

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

ENGROSSED

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

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.

SENATE
Amended 2nd Reading
February 11, 2019

the person knew:

- ! The depicted individual did not consent to the disclosure;
- ! The intimate image was private; and
- ! The depicted individual was identifiable.

The bill provides an exception to the civil action if the disclosure is made in good faith under various circumstances or if the person disclosing the image is a parent or guardian and has not disclosed the image for purposes of sexual arousal, sexual gratification, humiliation, degradation, or monetary or commercial gain.

A successful plaintiff may recover:

- ! The greater of:
 - ! Economic and noneconomic damages proximately caused by the defendant's disclosures or threatened disclosures, including damages for emotional distress whether or not accompanied by other damages; or
 - ! Statutory damages not to exceed \$10,000 against each defendant found liable for all disclosures or threatened disclosures by the defendant;
- ! An amount equal to the gain made by the defendant from disclosure of the intimate image if applicable;
- ! Punitive damages;
- ! Reasonable attorney fees and costs; and
- ! Additional relief, including injunctive relief.

The civil action has a 4-year statute of limitation.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 14 to article
3 21 of title 13 as follows:

4 PART 14

5 UNIFORM CIVIL REMEDIES FOR UNAUTHORIZED

6 DISCLOSURE OF INTIMATE IMAGES

7 **13-21-1401. Short title.** THE SHORT TITLE OF THIS PART 14 IS THE
8 "UNIFORM CIVIL REMEDIES FOR UNAUTHORIZED DISCLOSURE OF
9 INTIMATE IMAGES ACT".

10 **13-21-1402. Definitions.** AS USED IN THIS PART 14, UNLESS THE
11 CONTEXT OTHERWISE REQUIRES:

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 (5) THIS SECTION IS NOT THE EXCLUSIVE REMEDY FOR AN
15 INTENTIONAL DISCLOSURE OR THREATENED DISCLOSURE OF AN INTIMATE
16 IMAGE, A PLAINTIFF MAY ALSO BRING ANY OTHER AVAILABLE COMMON
17 LAW OR STATUTORY CLAIMS.

18 **13-21-1404. Exceptions to liability - definitions.** (1) IN THIS
19 SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

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

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

27 (a) MADE IN GOOD FAITH IN:

- 1 (I) LAW ENFORCEMENT;
2 (II) A LEGAL PROCEEDING; OR
3 (III) MEDICAL EDUCATION OR TREATMENT; OR
4 (b) MADE IN GOOD FAITH IN THE REPORTING OR INVESTIGATION OF:
5 (I) UNLAWFUL CONDUCT;
6 (II) UNSOLICITED AND UNWELCOME CONDUCT;
7 (III) RELATED TO A MATTER OF PUBLIC CONCERN OR PUBLIC
8 INTEREST; OR
9 (IV) REASONABLY INTENDED TO ASSIST THE DEPICTED
10 INDIVIDUAL.

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

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

- 19 (a) PROHIBITED BY LAW OTHER THAN THIS PART 14; OR
20 (b) MADE, POSSESSED, OR DISTRIBUTED FOR THE PURPOSES OF
21 SEXUAL AROUSAL, SEXUAL GRATIFICATION, HUMILIATION, DEGRADATION,
22 OR MONETARY OR COMMERCIAL GAIN.

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

26 **13-21-1405. Plaintiff's privacy.** (1) IN AN ACTION UNDER THIS
27 PART 14:

1 (a) A PLAINTIFF MAY PROCEED USING A PSEUDONYM IN PLACE OF
2 THE TRUE NAME OF THE PLAINTIFF;

3 (b) THE COURT MAY EXCLUDE OR REDACT FROM ALL PLEADINGS
4 AND DOCUMENTS FILED IN THE ACTION OTHER IDENTIFYING
5 CHARACTERISTICS OF THE PLAINTIFF;

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

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

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

15 (a) THE GREATER OF:

