

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0153.01 Jane Ritter x4342

HOUSE BILL 18-1143

HOUSE SPONSORSHIP

Arndt and Thurlow, Hooton, McKean

SENATE SPONSORSHIP

Moreno and Martinez Humenik, Zenzinger

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE REPEAL OF STATUTORY PROVISIONS RELATING TO
102 SEXUALLY EXPLICIT MATERIALS HARMFUL TO CHILDREN THAT
103 WERE RULED UNCONSTITUTIONAL BY THE COLORADO SUPREME
104 COURT.

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/>.)

Statutory Revision Committee. The bill repeals part 5 of article 7 of title 18, Colorado Revised Statutes, concerning sexually explicit materials harmful to children to reflect a 1985 decision made by the

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.

Colorado supreme court that held that the entire part was unconstitutional. Sections 3, 4, and 5 of the bill make conforming amendments.

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

2 **SECTION 1. Legislative declaration.** The general assembly
3 declares that the purpose of House Bill 18-____, enacted in 2018, is to
4 repeal a section of statute ruled unconstitutional in whole by the Colorado
5 supreme court in 1985.

6 **SECTION 2.** In Colorado Revised Statutes, **repeal** part 5 of
7 article 7 of title 18 as follows:

8 **18-7-501. Definitions.** ~~As used in this part 5, unless the context~~
9 ~~otherwise requires:~~

10 (1) ~~"Child" means a person under the age of eighteen years.~~

11 (2) ~~"Harmful to children" means that quality of any description or~~
12 ~~representation, in whatever form, of sexually explicit nudity, sexual~~
13 ~~conduct, sexual excitement, or sadomasochistic abuse, when it:~~

14 ~~(a) Taken as a whole, predominantly appeals to the prurient~~
15 ~~interest in sex of children;~~

16 ~~(b) Is patently offensive to prevailing standards in the adult~~
17 ~~community as a whole with respect to what is suitable material for~~
18 ~~children; and~~

19 ~~(c) Is, when taken as a whole, lacking in serious literary, artistic,~~
20 ~~political, and scientific value for children.~~

21 (3) ~~"Knowingly" means having general knowledge of, or reason~~
22 ~~to know, or a belief or ground for belief which warrants further inspection~~
23 ~~or inquiry, or both, of:~~

24 ~~(a) The character and content of any material described herein~~
25 ~~which is reasonably susceptible of examination; and~~

1 ~~(b) The age of the child; however, an honest mistake shall~~
2 ~~constitute an excuse from liability hereunder if a reasonable bona fide~~
3 ~~attempt is made to ascertain the true age of such child.~~

4 ~~(4) "Sadomasochistic abuse" means actual or explicitly simulated~~
5 ~~flagellation or torture by or upon a person who is nude or clad in~~
6 ~~undergarments, a mask or bizarre costume, or the condition of being~~
7 ~~fettered, bound, or otherwise physically restrained on the part of one so~~
8 ~~clothed.~~

9 ~~(5) "Sexual conduct" means actual or explicitly simulated acts of~~
10 ~~masturbation, homosexuality, sexual intercourse, sodomy, or physical~~
11 ~~contact in an act of apparent sexual stimulation or gratification with a~~
12 ~~person's clothed or unclothed genitals, pubic area, buttocks, or, if such be~~
13 ~~female, breast.~~

14 ~~(6) "Sexual excitement" means the condition of human male or~~
15 ~~female genitals when in a state of sexual stimulation or arousal.~~

16 ~~(7) "Sexually explicit nudity" means a state of undress so as to~~
17 ~~expose the human male or female genitals, pubic area, or buttocks with~~
18 ~~less than a full opaque covering, or the showing of the female breast with~~
19 ~~less than a fully opaque covering of any portion thereof below the top of~~
20 ~~the areola, or the depiction of covered or uncovered male genitals in a~~
21 ~~discernibly turgid state.~~

22 **18-7-502. Unlawful acts.** ~~(1) It shall be unlawful for any person~~
23 ~~knowingly to sell or loan for monetary consideration to a child:~~

24 ~~(a) Any picture, photograph, drawing, sculpture, motion picture~~
25 ~~film, or similar visual representation or image of a person or portion of~~
26 ~~the human body which depicts sexually explicit nudity, sexual conduct,~~
27 ~~or sadomasochistic abuse and which, taken as a whole, is harmful to~~

1 children; or

2 ~~(b) Any book, pamphlet, magazine, printed matter however~~
3 ~~reproduced, or sound recording which contains any matter enumerated in~~
4 ~~paragraph (a) of this subsection (1), or explicit and detailed verbal~~
5 ~~descriptions or narrative accounts of sexual excitement, sexual conduct,~~
6 ~~or sadomasochistic abuse and which, taken as a whole, is harmful to~~
7 ~~children.~~

