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HOUSE BILL 14-1378

BY REPRESENTATIVE(S) Stephens and Pabon, Fischer, Landgraf, McNulty, Navarro, Szabo, Duran, Exum, Fields, Gardner, Hamner, Hullinghorst, Kagan, Kraft-Tharp, Labuda, Lebsock, Lee, Mitsch Bush, Murray, Peniston, Pettersen, Primavera, Rosenthal, Schafer, Scott, Williams, Young, Court, Melton, Vigil, Ferrandino;
also SENATOR(S) King and Hodge, Heath, Herpin, Johnston, Jones, Lambert, Newell, Rivera, Todd.

CONCERNING PROHIBITING THE POSTING OF A PRIVATE IMAGE ON SOCIAL MEDIA WITHOUT CONSENT TO CAUSE SERIOUS EMOTIONAL DISTRESS.

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

SECTION 1. In Colorado Revised Statutes, **add** 18-7-107 and 18-7-108 as follows:

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

(1) (a) AN ACTOR WHO IS EIGHTEEN YEARS OF AGE OR OLDER COMMITS THE OFFENSE OF POSTING A PRIVATE IMAGE FOR HARASSMENT IF HE OR SHE POSTS OR DISTRIBUTES THROUGH THE USE OF SOCIAL MEDIA OR ANY WEB SITE ANY PHOTOGRAPH, VIDEO, OR OTHER IMAGE DISPLAYING THE PRIVATE INTIMATE PARTS OF AN IDENTIFIED OR IDENTIFIABLE PERSON EIGHTEEN YEARS OF AGE OR OLDER:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(I) WITH THE INTENT TO HARASS THE DEPICTED PERSON AND INFLICT SERIOUS EMOTIONAL DISTRESS UPON THE DEPICTED PERSON;

(II) (A) WITHOUT THE DEPICTED PERSON'S CONSENT; OR

(B) WHEN THE ACTOR KNEW OR SHOULD HAVE KNOWN THAT THE DEPICTED PERSON HAD A REASONABLE EXPECTATION THAT THE IMAGE WOULD REMAIN PRIVATE; AND

(III) THE CONDUCT RESULTS IN SERIOUS EMOTIONAL DISTRESS OF THE DEPICTED PERSON.

(b) POSTING A PRIVATE IMAGE FOR HARASSMENT IS A CLASS 1 MISDEMEANOR.

(c) NOTWITHSTANDING THE PROVISIONS OF SECTION 18-1.3-501 (1) (a), IN ADDITION TO ANY OTHER SENTENCE THE COURT MAY IMPOSE, THE COURT SHALL FINE THE DEFENDANT UP TO TEN THOUSAND DOLLARS. THE FINES COLLECTED PURSUANT TO THIS PARAGRAPH (b) SHALL BE CREDITED TO THE CRIME VICTIM COMPENSATION FUND CREATED IN SECTION 24-4.1-117, C.R.S.

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

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

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

(b) AN INDIVIDUAL WHOSE PRIVATE INTIMATE PARTS HAVE BEEN POSTED IN ACCORDANCE WITH THIS SECTION SHALL RETAIN A PROTECTABLE RIGHT OF AUTHORSHIP REGARDING THE COMMERCIAL USE OF THE PRIVATE

IMAGE.

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

(6) FOR PURPOSES OF THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "NEWSWORTHY EVENT" MEANS A MATTER OF PUBLIC INTEREST, PUBLIC CONCERN, OR RELATED TO A PUBLIC FIGURE WHO IS INTIMATELY INVOLVED IN THE RESOLUTION OF IMPORTANT PUBLIC QUESTIONS, OR BY REASON OF HIS OR HER FAME SHAPE EVENTS IN AREAS OF CONCERN TO SOCIETY.

(b) "PRIVATE INTIMATE PARTS" MEANS EXTERNAL GENITALIA OR THE PERINEUM OR THE ANUS OR THE PUBES OF ANY PERSON OR THE BREAST OF A FEMALE.

