

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



SENATE BILL 19-100

BY SENATOR(S) Gardner, Bridges, Cooke, Crowder, Hisey, Lundeen, Marble, Moreno, Pettersen, Priola, Rankin, Smallwood, Tate, Woodward; also REPRESENTATIVE(S) Tipper, Beckman, Bird, Bockenfeld, Caraveo, Esgar, Exum, Froelich, Galindo, Gonzales-Gutierrez, Gray, Hansen, Herod, Hooton, Jackson, Jaquez Lewis, Kipp, Lontine, McLachlan, Michaelson Jenet, Ransom, Roberts, Saine, Singer, Sirota, Snyder, Soper, Titone, Valdez A., Valdez D., Van Winkle, Wilson, Becker.

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

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

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

PART 14
UNIFORM CIVIL REMEDIES FOR UNAUTHORIZED
DISCLOSURE OF INTIMATE IMAGES

13-21-1401. Short title. THE SHORT TITLE OF THIS PART 14 IS THE "UNIFORM CIVIL REMEDIES FOR UNAUTHORIZED DISCLOSURE OF INTIMATE

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

IMAGES ACT".

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

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

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

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

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

(a) FROM AN INTIMATE IMAGE ITSELF; OR

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

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

(6) "INDIVIDUAL" MEANS A HUMAN BEING.

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

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

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

(8) "PERSON" MEANS AN INDIVIDUAL, ESTATE, BUSINESS OR NONPROFIT ENTITY, PUBLIC CORPORATION, GOVERNMENT OR

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GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR OTHER LEGAL ENTITY.

(9) "SEXUAL CONDUCT" INCLUDES:

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

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

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

(b) "PRIVATE" MEANS:

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

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

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

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

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(b) THE INTIMATE IMAGE WAS PRIVATE; AND

(c) THE DEPICTED INDIVIDUAL WAS IDENTIFIABLE.

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

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

(b) PREVIOUS CONSENSUAL DISCLOSURE OF THE IMAGE.

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

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

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

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

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

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

(a) MADE IN GOOD FAITH IN:

(I) LAW ENFORCEMENT;

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(II) A LEGAL PROCEEDING; OR

(III) MEDICAL EDUCATION OR TREATMENT; OR

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

(I) UNLAWFUL CONDUCT;

(II) UNSOLICITED AND UNWELCOME CONDUCT;

(III) RELATED TO A MATTER OF PUBLIC CONCERN OR PUBLIC INTEREST; OR

(IV) REASONABLY INTENDED TO ASSIST THE DEPICTED INDIVIDUAL.

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

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

(a) PROHIBITED BY LAW OTHER THAN THIS PART 14; OR

(b) MADE, POSSESSED, OR DISTRIBUTED FOR THE PURPOSES OF SEXUAL AROUSAL, SEXUAL GRATIFICATION, HUMILIATION, DEGRADATION, OR MONETARY OR COMMERCIAL GAIN.

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

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

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

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

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

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

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

(a) THE GREATER OF:

(I) 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

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

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

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

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

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

(a) REASONABLE ATTORNEY FEES AND COSTS; AND

(b) ADDITIONAL RELIEF, INCLUDING INJUNCTIVE RELIEF.

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

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

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

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

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

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

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

(2) THIS SECTION DOES NOT APPLY TO AN INTERACTIVE COMPUTER SERVICE, AS DEFINED IN 47 U.S.C. SEC. 230(f)(2), FOR CONTENT PROVIDED

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BY ANOTHER PERSON.

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

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

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

~~(4) (a) An individual whose private intimate parts have been posted or an individual who has had an image displaying sexual acts of the individual 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 fees and costs.~~

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

18-7-108. Posting a private image for pecuniary gain - definitions. ~~(4) (a) An individual whose private intimate parts have been posted or an individual who has had an image displaying sexual acts of the~~

~~individual 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 fees and costs.~~

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

SECTION 5. Safety clause. The general assembly hereby finds,

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determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Leroy M. Garcia
PRESIDENT OF
THE SENATE

KC Becker
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO

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