGHT LATER THAN
19 FOUR YEARS FROM THE DATE OF THE THREAT TO DISCLOSE.

20 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS
21 SECTION, THIS SECTION IS SUBJECT TO THE TOLLING STATUTES OF THIS
22 STATE.

23 (3) IN AN ACTION UNDER SECTION 13-21-1403 (2) BY A DEPICTED
24 INDIVIDUAL WHO WAS A MINOR ON THE DATE OF THE DISCLOSURE OR
25 THREAT TO DISCLOSE, THE TIME SPECIFIED IN SUBSECTION (1) OF THIS
26 SECTION DOES NOT BEGIN TO RUN UNTIL THE DEPICTED INDIVIDUAL
27 ATTAINS THE AGE OF MAJORITY.

1 **13-21-1408. Construction.** THIS PART 14 MUST BE CONSTRUED TO
2 BE CONSISTENT WITH THE FEDERAL "COMMUNICATIONS DECENCY ACT OF
3 1996", 47 U.S.C. SEC. 230.

4 **13-21-1409. Uniformity of application and construction.** IN
5 APPLYING AND CONSTRUING THIS PART 14, CONSIDERATION MUST BE
6 GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT
7 TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

8 **SECTION 2.** In Colorado Revised Statutes, 18-7-107, **repeal**
9 (4)(a) as follows:

10 **18-7-107. Posting a private image for harassment - definitions.**

11 ~~(4) (a) An individual whose private intimate parts have been posted or an~~
12 ~~individual who has had an image displaying sexual acts of the individual~~
13 ~~posted in accordance with this section may bring a civil action against the~~
14 ~~person who caused the posting of the private images and is entitled to~~
15 ~~injunctive relief, the greater of ten thousand dollars or actual damages~~
16 ~~incurred as a result of the posting of the private images, exemplary~~
17 ~~damages, and reasonable attorney fees and costs.~~

18 **SECTION 3.** In Colorado Revised Statutes, 18-7-108, **repeal**
19 (4)(a) as follows:

20 **18-7-108. Posting a private image for pecuniary gain -**

21 **definitions.** ~~(4) (a) An individual whose private intimate parts have been~~
22 ~~posted or an individual who has had an image displaying sexual acts of~~
23 ~~the individual posted in accordance with this section may bring a civil~~
24 ~~action against the person who caused the posting of the private images~~
25 ~~and is entitled to injunctive relief, the greater of ten thousand dollars or~~
26 ~~actual damages incurred as a result of the posting of the private images,~~
27 ~~exemplary damages, and reasonable attorney fees and costs.~~

1 **SECTION 4. Applicability.** This act applies to acts committed
2 on or after the effective date of this act.

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