

CHAPTER 192

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 18-1264

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also SENATOR(S) Cooke and Fields, Court, Garcia, Kagan, Kefalas, Lambert, Martinez Humenik, Tate, Todd, Williams A.

AN ACT**CONCERNING MEASURES TO CLARIFY THE SCOPE OF REVENGE PORN CRIMINAL OFFENSES.**

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

SECTION 1. In Colorado Revised Statutes, 18-7-107, **amend** (1)(a) introductory portion, (1)(a)(I), and (4); **repeal** (2); and **repeal and reenact, with amendments**, (6) 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 website any photograph, video, or other image displaying the private intimate parts of an identified or identifiable person eighteen years of age or older OR AN IMAGE DISPLAYING SEXUAL ACTS OF AN IDENTIFIED OR IDENTIFIABLE PERSON:

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

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

(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.

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

(b) 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 shall retain a protectable right of authorship regarding the commercial use of the private image.

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

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

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

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

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

(e) "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 WEBSITE PROFILES.

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

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 website any photograph, video, or other image displaying the private intimate parts of an identified or identifiable person eighteen years of age or older OR AN IMAGE DISPLAYING SEXUAL ACTS OF AN IDENTIFIED OR IDENTIFIABLE PERSON:

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

(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.

(b) 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 shall retain a protectable right of authorship regarding the commercial use of the private image.

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

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

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

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

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

(e) "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 WEBSITE PROFILES.

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

SECTION 4. 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.

Approved: May 3, 2018