

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**

**King and Hodge**,

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**House Committees**  
Judiciary

**Senate Committees**  
Judiciary

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**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.**

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**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.*

HOUSE  
Amended 3rd Reading  
April 28, 2014

HOUSE  
Amended 2nd Reading  
April 25, 2014

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.

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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 OF AN IDENTIFIED OR IDENTIFIABLE PERSON EIGHTEEN YEARS OF  
12 AGE OR OLDER, WITHOUT THE DEPICTED PERSON'S CONSENT, AFTER THE  
13 DEPICTED PERSON COMMUNICATED TO THE ACTOR AN EXPECTATION THAT  
14 THE IMAGE WOULD REMAIN PRIVATE, OR WHEN THE DEPICTED PERSON  
15 OTHERWISE HAD A REASONABLE EXPECTATION THAT THE IMAGE WOULD  
16 REMAIN PRIVATE, AND SUCH CONDUCT RESULTS IN EMOTIONAL DISTRESS  
17 OF THE PERSON; EXTORTION OF THE PERSON; OR PECUNIARY BENEFIT TO  
18 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. THE FINES COLLECTED PURSUANT TO THIS  
6 PARAGRAPH (b) SHALL BE CREDITED TO THE CRIME VICTIM COMPENSATION  
7 FUND CREATED IN SECTION 24-4.1-117, C.R.S.

8 (2) IT SHALL NOT BE AN OFFENSE UNDER THIS SECTION IF THE  
9 PHOTOGRAPH, VIDEO, OR IMAGE IS RELATED TO A NEWSWORTHY EVENT.

10 (3) NOTHING IN THIS SECTION PRECLUDES PUNISHMENT UNDER  
11 ANY SECTION OF LAW PROVIDING FOR GREATER PUNISHMENT.

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

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

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

27 (6) FOR PURPOSES OF THIS SECTION, UNLESS THE CONTEXT

1 OTHERWISE REQUIRES:

2 (a) "INTIMATE PARTS" MEANS EXTERNAL GENITALIA OR THE  
3 PERINEUM OR THE ANUS OR THE BUTTOCKS OR THE PUBES OF ANY PERSON  
4 OR THE BREAST OF A FEMALE.

5 (b) "SOCIAL MEDIA" MEANS ANY ELECTRONIC MEDIUM, INCLUDING  
6 AN INTERACTIVE COMPUTER SERVICE, TELEPHONE NETWORK, OR DATA  
7 NETWORK, THAT ALLOWS USERS TO CREATE, SHARE, AND VIEW  
8 USER-GENERATED CONTENT, INCLUDING BUT NOT LIMITED TO VIDEOS,  
9 STILL PHOTOGRAPHS, BLOGS, VIDEO BLOGS, PODCASTS, INSTANT  
10 MESSAGES, ELECTRONIC MAIL, OR INTERNET WEB SITE PROFILES.

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

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

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

1 THE COURT SHALL ORDER THE RECORD SEALED AFTER:

2 (I) THE PETITION IS FILED; AND

3 (II) THE FILING FEE IS PAID.

4 (c) A PETITION TO SEAL A CONVICTION RECORD PURSUANT TO THIS  
5 SECTION MUST INCLUDE A LISTING OF EACH CUSTODIAN OF THE RECORDS  
6 TO WHOM THE SEALING ORDER IS DIRECTED AND ANY INFORMATION THAT  
7 ACCURATELY AND COMPLETELY IDENTIFIES THE RECORDS TO BE SEALED.  
8 THE DEFENDANT SHALL SUBMIT A VERIFIED COPY OF THE DEFENDANT'S  
9 CRIMINAL HISTORY WITH THE PETITION AT THE TIME OF FILING, CURRENT  
10 THROUGH AT LEAST THE TWENTIETH DAY PRIOR TO THE DATE OF THE  
11 FILING OF THE PETITION, TO THE COURT BUT NO LATER THAN THE TENTH  
12 DAY AFTER THE PETITION IS FILED. THE DEFENDANT IS RESPONSIBLE FOR  
13 OBTAINING AND PAYING FOR THE VERIFIED COPY OF HIS OR HER CRIMINAL  
14 HISTORY. WHENEVER A COURT ENTERS AN ORDER SEALING CONVICTION  
15 RECORDS PURSUANT TO THIS SECTION, THE DEFENDANT SHALL PROVIDE  
16 THE COLORADO BUREAU OF INVESTIGATION AND EACH CUSTODIAN OF THE  
17 CONVICTION RECORDS WITH A COPY OF THE ORDER AND SHALL PAY TO THE  
18 BUREAU ANY COSTS RELATED TO THE SEALING OF HIS OR HER CRIMINAL  
19 CONVICTION RECORDS THAT ARE IN THE CUSTODY OF THE BUREAU.  
20 THEREAFTER, THE DEFENDANT MAY REQUEST AND THE COURT MAY GRANT  
21 AN ORDER SEALING THE CIVIL CASE IN WHICH THE CONVICTION RECORDS  
22 WERE SEALED.