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

18-7-108. Posting a private image for pecuniary gain - definitions. (1) (a) AN ACTOR WHO IS EIGHTEEN YEARS OF AGE OR OLDER COMMITS THE OFFENSE OF POSTING A PRIVATE IMAGE FOR PECUNIARY GAIN IF HE OR SHE POSTS OR DISTRIBUTES THROUGH SOCIAL MEDIA OR ANY WEB SITE ANY PHOTOGRAPH, VIDEO, OR OTHER IMAGE DISPLAYING THE PRIVATE INTIMATE PARTS OF AN IDENTIFIED OR IDENTIFIABLE PERSON EIGHTEEN YEARS OF AGE OR OLDER:

(I) WITH THE INTENT TO OBTAIN A PECUNIARY BENEFIT FROM ANY PERSON AS A RESULT OF THE POSTING, VIEWING, OR REMOVAL OF THE PRIVATE IMAGE; AND

(II) (A) WHEN THE ACTOR HAS NOT OBTAINED THE DEPICTED PERSON'S CONSENT; OR

(B) WHEN THE ACTOR KNEW OR SHOULD HAVE KNOWN THAT THE DEPICTED PERSON HAD A REASONABLE EXPECTATION THAT THE IMAGE WOULD REMAIN PRIVATE.

(b) POSTING A PRIVATE IMAGE FOR PECUNIARY GAIN IS A CLASS 1 MISDEMEANOR.

(c) NOTWITHSTANDING THE PROVISIONS OF SECTION 18-1.3-501 (1) (a), IN ADDITION TO ANY OTHER SENTENCE THE COURT MAY IMPOSE, THE COURT SHALL FINE THE DEFENDANT UP TO TEN THOUSAND DOLLARS. THE FINES COLLECTED PURSUANT TO THIS PARAGRAPH (b) SHALL BE CREDITED TO THE CRIME VICTIM COMPENSATION FUND CREATED IN SECTION 24-4.1-117, C.R.S.

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

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

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

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

(5) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO IMPOSE LIABILITY ON THE PROVIDER OF AN INTERACTIVE COMPUTER SERVICE, AS DEFINED IN 47 U.S.C. SEC. 230 (f) (2), AN INFORMATION SERVICE, AS DEFINED IN 47 U.S.C. SEC. 153, OR A TELECOMMUNICATIONS SERVICE, AS

DEFINED IN 47 U.S.C. SEC. 153, FOR CONTENT PROVIDED BY ANOTHER PERSON.

(6) FOR PURPOSES OF THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "NEWSWORTHY EVENT" MEANS A MATTER OF PUBLIC INTEREST, PUBLIC CONCERN, OR RELATED TO A PUBLIC FIGURE WHO IS INTIMATELY INVOLVED IN THE RESOLUTION OF IMPORTANT PUBLIC QUESTIONS, OR BY REASON OF HIS OR HER FAME SHAPE EVENTS IN AREAS OF CONCERN TO SOCIETY.

(b) "PRIVATE INTIMATE PARTS" MEANS EXTERNAL GENITALIA OR THE PERINEUM OR THE ANUS OR THE PUBES OF ANY PERSON OR THE BREAST OF A FEMALE.

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

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

24-72-308.4. Sealing of criminal conviction records information for posting an intimate photograph of a person on the internet.

(1) (a) IF A PERSON WAS CONVICTED OF POSTING A PRIVATE IMAGE FOR HARASSMENT IN VIOLATION OF SECTION 18-7-107, C.R.S., OR POSTING A PRIVATE IMAGE FOR PECUNIARY GAIN IN VIOLATION OF SECTION 18-7-108, C.R.S., AND THE PERSON HAS COMPLETED THE SENTENCE, INCLUDING PAYMENT OF THE FINE, AND THE PERSON HAS NOT BEEN CONVICTED OF ANOTHER CRIMINAL OFFENSE FOR AT LEAST FIVE YEARS AFTER THE DATE HE OR SHE COMPLETED HIS OR HER SENTENCE, HE OR SHE MAY PETITION THE DISTRICT COURT OF THE DISTRICT IN WHICH THE CONVICTION RECORD PERTAINING TO THE DEFENDANT'S CONVICTION FOR POSTING INTIMATE PHOTOGRAPHS OF PERSONS IS LOCATED FOR THE SEALING OF THE CONVICTION RECORDS, EXCEPT FOR BASIC IDENTIFYING INFORMATION.

