

**Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 18-0388.01 Michael Dohr x4347

HOUSE BILL 18-1264

HOUSE SPONSORSHIP

Jackson and Carver, Becker K., Buck, Esgar, Landgraf, Liston, Lundeen, Melton, Salazar, Sias, Van Winkle, Weissman, Wilson, Wist

SENATE SPONSORSHIP

Cooke and Fields,

House Committees
Judiciary

Senate Committees
Judiciary

A BILL FOR AN ACT

101 **CONCERNING MEASURES TO CLARIFY THE SCOPE OF REVENGE PORN**
102 **CRIMINAL OFFENSES.**

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>.)

Currently, Colorado criminalizes posting nude images of another person for harassment purposes or for pecuniary gain. The bill makes the following changes to those crimes:

- ! Adds images of sex acts that may not include nude images;
- ! Removes the requirement that the defendant intend to inflict serious emotional distress;

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
3rd Reading Unamended
April 12, 2018

SENATE
2nd Reading Unamended
April 11, 2018

HOUSE
3rd Reading Unamended
April 3, 2018

HOUSE
2nd Reading Unamended
April 2, 2018

- ! Removes as an exception to the crimes that the image relates to a newsworthy event; and
- ! Clarifies that the images subject to the crimes may be disclosed by law enforcement personnel, human or social services personnel, prosecutors, and court personnel in the course of their normal business.

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

2 **SECTION 1.** In Colorado Revised Statutes, 18-7-107, **amend**
3 (1)(a) introductory portion, (1)(a)(I), and (4); **repeal** (2); and **repeal and**
4 **reenact, with amendments,** (6) as follows:

5 **18-7-107. Posting a private image for harassment - definitions.**

6 (1) (a) An actor who is eighteen years of age or older commits the
7 offense of posting a private image for harassment if he or she posts or
8 distributes through the use of social media or any website any photograph,
9 video, or other image displaying the private intimate parts of an identified
10 or identifiable person eighteen years of age or older OR AN IMAGE
11 DISPLAYING SEXUAL ACTS OF AN IDENTIFIED OR IDENTIFIABLE PERSON:

12 (I) With the intent to harass, INTIMIDATE, OR COERCE the depicted
13 person; and ~~inflict serious emotional distress upon the depicted person;~~

14 ~~(2) It shall not be an offense under this section if the photograph,~~
15 ~~video, or image is related to a newsworthy event.~~

16 (4) (a) An individual whose private intimate parts have been
17 posted OR AN INDIVIDUAL WHO HAS HAD AN IMAGE DISPLAYING SEXUAL
18 ACTS OF THE INDIVIDUAL POSTED in accordance with this section may
19 bring a civil action against the person who caused the posting of the
20 private images and is entitled to injunctive relief, the greater of ten
21 thousand dollars or actual damages incurred as a result of the posting of
22 the private images, exemplary damages, and reasonable attorney fees and

1 costs.

2 (b) An individual whose private intimate parts have been posted
3 OR AN INDIVIDUAL WHO HAS HAD AN IMAGE DISPLAYING SEXUAL ACTS OF
4 THE INDIVIDUAL POSTED in accordance with this section shall retain a
5 protectable right of authorship regarding the commercial use of the
6 private image.

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

9 (a) "DISPLAYING SEXUAL ACTS" MEANS ANY DISPLAY OF SEXUAL
10 ACTS EVEN IF THE PRIVATE INTIMATE PARTS ARE NOT VISIBLE IN THE
11 IMAGE.

12 (b) "IMAGE" MEANS A PHOTOGRAPH, FILM, VIDEOTAPE,
13 RECORDING, DIGITAL FILE, OR OTHER REPRODUCTION.

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

17 (d) "SEXUAL ACTS" MEANS SEXUAL INTRUSION OR SEXUAL
18 PENETRATION AS DEFINED BY SECTION 18-3-401.

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

25 **SECTION 2.** In Colorado Revised Statutes, 18-7-108, **amend**
26 (1)(a) introductory portion and (4); **repeal** (2); and **repeal and reenact,**
27 **with amendments,** (6) as follows:

1 **18-7-108. Posting a private image for pecuniary gain -**
2 **definitions.** (1) (a) An actor who is eighteen years of age or older
3 commits the offense of posting a private image for pecuniary gain if he
4 or she posts or distributes through social media or any website any
5 photograph, video, or other image displaying the private intimate parts of
6 an identified or identifiable person eighteen years of age or older OR AN
7 IMAGE DISPLAYING SEXUAL ACTS OF AN IDENTIFIED OR IDENTIFIABLE
8 PERSON:

9 (2) ~~It shall not be an offense under this section if the photograph,~~
10 ~~video, or image is related to a newsworthy event.~~

11 (4) (a) An individual whose private intimate parts have been
12 posted OR AN INDIVIDUAL WHO HAS HAD AN IMAGE DISPLAYING SEXUAL
13 ACTS OF THE INDIVIDUAL POSTED in accordance with this section may
14 bring a civil action against the person who caused the posting of the
15 private images and is entitled to injunctive relief, the greater of ten
16 thousand dollars or actual damages incurred as a result of the posting of
17 the private images, exemplary damages, and reasonable attorney fees and
18 costs.

19 (b) An individual whose private intimate parts have been posted
20 OR AN INDIVIDUAL WHO HAS HAD AN IMAGE DISPLAYING SEXUAL ACTS OF
21 THE INDIVIDUAL POSTED in accordance with this section shall retain a
22 protectable right of authorship regarding the commercial use of the
23 private image.

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

26 (a) "DISPLAYING SEXUAL ACTS" MEANS ANY DISPLAY OF SEXUAL
27 ACTS EVEN IF THE PRIVATE INTIMATE PARTS ARE NOT VISIBLE IN THE

1 IMAGE.

2 (b) "IMAGE" MEANS A PHOTOGRAPH, FILM, VIDEOTAPE,
3 RECORDING, DIGITAL FILE, OR OTHER REPRODUCTION.

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

7 (d) "SEXUAL ACTS" MEANS SEXUAL INTRUSION OR SEXUAL
8 PENETRATION AS DEFINED BY SECTION 18-3-401.

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

15 **SECTION 3. Effective date - applicability.** This act takes effect
16 July 1, 2018, and applies to offenses committed on or after said date.

17 **SECTION 4. Safety clause.** The general assembly hereby finds,
18 determines, and declares that this act is necessary for the immediate
19 preservation of the public peace, health, and safety.