8 ~~(2) It shall be unlawful for any person knowingly to sell to a child~~
9 ~~an admission ticket or pass, or knowingly to admit a child to premises~~
10 ~~whereon there is exhibited a motion picture, show, or other presentation~~
11 ~~which, in whole or in part, depicts sexually explicit nudity, sexual~~
12 ~~conduct, or sadomasochistic abuse and which is harmful to children or to~~
13 ~~exhibit any such motion picture at any such premises which are not~~
14 ~~designed to prevent viewing from any public way of such motion picture~~
15 ~~by children not admitted to any such premises.~~

16 ~~(3) It shall be unlawful for any child falsely to represent to any~~
17 ~~person mentioned in subsection (1) or (2) of this section, or to his agent,~~
18 ~~that he is eighteen years of age or older, with the intent to procure any~~
19 ~~material set forth in subsection (1) of this section, or with the intent to~~
20 ~~procure his admission to any motion picture, show, or other presentation,~~
21 ~~as set forth in subsection (2) of this section.~~

22 ~~(4) It shall be unlawful for any person knowingly to make a false~~
23 ~~representation to any person mentioned in subsection (1) or (2) of this~~
24 ~~section, or to his agent, that he is the parent or guardian of any juvenile,~~
25 ~~or that any child is eighteen years of age or older, with the intent to~~
26 ~~procure any material set forth in subsection (1) of this section, or with the~~
27 ~~intent to procure any child's admission to any motion picture, show, or~~

1 other presentation, as set forth in subsection (2) of this section.

2 (5) ~~It shall be unlawful for any person knowingly to exhibit,~~
3 ~~expose, or display in public at newsstands or any other business or~~
4 ~~commercial establishment frequented by children or where children are~~
5 ~~or may be invited as part of the general public:~~

6 (a) ~~Any picture, photograph, drawing, sculpture, motion picture~~
7 ~~film, or similar visual representation or image of a person or portion of~~
8 ~~the human body which depicts sexually explicit nudity, sexual conduct,~~
9 ~~or sadomasochistic abuse and which is harmful to children; or~~

10 (b) ~~Any book, pamphlet, magazine, printed matter however~~
11 ~~reproduced, or sound recording which contains any matter enumerated in~~
12 ~~paragraph (a) of this subsection (5), or explicit verbal descriptions or~~
13 ~~narrative accounts of sexual excitement, sexual conduct, or~~
14 ~~sadomasochistic abuse and which, taken as a whole, is harmful to~~
15 ~~children.~~

16 (6) ~~A violation of any provision of this section is a class 2~~
17 ~~misdemeanor.~~

18 **18-7-503. Applicability.** (1) ~~Nothing contained in this part 5~~
19 ~~shall be construed to apply to:~~

20 (a) ~~The purchase, distribution, exhibition, or loan of any work of~~
21 ~~art, book, magazine, or other printed or manuscript material by any~~
22 ~~accredited museum, library, school, or institution of higher education;~~

23 (b) ~~The exhibition or performance of any play, drama, tableau, or~~
24 ~~motion picture by any theatre, museum, school, or institution of higher~~
25 ~~education, either supported by public appropriation or which is an~~
26 ~~accredited institution supported by private funds.~~

27 **18-7-504. Severability.** ~~If any provision of this part 5 or the~~

1 application thereof to any person or circumstances is held invalid, such
2 invalidity shall not affect other provisions of this part 5 which may be
3 given effect without the invalid provision or application, and, to this end,
4 the provisions of this part 5 are declared to be severable.

5 **SECTION 3.** In Colorado Revised Statutes, 12-61-113, **amend**
6 (1)(m)(I) as follows:

7 **12-61-113. Investigation - revocation - actions against licensee**
8 **or applicant - repeal.** (1) The commission, upon its own motion, may,
9 and, upon the complaint in writing of any person, shall, investigate the
10 activities of any licensee or any person who assumes to act in the capacity
11 of a licensee within the state, and the commission, after holding a hearing
12 pursuant to section 12-61-114, has the power to impose an administrative
13 fine not to exceed two thousand five hundred dollars for each separate
14 offense and to censure a licensee, to place the licensee on probation and
15 to set the terms of probation, or to temporarily suspend a license, or
16 permanently revoke a license, when the licensee has performed, is
17 performing, or is attempting to perform any of the following acts and is
18 guilty of:

19 (m) (I) Conviction of, entering a plea of guilty to, or entering a
20 plea of nolo contendere to any crime in article 3 of title 18; parts 1, 2, 3,
21 and 4 of article 4 of title 18; part 1, 2, 3, 4, 5, 7, 8, or 9 of article 5 of title
22 18; article 5.5 of title 18; parts 3, 4, 6, 7, and 8 of article 6 of title 18;
23 parts 1, 3, 4, 5, 6, 7, and 8 of article 7 of title 18; part 3 of article 8 of title
24 18; article 15 of title 18; article 17 of title 18; section 18-18-404,
25 18-18-405, 18-18-406, 18-18-411, 18-18-412.5, 18-18-412.7,
26 18-18-412.8, 18-18-415, 18-18-416, 18-18-422, or 18-18-423; or any
27 other like crime under Colorado law, federal law, or the laws of other

1 states. A certified copy of the judgment of a court of competent
2 jurisdiction of such conviction or other official record indicating that such
3 plea was entered shall be conclusive evidence of such conviction or plea
4 in any hearing under this part 1.

5 **SECTION 4.** In Colorado Revised Statutes, 12-61-1010, **amend**
6 (1) introductory portion and (1)(i) as follows:

7 **12-61-1010. Investigation - revocation - actions against**
8 **licensee.** (1) The director, upon the director's own motion, may, and,
9 upon the complaint in writing of any person, shall, investigate the
10 activities of any licensee or any person who assumes to act in the capacity
11 of a licensee within the state. The director, after holding a hearing in
12 accordance with the "State Administrative Procedure Act", article 4 of
13 title 24, ~~C.R.S.~~, may impose an administrative fine not to exceed two
14 thousand five hundred dollars for each separate offense, censure a
15 licensee, place the licensee on probation and set the terms of probation,
16 or temporarily suspend or permanently revoke a license when the licensee
17 has performed, is performing, or is attempting to perform any of the
18 following acts and is guilty of:

19 (i) Performing any act that leads to a conviction of, entry of a plea
20 of guilty to, or entry of a plea of nolo contendere to any crime in article
21 3 of title 18; ~~C.R.S.~~; parts 1 to 4 of article 4 of title 18; ~~C.R.S.~~; parts 1 to
22 5 and 7 to 9 of article 5 of title 18; ~~C.R.S.~~; article 5.5 of title 18; ~~C.R.S.~~;
23 parts 1, 3, 4, and 6 to 8 of article 6 of title 18; ~~C.R.S.~~; parts 1, ~~and 3 to 8~~
24 3, 4, AND 6 TO 8 of article 7 of title 18; ~~C.R.S.~~; part 3 of article 8 of title
25 18; ~~C.R.S.~~; article 15 of title 18; ~~C.R.S.~~; article 17 of title 18; ~~C.R.S.~~;
26 section 18-18-405, 18-18-411, 18-18-412.5, 18-18-412.7, 18-18-415,
27 18-18-422, or 18-18-423; ~~C.R.S.~~; or any other like crime under Colorado

1 law, federal law, or the laws of other states. A certified copy of the
2 judgment of a court of competent jurisdiction of such conviction or other
3 official record indicating that such plea was entered is conclusive
4 evidence of such conviction or plea in any hearing under this part 10.

5 **SECTION 5.** In Colorado Revised Statutes, 13-10-126, **amend**
6 (2)(a)(I)(A) as follows:

7 **13-10-126. Prostitution offender program authorized -**
8 **reports.** (2) A program created and administered by a municipal or
9 county court or multiple municipal or county courts pursuant to
10 subsection (1) of this section must:

11 (a) Permit enrollment in the program only by an offender who
12 either:

13 (I) (A) Has no prior convictions or any charges pending for any
14 felony; for any offense described in section 18-3-305, 18-3-306, or
15 18-13-128; ~~C.R.S.~~, in part 4 or 5 of article 3 of title 18; ~~C.R.S.~~, in part 3,
16 4, 6, 7, or 8 of article 6 of title 18; ~~C.R.S.~~, in section 18-7-203 or
17 18-7-206; ~~C.R.S.~~, or in part 3 OR 4 or 5 of article 7 of title 18; ~~C.R.S.~~, or
18 for any offense committed in another state that would constitute such an
19 offense if committed in this state; and

20 **SECTION 6. Act subject to petition - effective date.** This act
21 takes effect at 12:01 a.m. on the day following the expiration of the
22 ninety-day period after final adjournment of the general assembly (August
23 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
24 referendum petition is filed pursuant to section 1 (3) of article V of the
25 state constitution against this act or an item, section, or part of this act
26 within such period, then the act, item, section, or part will not take effect
27 unless approved by the people at the general election to be held in

- 1 November 2018 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.