

Colorado

- [18-7-101. Definitions](#)
- [18-7-102. Obscenity](#)
- [18-7-103. Injunctions to restrain the promotion of obscene materials](#)
- [18-7-104.5. Remedies under the "Colorado Organized Crime Control Act"](#)

18-7-101. Definitions.

As used in this part 1, unless the context otherwise requires:

(1) "Material" means anything tangible that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner, but does not include an actual three-dimensional obscene device.

(1.5) "Minor" means a person under eighteen years of age.

(2) "Obscene" means material or a performance that:

(a) The average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;

(b) Depicts or describes:

(I) Patently offensive representations or descriptions of ultimate sex acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or

(II) Patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, or covered male genitals in a discernibly turgid state; and

(c) Taken as a whole, lacks serious literary, artistic, political, or scientific value.

(3) "Obscene device" means a device including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs.

(4) "Patently offensive" means so offensive on its face as to affront current community standards of tolerance.

(5) "Performance" means a play, motion picture, dance, or other exhibition performed before an audience.

(6) "Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same.

(6.5) "Prurient interest" means a shameful or morbid interest.

(7) "Simulated" means the explicit depiction or description of any of the types of conduct set forth in paragraph (b) of subsection (2) of this section, which creates the appearance of such conduct.

(8) "Wholesale promote" means to manufacture, issue, sell, provide, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, or to offer or agree to do the same for purpose of resale.

(9) If any of the depictions or descriptions of sexual conduct described in this section are declared by a court of competent jurisdiction to be unlawfully included herein, this declaration shall not invalidate this section as to other patently offensive sexual conduct included herein.

Source: L. 81: Entire part R&RE, p. 998, § 1, effective July 1. L. 86: (2)(b)(II) and (4) amended and (6.5) added, p. 782, § 1, effective April 21. L. 94: (1.5) added, p. 1720, § 16, effective July 1.

18-7-102. Obscenity.

(1) (a) Except as otherwise provided in subsection (1.5) of this section, a person commits wholesale promotion of obscenity if, knowing its content and character, such person wholesale promotes or possesses with intent to wholesale promote any obscene material.

(b) Wholesale promotion of obscenity is a class 1 misdemeanor.

(1.5) (a) A person commits wholesale promotion of obscenity to a minor if, knowing its content and character, such person wholesale promotes to a minor or possesses with intent to wholesale promote to a minor any obscene material.

(b) Wholesale promotion of obscenity to a minor is a class 6 felony.

(2) (a) Except as otherwise provided in subsection (2.5) of this section, a person commits promotion of obscenity if, knowing its content and character, such person:

(I) Promotes or possesses with intent to promote any obscene material; or

(II) Produces, presents, or directs an obscene performance or participates in a portion thereof that is obscene or that contributes to its obscenity.

(b) Promotion of obscenity is a class 2 misdemeanor.

(2.5) (a) A person commits promotion of obscenity to a minor if, knowing its content and character, such person:

(I) Promotes to a minor or possesses with intent to promote to a minor any obscene material; or

(II) Produces, presents, or directs an obscene performance involving a minor or participates in a portion thereof that is obscene or that contributes to its obscenity.

(b) Promotion of obscenity to a minor is a class 6 felony.

(3) Repealed.

(4) A person who possesses six or more identical obscene materials is presumed to possess them with intent to promote the same.

(5) This section does not apply to a person who possesses or distributes obscene material or participates in conduct otherwise proscribed by this section when the possession, participation, or conduct occurs in the course of law enforcement activities.

(6) This section does not apply to a person's conduct otherwise proscribed by this section which occurs in that person's residence as long as that person does not engage in the wholesale promotion or promotion of obscene material in his residence.

Source: L. 81: Entire part R&RE, p. 999, § 1, effective July 1. L. 83: (5) and (6) amended, p. 2048, § 4, effective October 14. L. 86: (1)(a), (2)(a)(I), (4), and (5) amended and (3) repealed, pp. 782, 785, §§ 2, 8, effective April 21. L. 94: (1) and (2) amended and (1.5) and (2.5) added, p. 1720, § 17, effective July 1.

18-7-103. Injunctions to restrain the promotion of obscene materials.

(1) The district courts of this state and the judges thereof shall have full power, authority, and jurisdiction to enjoin the wholesale promotion, promotion, or display of obscene materials as specified in this section and to issue all necessary and proper restraining orders, injunctions, and writs and processes in connection therewith not inconsistent with this article.