16 (I) ECONOMIC AND NONECONOMIC DAMAGES PROXIMATELY
17 CAUSED BY THE DEFENDANT'S DISCLOSURES OR THREATENED
18 DISCLOSURES, INCLUDING DAMAGES FOR EMOTIONAL DISTRESS WHETHER
19 OR NOT ACCOMPANIED BY OTHER DAMAGES; OR

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

26 (B) IN DETERMINING THE AMOUNT OF STATUTORY DAMAGES
27 UNDER THIS SUBSECTION (1)(a)(II), CONSIDERATION MUST BE GIVEN TO

1 THE AGE OF THE PARTIES AT THE TIME OF THE DISCLOSURE OR
2 THREATENED DISCLOSURE, THE NUMBER OF DISCLOSURES OR THREATENED
3 DISCLOSURES MADE BY THE DEFENDANT, THE BREADTH OF DISTRIBUTION
4 OF THE IMAGE BY THE DEFENDANT, AND OTHER EXACERBATING OR
5 MITIGATING FACTORS.

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

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

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

12 (a) REASONABLE ATTORNEY FEES AND COSTS; AND

13 (b) ADDITIONAL RELIEF, INCLUDING INJUNCTIVE RELIEF.

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

16 **13-21-1407. Statute of limitations.** (1) AN ACTION UNDER
17 SECTION 13-21-1403 (2) FOR:

18 (a) AN UNAUTHORIZED DISCLOSURE MAY NOT BE BROUGHT LATER
19 THAN FOUR YEARS FROM THE DATE THE DISCLOSURE WAS DISCOVERED OR
20 SHOULD HAVE BEEN DISCOVERED WITH THE EXERCISE OF REASONABLE
21 DILIGENCE; AND

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

24 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS
25 SECTION, THIS SECTION IS SUBJECT TO THE TOLLING STATUTES OF THIS
26 STATE.

27 (3) IN AN ACTION UNDER SECTION 13-21-1403 (2) BY A DEPICTED

1 INDIVIDUAL WHO WAS A MINOR ON THE DATE OF THE DISCLOSURE OR
2 THREAT TO DISCLOSE, THE TIME SPECIFIED IN SUBSECTION (1) OF THIS
3 SECTION DOES NOT BEGIN TO RUN UNTIL THE DEPICTED INDIVIDUAL
4 ATTAINS THE AGE OF MAJORITY.

5 **13-21-1408. Construction.** THIS PART 14 MUST BE CONSTRUED TO
6 BE CONSISTENT WITH THE FEDERAL "COMMUNICATIONS DECENCY ACT OF
7 1996", 47 U.S.C. SEC. 230.

8 **13-21-1409. Uniformity of application and construction.** IN
9 APPLYING AND CONSTRUING THIS PART 14, CONSIDERATION MUST BE
10 GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT
11 TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

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

14 **18-7-107. Posting a private image for harassment - definitions.**
15 (4) (a) ~~An individual whose private intimate parts have been posted or an~~
16 ~~individual who has had an image displaying sexual acts of the individual~~
17 ~~posted in accordance with this section may bring a civil action against the~~
18 ~~person who caused the posting of the private images and is entitled to~~
19 ~~injunctive relief, the greater of ten thousand dollars or actual damages~~
20 ~~incurred as a result of the posting of the private images, exemplary~~
21 ~~damages, and reasonable attorney fees and costs.~~

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

24 **18-7-108. Posting a private image for pecuniary gain -**
25 **definitions.** (4) (a) ~~An individual whose private intimate parts have been~~
26 ~~posted or an individual who has had an image displaying sexual acts of~~
27 ~~the individual posted in accordance with this section may bring a civil~~

1 ~~action against the person who caused the posting of the private images~~
2 ~~and is entitled to injunctive relief, the greater of ten thousand dollars or~~
3 ~~actual damages incurred as a result of the posting of the private images,~~
4 ~~exemplary damages, and reasonable attorney fees and costs.~~

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

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