



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Revised Fiscal Note

(replaces fiscal note dated January 16, 2024)

Drafting Number:	LLS 24-0730	Date:	April 3, 2024
Prime Sponsors:	Sen. Winter F.; Cutter Rep. Duran; Willford	Bill Status:	House Judiciary
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Bill Topic: ONLINE-FACILITATED MISCONDUCT & REMOTE TRACKING

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> State Transfer	<input checked="" type="checkbox"/> Local Government
	<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> TABOR Refund	<input type="checkbox"/> Statutory Public Entity

The bill requires online dating and social media services to adopt certain policies; creates a civil action; and updates certain criminal offenses around posting an image online to include computer generated or digitally altered images. Starting in FY 2024-25, the bill will increase state revenue and state and local expenditures on an ongoing basis.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: This revised fiscal note reflects the reengrossed bill.

Summary of Legislation

The bill requires online dating and social media services to adopt certain policies; allows individuals to bring a civil suit if they were tracked without their consent; and updates certain criminal offenses regarding posting an image online to include computer-generated or digitally altered images, as described below.

Policies for online dating and social media services. The bill requires an online dating service that has a member within the state of Colorado to adopt a safety policy and have the policy effective by January 1, 2025, or within one year after the service registers its first member in Colorado. The bill outlines what the policy must include and requires the service to post a link to its policy on the front page of its website. The service must submit the URL to its safety policy to the Attorney General within 15 days of its adoption, and within 7 days of any changes to the URL.

By January 31, 2026, and each year thereafter, online dating services must annually report to the Attorney General concerning member safety, the service's compliance with its safety policy, and any other requirements the Attorney General adopts by rule. The Attorney General must post links to safety policies and annual reporting.

Prior to commencing an enforcement action against an online dating service, the Attorney General or district attorney's office must issue a notice of violation if it is determined that it is possible for the service to cure the violation. Enforcement actions may be brought if the service fails to cure the violation within 30 days.

The bill also requires social media companies to prohibit posting of, and have a policy that allows a user to flag content of, a computer generated or digitally altered sexual image on its platform. An online dating or social media service that fails to comply with these requirements engages in a deceptive trade practice.

Civil actions. The bill allows a person who was tracked by a tracking device or tracking application may bring a claim for damages against the actor who installed the tracking device without the person's consent.

Criminal actions. Finally, the bill modifies the crimes of posting a private image for harassment and posting a private image for pecuniary gain so that it is not a defense to an alleged violation that an image is digitally created or altered. For the crime of posting, possession, or exchange of a private image by a juvenile, the bill clarifies that sexually explicit images include real or simulated images.

Comparable Crime Analysis

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or creates a new factual basis for an existing crime. The following section outlines crimes that are comparable to the offense in this bill and discusses assumptions on future rates of criminal convictions resulting from the bill.

Prior conviction data and assumptions. This bill creates a new factual basis for three existing offenses by adding simulated images to the offenses. Sentencing and demographic data for each offense can be found below.

- **Posting a private image for harassment.** From FY 2020-21 to FY 2022-23, 138 individuals have been convicted and sentenced for this class 1 misdemeanor. Of the persons convicted, 119 were male and 19 were female. Demographically, 93 were White, 27 were Black/African American, 12 were Hispanic, 1 was Asian, 1 was American Indian, and 4 were classified as "Other."
- **Posting a private image for pecuniary gain.** From FY 2020-21 to FY 2022-23, 2 individuals have been convicted and sentenced for this class 1 misdemeanor. Of the persons convicted, 1 was a white male and 1 was a white female.
- **Posting, possession, or exchange of a private image by a juvenile.** Due to confidentiality concerns around crimes concerning juveniles, sentencing and demographic data is unavailable for these offenses that range from a civil infraction to a class 1 misdemeanor. However, the courts do report that between 2021 and 2024, there were 107 cases filed for this offense, or about 36 cases per year.

Assumptions. Based on analysis from the courts and district attorneys, this analysis assumes that adding simulated sexual images to these offenses will have a minimal impact on convictions. Because the bill is not expected to have a tangible impact on criminal justice-related revenue or expenditures at the state or local levels, these potential impacts are not discussed further in this fiscal note. Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

State Revenue

The bill may increase revenue from civil penalties and filing fees related to the deceptive trade practice and the civil actions created by the bill.

Civil penalties. Under the Colorado Consumer Protection Act, a person committing a deceptive trade practice may be subject to a civil penalty of up to \$20,000 for each violation. Additional penalties may be imposed for subsequent violations of a court order or injunction. This revenue is classified as a damage award and not subject to TABOR. Given the uncertainty about the number of cases that may be pursued by the Attorney General and district attorneys, as well as the wide range in potential penalty amounts, the fiscal note cannot estimate the potential impact of these civil penalties.

Filing fees. The bill may increase revenue to the Judicial Department from an increase in civil case filings. Revenue from filing fees is subject to TABOR.

State Expenditures

Starting in FY 2024-25, workload in the Department of Law and the Judicial Department will increase as described below.

Department of Law. Workload in the Department of Law will increase to collect and post online dating service safety policies and annual reporting; this work can be accomplished within existing resources. To the extent that deceptive trade practice complaints are filed, workload will increase for the department to review complaints and prioritize investigations as necessary within the overall number of deceptive trade practice complaints and available resources.

Judicial Department. Trial courts may experience an increase in workload to the extent additional civil cases are filed under the Colorado Consumer Protection Act from the addition of new deceptive trade practices, or from other civil actions allowed by the bill. The fiscal note assumes that online dating services, social media companies, and individuals will comply with the law and any increase will be minimal.

Local Government

Similar to the state, to the extent district attorneys receive deceptive trade practice complaints related to the new deceptive trade practice under the bill, workload will increase to investigate complaints and seek relief when appropriate. It is assumed most such cases will be handled at the state level by the Attorney General.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed, and applies to offenses committed and claims made on or after that date.

State and Local Government Contacts

District Attorneys

Judicial

Law

The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit the [General Assembly website](#).