

LFC Requester:	Connor Jorgensen
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original	<input checked="" type="checkbox"/>	Amendment	<input type="checkbox"/>	Date	<u>2/17/2015</u>
Correction	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Bill No:	<u>HB 142</u>

Sponsor:	<u>Rep. Brian Egolf</u>	Agency Code:	<u>Attorney General's Office</u>
Short Title:	<u>Unauthorized Distribution of Sensitive Images</u>	Person Writing	<u>James Torres</u>
		Phone:	<u>827-6064</u>
		Email	<u>jtorres@nmag.gov</u>

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis:

HB 142 proposes to criminalize the unauthorized distribution of sensitive images. A person would be guilty of a misdemeanor for distributing images of a “person’s genitals ... or a woman’s breast below the top of the areola” without that person’s consent and with the intent to harass or cause emotional or physical harm of a category delineated in Subsection (A) (1)-(5). A person would be guilty of a 4th degree felony upon a subsequent conviction.

The Safety and Civil Affairs Committee recommends passage if this bill is amended to shield from liability third party intermediaries transmitting the proscribed sensitive images, as well as a person who disseminates this content in furtherance of a legitimate public purpose, including newspapers and licensed broadcasters.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

First, the utility of this bill is limited by its definition of “sensitive images.” This bill only prohibits the distribution of images of the “genitals” and female “areola.” A broader definition would be advised to capture the scope of situations in which an objective person has a reasonable expectation of privacy.

Second, this bill may raise some First Amendment concerns; namely, that such conduct would not fall within an exception to free speech. California has recently passed legislation criminalizing the distribution of images of the intimate body part of another under circumstances where the parties agree or understand the image shall remain private. However, this statute requires that the person is identifiable and suffers serious emotional distress.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

Addressed above

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

Drafters may consider employing language similar to that used in Section 30-9-20 (1) NMSA 1978, defining “intimate areas” as “the primary genital area, groin, buttocks, anus or breasts or the undergarments that cover those areas.”