(b) (I) UPON THE FILING OF A PETITION, THE COURT SHALL REVIEW THE PETITION AND DETERMINE WHETHER THE PETITION IS SUFFICIENT ON ITS FACE. IF THE COURT DETERMINES THAT THE PETITION ON ITS FACE IS INSUFFICIENT OR IF THE COURT DETERMINES THAT, AFTER TAKING JUDICIAL NOTICE OF MATTERS OUTSIDE THE PETITION, THE PETITIONER IS NOT ENTITLED TO RELIEF UNDER THIS SECTION, THE COURT SHALL ENTER AN ORDER DENYING THE PETITION AND MAIL A COPY OF THE ORDER TO THE PETITIONER OR, AS PERMITTED, SERVE THE ORDER UNDER SUPREME COURT RULES. THE COURT'S ORDER SHALL SPECIFY THE REASONS FOR THE DENIAL OF THE PETITION.

(II) IF THE COURT DETERMINES THAT THE PETITION IS SUFFICIENT ON ITS FACE AND THAT NO OTHER GROUNDS EXIST AT THAT TIME FOR THE COURT TO DENY THE PETITION UNDER THIS SECTION, THE COURT SHALL SET A DATE FOR A HEARING, AND THE PETITIONER SHALL NOTIFY THE PROSECUTING ATTORNEY BY CERTIFIED MAIL AT LEAST TEN DAYS PRIOR TO THE HEARING, THE ARRESTING AGENCY, AND ANY OTHER PERSON OR AGENCY IDENTIFIED BY THE PETITIONER. EXCEPT AS PROVIDED FOR IN SECTION 18-1.3-101 (10) (c), C.R.S., AFTER THE HEARING DESCRIBED IN THIS SUBPARAGRAPH (II) IS CONDUCTED AND IF THE COURT FINDS THAT THE HARM TO THE PRIVACY OF THE PETITIONER OR DANGERS OF UNWARRANTED ADVERSE CONSEQUENCES TO THE PETITIONER OUTWEIGH THE PUBLIC INTEREST IN RETAINING THE RECORDS, THE COURT MAY ORDER SUCH RECORDS, EXCEPT BASIC IDENTIFICATION INFORMATION, TO BE SEALED.

(c) A PETITION TO SEAL A CONVICTION RECORD PURSUANT TO THIS SECTION MUST INCLUDE A LISTING OF EACH CUSTODIAN OF THE RECORDS TO WHOM THE SEALING ORDER IS DIRECTED AND ANY INFORMATION THAT ACCURATELY AND COMPLETELY IDENTIFIES THE RECORDS TO BE SEALED. THE DEFENDANT SHALL SUBMIT A VERIFIED COPY OF THE DEFENDANT'S CRIMINAL HISTORY WITH THE PETITION AT THE TIME OF FILING, CURRENT THROUGH AT LEAST THE TWENTIETH DAY PRIOR TO THE DATE OF THE FILING OF THE PETITION, TO THE COURT BUT NO LATER THAN THE TENTH DAY AFTER THE PETITION IS FILED. THE DEFENDANT IS RESPONSIBLE FOR OBTAINING AND PAYING FOR THE VERIFIED COPY OF HIS OR HER CRIMINAL HISTORY. WHENEVER A COURT ENTERS AN ORDER SEALING CONVICTION RECORDS PURSUANT TO THIS SECTION, THE DEFENDANT SHALL PROVIDE THE COLORADO BUREAU OF INVESTIGATION AND EACH CUSTODIAN OF THE CONVICTION RECORDS WITH A COPY OF THE ORDER AND SHALL PAY TO THE BUREAU ANY COSTS RELATED TO THE SEALING OF HIS OR HER CRIMINAL

CONVICTION RECORDS THAT ARE IN THE CUSTODY OF THE BUREAU. THEREAFTER, THE DEFENDANT MAY REQUEST AND THE COURT MAY GRANT AN ORDER SEALING THE CIVIL CASE IN WHICH THE CONVICTION RECORDS WERE SEALED.