(2) The district attorney of the county in which a person, firm, or corporation wholesale promotes, promotes, or displays, or is about to wholesale promote, promote, or display, or has in his, her, or its possession with intent to wholesale promote, promote, or display, or is about to acquire possession with intent to wholesale promote, promote, or display any obscene material may maintain an action for injunction against such person, firm, or corporation to prevent the wholesale promotion, promotion, or display or further wholesale promotion, promotion, or display of said material described or identified in said suit for injunction.

(3) This article shall not authorize the issuance of temporary restraining orders except where exigent circumstances require the same. In matters of exigent circumstances, the restraining order shall provide that the action must be commenced on the earliest possible date. No temporary restraining order may be issued to restrain the continued exhibitions

of a motion picture being shown commercially before the public, notwithstanding the existence of exigent circumstances.

(4) No temporary restraining order or temporary injunction may be issued except after notice to the person, firm, or corporation sought to be enjoined and only after all parties have been offered or afforded an opportunity to be heard. A person, firm, or corporation shall be deemed to have been offered or afforded an opportunity to be heard if notice has been given and he, she, or it fails to appear. At such hearing, evidence shall be presented and witnesses examined.

(5) Before or after the commencement of the hearing on an application for a temporary injunction, the court may, and on motion of the party sought to be restrained shall, order the trial on the action on the merits to be advanced and consolidated with the hearing on the application. Where such hearings are not so consolidated, and a temporary injunction or restraining order is issued, the court shall hold a final hearing and a trial of the issues within one day after joinder of issue, and a decision shall be rendered within two days of the conclusion of the trial. If a final hearing is not held within one day after joinder of issue or a decision not rendered within two days of the conclusion of the trial, the injunction shall be dissolved. No temporary injunction or restraining order shall issue until after a showing of probable cause to believe that the material or display is obscene and a showing of probable success on the merits. Any such temporary injunction or restraining order shall provide that the defendant may not be punished for contempt if the material is found not to be obscene after joinder of issue, final hearing, and trial.

(6) Nothing contained in this article shall prevent the court from issuing a temporary restraining order forbidding the removing, destroying, deleting, splicing, or otherwise altering of any motion picture alleged to be obscene.

(7) Any person, firm, or corporation sought to be permanently enjoined shall be entitled to a full adversary trial of the issues within one day after the joinder of issue, and a decision shall be rendered by the court within two days of the conclusion of the trial. If the defendant in any suit for a permanent injunction filed under the terms of this article shall fail to answer or otherwise join issue within the time required to file his, her, or its answer, the court, on motion of the party applying for the injunction, shall enter a general denial for the defendant and set a date for hearing on the question raised in the suit for injunction within ten days following the entry of the general denial entered by the court. The court shall render its decision within two days after the conclusion of the hearing.

(8) In the event that a final order or judgment of injunction is entered against the person, firm, or corporation sought to be enjoined, such final order or judgment shall contain a provision directing the person, firm, or corporation to surrender to the sheriff of the county in which the action was brought any of the material described in subsection (2) of this section, and such sheriff shall be directed to seize and destroy the same six months after the entry of the said final order unless criminal proceedings or an indictment is brought before that time, in which event, said material may be used as evidence in such criminal proceeding.

(9) In any action brought as herein provided, the district attorney shall not be required to file any undertaking, bond, or security before the issuance of any injunction order provided for above, shall not be liable for costs, and shall not be liable for damages sustained by reason of the injunction order in cases where judgment is rendered in favor of the person, firm, or corporation sought to be enjoined.

(10) Every person, firm, or corporation who wholesale promotes, promotes, displays, or acquires possession with intent to wholesale promote, promote, or display any of the material described in subsection (2) of this section, after the service upon him of a summons and complaint in an action brought pursuant to this article, is chargeable with knowledge of the contents.

Source: L. 81: Entire part R&RE, p. 1000, § 1, effective July 1. **L. 86:** (1) to (5) amended, p. 783, § 3, effective April 21. **L. 87:** (8) and (10) amended, p. 1579, § 24, effective July 10.

18-7-104.5. Remedies under the "Colorado Organized Crime Control Act".

When a person or persons, through an enterprise, engage in a pattern of racketeering activity for which the predicate offenses are the promotion or wholesale promotion of obscenity, pursuant to article 17 of this title, the difference in the fair market value of real property in the vicinity of the location of such enterprise from what the value would be if such enterprise or any part thereof were not located in the vicinity, as established by the opinion testimony of experts or otherwise, shall be deemed a compensable injury for which the owners of victimized real property can exercise all civil remedies set forth in article 17 of this title, in addition to any other measure of damages provable pursuant to article 17 of this title.

Source: L. 86: Entire section added, p. 784, § 4, effective April 21.