23 (d) AN ORDER SEALING CONVICTION RECORDS DOES NOT DENY  
24 ACCESS TO THE CRIMINAL RECORDS OF A DEFENDANT BY ANY COURT, LAW  
25 ENFORCEMENT AGENCY, CRIMINAL JUSTICE AGENCY, PROSECUTING  
26 ATTORNEY, OR PARTY OR AGENCY REQUIRED BY LAW TO CONDUCT A  
27 CRIMINAL HISTORY RECORD CHECK ON AN INDIVIDUAL. AN ORDER SEALING

1 CONVICTION RECORDS DOES NOT VACATE A CONVICTION. A CONVICTION  
2 SEALED PURSUANT TO THIS SECTION MAY BE USED BY A CRIMINAL JUSTICE  
3 AGENCY, LAW ENFORCEMENT AGENCY, COURT, OR PROSECUTING  
4 ATTORNEY FOR ANY LAWFUL PURPOSE RELATING TO THE INVESTIGATION  
5 OR PROSECUTION OF ANY CASE, INCLUDING BUT NOT LIMITED TO ANY  
6 SUBSEQUENT CASE THAT IS FILED AGAINST THE DEFENDANT, OR FOR ANY  
7 OTHER LAWFUL PURPOSE WITHIN THE SCOPE OF HIS, HER, OR ITS DUTIES. IF  
8 A DEFENDANT IS CONVICTED OF A NEW CRIMINAL OFFENSE AFTER AN  
9 ORDER SEALING CONVICTION RECORDS IS ENTERED, THE COURT SHALL  
10 ORDER THE CONVICTION RECORDS TO BE UNSEALED. A PARTY OR AGENCY  
11 REQUIRED BY LAW TO CONDUCT A CRIMINAL HISTORY RECORD CHECK IS  
12 AUTHORIZED TO USE ANY SEALED CONVICTION FOR THE LAWFUL PURPOSE  
13 FOR WHICH THE CRIMINAL HISTORY RECORD CHECK IS REQUIRED BY LAW.

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

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

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

27 (h) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (d) OF THIS

1 SUBSECTION (1), INSPECTION OF THE RECORDS INCLUDED IN AN ORDER  
2 SEALING CONVICTION RECORDS MAY THEREAFTER BE PERMITTED BY THE  
3 COURT ONLY UPON PETITION BY THE DEFENDANT.

4 (i) (I) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (d) OF THIS  
5 SUBSECTION (1), EMPLOYERS, STATE AND LOCAL GOVERNMENT AGENCIES,  
6 OFFICIALS, LANDLORDS, AND EMPLOYEES SHALL NOT, IN ANY APPLICATION  
7 OR INTERVIEW OR IN ANY OTHER WAY, REQUIRE AN APPLICANT TO  
8 DISCLOSE ANY INFORMATION CONTAINED IN SEALED CONVICTION  
9 RECORDS. AN APPLICANT NEED NOT, IN ANSWER TO ANY QUESTION  
10 CONCERNING CONVICTION RECORDS THAT HAVE BEEN SEALED, INCLUDE  
11 A REFERENCE TO OR INFORMATION CONCERNING THE SEALED CONVICTION  
12 RECORDS AND MAY STATE THAT THE APPLICANT HAS NOT BEEN  
13 CRIMINALLY CONVICTED.

14 (II) THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (i)  
15 DO NOT PRECLUDE THE BAR COMMITTEE OF THE COLORADO STATE BOARD  
16 OF LAW EXAMINERS FROM MAKING FURTHER INQUIRIES INTO THE FACT OF  
17 A CONVICTION THAT COMES TO THE ATTENTION OF THE BAR COMMITTEE  
18 THROUGH OTHER MEANS. THE BAR COMMITTEE OF THE COLORADO STATE  
19 BOARD OF LAW EXAMINERS HAS A RIGHT TO INQUIRE INTO THE MORAL AND  
20 ETHICAL QUALIFICATIONS OF AN APPLICANT, AND THE APPLICANT DOES  
21 NOT HAVE A RIGHT TO PRIVACY OR PRIVILEGE THAT JUSTIFIES HIS OR HER  
22 REFUSAL TO ANSWER A QUESTION CONCERNING SEALED CONVICTION  
23 RECORDS THAT HAVE COME TO THE ATTENTION OF THE BAR COMMITTEE  
24 THROUGH OTHER MEANS.

25 (III) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I)  
26 OF THIS PARAGRAPH (i), THE DEPARTMENT OF EDUCATION MAY REQUIRE  
27 A LICENSED EDUCATOR OR AN APPLICANT FOR AN EDUCATOR'S LICENSE

1 WHO FILES A PETITION TO SEAL A CRIMINAL RECORD TO NOTIFY THE  
2 DEPARTMENT OF EDUCATION OF THE PENDING PETITION TO SEAL. THE  
3 DEPARTMENT HAS THE RIGHT TO INQUIRE INTO THE FACTS OF THE  
4 CRIMINAL OFFENSE FOR WHICH THE PETITION TO SEAL IS PENDING. THE  
5 EDUCATOR OR APPLICANT HAS NO RIGHT TO PRIVACY OR PRIVILEGE THAT  
6 JUSTIFIES HIS OR HER REFUSAL TO ANSWER ANY QUESTIONS CONCERNING  
7 THE ARREST AND CRIMINAL RECORDS INFORMATION CONTAINED IN THE  
8 PENDING PETITION TO SEAL.

9 (IV) ANY MEMBER OF THE PUBLIC MAY PETITION THE COURT TO  
10 UNSEAL ANY FILE THAT HAS BEEN PREVIOUSLY SEALED UPON A SHOWING  
11 THAT CIRCUMSTANCES HAVE COME INTO EXISTENCE SINCE THE ORIGINAL  
12 SEALING, AND, AS A RESULT, THE PUBLIC INTEREST IN DISCLOSURE NOW  
13 OUTWEIGHS THE DEFENDANT'S INTEREST IN PRIVACY.

14 (j) THE OFFICE OF THE STATE COURT ADMINISTRATOR SHALL POST  
15 ON ITS WEB SITE A LIST OF ALL PETITIONS TO SEAL CONVICTION RECORDS  
16 THAT ARE FILED WITH A DISTRICT COURT. A DISTRICT COURT MAY NOT  
17 GRANT A PETITION TO SEAL CONVICTION RECORDS UNTIL AT LEAST THIRTY  
18 DAYS AFTER THE POSTING. AFTER THE EXPIRATION OF THIRTY DAYS  
19 FOLLOWING THE POSTING, THE PETITION TO SEAL CONVICTION RECORDS  
20 AND INFORMATION PERTINENT THERETO SHALL BE REMOVED FROM THE  
21 WEB SITE OF THE OFFICE OF THE STATE COURT ADMINISTRATOR.

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

24 (l) NOTWITHSTANDING ANY PROVISION IN THIS SECTION TO THE  
25 CONTRARY, IN REGARD TO ANY CONVICTION OF A DEFENDANT RESULTING  
26 FROM A SINGLE CASE IN WHICH THE DEFENDANT IS CONVICTED OF MORE  
27 THAN ONE OFFENSE, RECORDS OF THE CONVICTION MAY BE SEALED



1 PURSUANT TO THE PROVISIONS OF THIS SECTION ONLY IF THE RECORDS OF  
2 EVERY CONVICTION OF THE DEFENDANT RESULTING FROM THAT CASE MAY  
3 BE SEALED PURSUANT TO THE PROVISIONS OF THIS PART 3.

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

7 (a) THE COLORADO RULES OF CIVIL PROCEDURE RELATED TO  
8 DISCOVERY OR THE COLORADO RULES OF EVIDENCE PROMULGATED BY  
9 THE SUPREME COURT OF COLORADO OR ANY OTHER STATE OR FEDERAL  
10 COURT; OR

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

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

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

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

27 (b) IF A PETITION IS FILED PURSUANT TO PARAGRAPH (a) OF THIS

1 SUBSECTION (1) FOR THE SEALING OF A RECORD OF CONVICTION FOR  
2 POSTING A PRIVATE IMAGE IN VIOLATION OF SECTION 18-7-107, C.R.S.,  
3 THE COURT SHALL ORDER THE RECORD SEALED AFTER:

4 (I) THE PETITION IS FILED; AND

5 (II) THE FILING FEE IS PAID.

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

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