(d) AN ORDER SEALING CONVICTION RECORDS DOES NOT DENY ACCESS TO THE CRIMINAL RECORDS OF A DEFENDANT BY ANY COURT, LAW ENFORCEMENT AGENCY, CRIMINAL JUSTICE AGENCY, PROSECUTING ATTORNEY, OR PARTY OR AGENCY REQUIRED BY LAW TO CONDUCT A CRIMINAL HISTORY RECORD CHECK ON AN INDIVIDUAL. AN ORDER SEALING CONVICTION RECORDS DOES NOT VACATE A CONVICTION. A CONVICTION SEALED PURSUANT TO THIS SECTION MAY BE USED BY A CRIMINAL JUSTICE AGENCY, LAW ENFORCEMENT AGENCY, COURT, OR PROSECUTING ATTORNEY FOR ANY LAWFUL PURPOSE RELATING TO THE INVESTIGATION OR PROSECUTION OF ANY CASE, INCLUDING BUT NOT LIMITED TO ANY SUBSEQUENT CASE THAT IS FILED AGAINST THE DEFENDANT, OR FOR ANY OTHER LAWFUL PURPOSE WITHIN THE SCOPE OF HIS, HER, OR ITS DUTIES. IF A DEFENDANT IS CONVICTED OF A NEW CRIMINAL OFFENSE AFTER AN ORDER SEALING CONVICTION RECORDS IS ENTERED, THE COURT SHALL ORDER THE CONVICTION RECORDS TO BE UNSEALED. A PARTY OR AGENCY REQUIRED BY LAW TO CONDUCT A CRIMINAL HISTORY RECORD CHECK IS AUTHORIZED TO USE ANY SEALED CONVICTION FOR THE LAWFUL PURPOSE FOR WHICH THE CRIMINAL HISTORY RECORD CHECK IS REQUIRED BY LAW.

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

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

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

(h) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (d) OF THIS SUBSECTION (1), INSPECTION OF THE RECORDS INCLUDED IN AN ORDER SEALING CONVICTION RECORDS MAY THEREAFTER BE PERMITTED BY THE COURT ONLY UPON PETITION BY THE DEFENDANT.

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

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

(III) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (i), THE DEPARTMENT OF EDUCATION MAY REQUIRE A LICENSED EDUCATOR OR AN APPLICANT FOR AN EDUCATOR'S LICENSE WHO FILES A PETITION TO SEAL A CRIMINAL RECORD TO NOTIFY THE DEPARTMENT OF EDUCATION OF THE PENDING PETITION TO SEAL. THE DEPARTMENT HAS THE RIGHT TO INQUIRE INTO THE FACTS OF THE CRIMINAL OFFENSE FOR WHICH THE PETITION TO SEAL IS PENDING. THE EDUCATOR OR APPLICANT HAS NO RIGHT TO PRIVACY OR PRIVILEGE THAT JUSTIFIES HIS OR HER REFUSAL TO ANSWER ANY QUESTIONS CONCERNING THE ARREST AND CRIMINAL RECORDS INFORMATION CONTAINED IN THE PENDING PETITION TO SEAL.

(IV) ANY MEMBER OF THE PUBLIC MAY PETITION THE COURT TO

UNSEAL ANY FILE THAT HAS BEEN PREVIOUSLY SEALED UPON A SHOWING THAT CIRCUMSTANCES HAVE COME INTO EXISTENCE SINCE THE ORIGINAL SEALING, AND, AS A RESULT, THE PUBLIC INTEREST IN DISCLOSURE NOW OUTWEIGHS THE DEFENDANT'S INTEREST IN PRIVACY.

