**SECOND REGULAR SESSION**
**SIXTY-SIXTH GENERAL ASSEMBLY**
**STATE OF COLORADO**

INTRODUCED

LLS NO. 08-0894.01 Michael Dohr

**SENATE BILL 08-125**

**SENATE SPONSORSHIP**

Harvey, Penry, Cadman, Johnson, Kopp, Mitchell S., Renfroe, Schultheis, and Wiens

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Stephens, and Gardner C.

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**A BILL FOR AN ACT**

101 CONCERNING REGULATION OF SEXUALLY EXPLICIT REPRESENTATIONS

102 THAT ARE HARMFUL TO MINORS.

**Bill Summary**

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Recognizes the state's interest in protecting children from access to certain sexually explicit materials, and specifies that the general assembly's intent is to prohibit access to these materials by children without unconstitutionally inhibiting access by adults. Specifically allows municipalities to adopt ordinances concerning sexually explicit materials or performances that are harmful to minors.

Specifies criteria for determining whether material or a
performance is harmful to minors.

Makes it a class 2 misdemeanor to disseminate to a minor any material that is harmful to minors or to allow a minor to view any performance that is harmful to minors. Specifies affirmative defenses. Specifies the severability of provisions in the act.

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

SECTION 1. Part 5 of article 7 of title 18, Colorado Revised Statutes, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

PART 5
SEXUALLY EXPLICIT REPRESENTATIONS
HARMFUL TO CHILDREN

18-7-501. Legislative declaration. (1) The General Assembly finds that both the United States and Colorado Supreme Courts have held that a state’s interest in protecting the well-being of children permits the state greater latitude in adopting restrictions that limit children’s access to sexually explicit materials than in limiting adult access to such materials. Therefore, the purpose of this part 5 is to enact reasonable time, place, and manner restrictions to further this compelling governmental interest. The dissemination regulations of this part 5 are designed to prevent the sale to minors of materials deemed legally obscene as to minors but not as to adults. Similarly, the performance provisions of this part 5 are designed to prevent minors from being exposed to sexually explicit performances that are not appropriate for minors.

(2) It is not the intent of the General Assembly in the adoption of this part 5 to preempt the power of municipalities to
ADOPT ORDINANCES CONCERNING MATERIALS OR PERFORMANCES THAT ARE HARMFUL TO MINORS.

18-7-502. Definitions. As used in this Part 5, unless the context otherwise requires:

(1) "Material" means a picture, drawing, video or digital recording, film, book, magazine, or other written or electronic depiction, description, or representation.

(2) "Minor" means a person who is younger than eighteen years of age and who is not married or judicially emancipated.

(3) "Nudity" means the showing of:

(a) Uncovered, or less than opaqueley covered, human genitals, pubic areas, or buttocks or the nipple or any portion of the areola of the human female breast; or

(b) Covered human male genitals in a discernibly turgid state.

(4) "Performance" means a live exhibition with its primary purpose being for the audience's sexual gratification.

(5) "Sexual activity" means any of the following acts:

(a) Masturbation, whether performed alone or with another human or an animal;

(b) Vaginal, anal, or oral intercourse, whether performed with another human or with an animal;

(c) Touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic areas, or buttocks of another person or the clothed or unclothed breasts of a human female;

(d) Torture, physical restraint by being fettered or
BOUND, OR FLAGELLATION THAT IS INTENDED TO DEPICT SEXUAL
STIMULATION OR SEXUAL ABUSE;

(e) Excretory functions that are intended as an act of
APPARENT SEXUAL STIMULATION OR SEXUAL ABUSE; OR

(f) The insertion of any part of a person’s body or of any
OBJECT INTO ANOTHER PERSON’S ANUS OR VAGINA, EXCEPT WHEN DONE
AS PART OF A GENERALLY RECOGNIZED MEDICAL PROCEDURE.

18-7-503. Harmful to minors - standard. (1) A material or
performance is deemed harmful to minors if the material or
performance depicts nudity or sexual activity and if the
material or performance, when taken as a whole, meets the
following criteria:

(a) A reasonable adult person would find that the
material or performance has a predominant tendency to appeal
to the prurient interest of minors; and

(b) A reasonable adult person would find that the
depiction of nudity or sexual activity in the material or
performance is patently offensive to prevailing standards in the
adult community concerning what is suitable for minors; and

(c) A reasonable adult person would find that the
material or performance lacks serious literary, artistic,
political, or scientific value for minors.

18-7-504. Disseminating material or exhibiting a performance
that is harmful to minors - penalty. (1) A person commits the
offense of disseminating material that is harmful to minors if,
with or without financial or other consideration and knowing
the character or content of the material, the person:
(a) Sells, furnishes, presents, or distributes to a minor any material that is harmful to minors; or

(b) Allows a minor to review or peruse any material that is harmful to minors.

(2) A person commits the offense of exhibiting a performance that is harmful to minors if, with or without financial or other consideration and knowing the character or content of the performance, the person allows a minor to view a live performance that is harmful to minors.

(3) Except as otherwise provided in paragraph (b) of subsection (4) of this section, a mistake as to a minor's age is not a defense to prosecution under this section.

(4) It is an affirmative defense to prosecution under this section that:

(a) The defendant is a parent or legal guardian of the minor; or

(b) Before disseminating or exhibiting any material or performance that is harmful to minors, the defendant requested and received a driver's license, student identification card, or other document indicating that the minor to whom the material or performance was disseminated or exhibited was at least eighteen years of age and the defendant reasonably believed the minor was at least eighteen years of age; or

(c) The dissemination or exhibition was made with the prior consent of a parent or legal guardian of the minor; or

(d) The defendant was a teacher acting in the course of his or her duty teaching required material in a school or school.
DISTRICT; OR

(e) THE DEFENDANT WAS A SUBSTITUTE TEACHER ACTING IN THE COURSE OF HIS OR HER DUTY TEACHING THE MATERIAL PROVIDED TO THE SUBSTITUTE TEACHER.

(5) DISSEMINATING MATERIAL THAT IS HARMFUL TO MINORS OR EXHIBITING A PERFORMANCE THAT IS HARMFUL TO MINORS IS A CLASS 2 MISDEMEANOR. EACH INDIVIDUAL DISSEMINATION OF MATERIAL THAT IS HARMFUL TO MINORS AND EACH EXHIBITION OF A PERFORMANCE THAT IS HARMFUL TO MINORS IS A SEPARATE OFFENSE.

18-7-505. Severability. If any provision of this Part 5 or the application thereof to a person or circumstance is held invalid, such invalidity shall not affect other provisions of this Part 5 that may be given effect without the invalid provision or application. To this end, the provisions of this Part 5 are declared to be severable.

SECTION 2. Effective date - applicability. This act shall take effect July 1, 2008, and shall apply to offenses committed on or after said date.

SECTION 3. 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.