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

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

(l) NOTWITHSTANDING ANY PROVISION IN THIS SECTION TO THE CONTRARY, IN REGARD TO ANY CONVICTION OF A DEFENDANT RESULTING FROM A SINGLE CASE IN WHICH THE DEFENDANT IS CONVICTED OF MORE THAN ONE OFFENSE, RECORDS OF THE CONVICTION MAY BE SEALED PURSUANT TO THE PROVISIONS OF THIS SECTION ONLY IF THE RECORDS OF EVERY CONVICTION OF THE DEFENDANT RESULTING FROM THAT CASE MAY BE SEALED PURSUANT TO THE PROVISIONS OF THIS PART 3.

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

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

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

SECTION 3. In Colorado Revised Statutes, **add** 24-72-709 as follows:

24-72-709. Sealing of criminal conviction records information for posting an intimate photograph of a person on the internet.

(1) IF A PERSON WHO WAS CONVICTED OF POSTING A PRIVATE IMAGE FOR HARASSMENT IN VIOLATION OF SECTION 18-7-107, C.R.S., OR POSTING A PRIVATE IMAGE FOR PECUNIARY GAIN IN VIOLATION OF SECTION 18-7-108, C.R.S., HAS COMPLETED THE SENTENCE, INCLUDING PAYMENT OF THE FINE, AND HAS NOT BEEN CONVICTED OF ANOTHER CRIMINAL OFFENSE FOR AT LEAST FIVE YEARS AFTER THE DATE HE OR SHE COMPLETED HIS OR HER SENTENCE, HE OR SHE MAY PETITION THE DISTRICT COURT OF THE DISTRICT IN WHICH THE CONVICTION RECORD PERTAINING TO THE DEFENDANT'S CONVICTION FOR POSTING AN INTIMATE PHOTOGRAPH OF A PERSON IS LOCATED FOR THE SEALING OF THE CONVICTION RECORDS, EXCEPT FOR BASIC IDENTIFYING INFORMATION.

(2) UPON THE FILING OF A PETITION, THE COURT SHALL REVIEW THE PETITION AND DETERMINE WHETHER THE PETITION IS SUFFICIENT ON ITS FACE. IF THE COURT DETERMINES THAT THE PETITION ON ITS FACE IS INSUFFICIENT OR IF THE COURT DETERMINES THAT, AFTER TAKING JUDICIAL NOTICE OF MATTERS OUTSIDE THE PETITION, THE PETITIONER IS NOT ENTITLED TO RELIEF UNDER THIS SECTION, THE COURT SHALL ENTER AN ORDER DENYING THE PETITION AND MAIL A COPY OF THE ORDER TO THE PETITIONER OR, AS PERMITTED, SERVE THE ORDER UNDER SUPREME COURT RULES. THE COURT'S ORDER SHALL SPECIFY THE REASONS FOR THE DENIAL OF THE PETITION.

(3) IF THE COURT DETERMINES THAT THE PETITION IS SUFFICIENT ON ITS FACE AND THAT NO OTHER GROUNDS EXIST AT THAT TIME FOR THE COURT TO DENY THE PETITION UNDER THIS SECTION, THE COURT SHALL SET A DATE FOR A HEARING, AND THE PETITIONER SHALL NOTIFY THE PROSECUTING ATTORNEY BY CERTIFIED MAIL AT LEAST TEN DAYS PRIOR TO THE HEARING, THE ARRESTING AGENCY, AND ANY OTHER PERSON OR AGENCY IDENTIFIED BY THE PETITIONER. EXCEPT AS PROVIDED FOR IN SECTION 18-1.3-101 (10) (c), C.R.S., AFTER THE HEARING DESCRIBED IN THIS SUBSECTION (3) IS CONDUCTED AND IF THE COURT FINDS THAT THE HARM TO THE PRIVACY OF THE PETITIONER OR DANGERS OF UNWARRANTED ADVERSE CONSEQUENCES TO THE PETITIONER OUTWEIGH THE PUBLIC INTEREST IN RETAINING THE CONVICTION RECORDS, THE COURT MAY ORDER SUCH RECORDS, EXCEPT BASIC IDENTIFICATION INFORMATION, TO BE SEALED. IN MAKING THIS DETERMINATION, THE COURT SHALL, AT A MINIMUM, CONSIDER THE FACTORS IN SECTION 24-72-704 (1) (c).

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

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

Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Morgan Carroll
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO