

An Act

HOUSE BILL 12-1151

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also SENATOR(S) King S., Aguilar, Bacon, Boyd, Brophy, Cadman, Carroll, Foster, Giron, Grantham, Guzman, Harvey, Heath, Hodge, Hudak, Jahn, Johnston, King K., Lambert, Morse, Neville, Newell, Nicholson, Renfroe, Roberts, Scheffel, Schwartz, Spence, Steadman, Tochtrop, White, Williams S., Shaffer B.

CONCERNING THE TRAFFICKING OF HUMAN BEINGS.

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

SECTION 1. In Colorado Revised Statutes, **repeal** 18-1.8-101.

SECTION 2. In Colorado Revised Statutes, **add** 13-21-127 as follows:

13-21-127. Civil damages for human trafficking and involuntary servitude. (1) A PERSON IS ENTITLED TO RECOVER DAMAGES AND TO OBTAIN INJUNCTIVE RELIEF FROM ANY PERSON WHO COMMITS TRAFFICKING

IN ADULTS, AS DESCRIBED IN SECTION 18-3-501, C.R.S.; TRAFFICKING IN CHILDREN, AS DESCRIBED IN SECTION 18-3-502, C.R.S.; OR COERCION OF INVOLUNTARY SERVITUDE, AS DESCRIBED IN SECTION 18-3-503, C.R.S.

(2) A CONVICTION FOR TRAFFICKING IN ADULTS, AS DESCRIBED IN SECTION 18-3-501, C.R.S.; TRAFFICKING IN CHILDREN, AS DESCRIBED IN SECTION 18-3-502, C.R.S.; OR COERCION OF INVOLUNTARY SERVITUDE, AS DESCRIBED IN SECTION 18-3-503, C.R.S., SHALL NOT BE A CONDITION PRECEDENT TO MAINTAINING A CIVIL ACTION PURSUANT TO THE PROVISIONS OF THIS SECTION.

SECTION 3. In Colorado Revised Statutes, 16-13-303, **amend** (1) (a) as follows:

16-13-303. Class 1 public nuisance. (1) Every building or part of a building including the ground upon which it is situate and all fixtures and contents thereof, every vehicle, and any real property shall be deemed a class 1 public nuisance when:

(a) Used as a public or private place of prostitution or used as a place where the commission of soliciting for prostitution, as defined in section 18-7-202, C.R.S.; pandering, as defined in section 18-7-203, C.R.S.; keeping a place of prostitution, as defined in section 18-7-204, C.R.S.; or pimping, as defined in section 18-7-206, C.R.S.; TRAFFICKING IN ADULTS, AS DEFINED IN SECTION 18-3-501, C.R.S.; TRAFFICKING IN CHILDREN, AS DEFINED IN SECTION 18-3-502, C.R.S.; OR COERCION OF INVOLUNTARY SERVITUDE, AS DEFINED IN SECTION 18-3-503, C.R.S., occurs;

SECTION 4. In Colorado Revised Statutes, 12-25.5-112, **add** (3) as follows:

12-25.5-112. Duties of escort bureau. (3) EACH ESCORT BUREAU SHALL PROVIDE TO EACH EMPLOYEE OF THE ESCORT BUREAU A WRITTEN NOTICE THAT INCLUDES:

(a) A STATEMENT THAT HUMAN TRAFFICKING AND COERCION OF INVOLUNTARY SERVITUDE ARE PROHIBITED IN THIS STATE BY THE PROVISIONS OF SECTIONS 18-3-501, 18-3-502, AND 18-3-503, C.R.S.; AND

(b) THE NAME, TELEPHONE NUMBER, AND INTERNET WEB SITE

ADDRESS OF A LOCAL, STATEWIDE, OR NATIONAL ORGANIZATION THAT PROVIDES ASSISTANCE TO VICTIMS OF HUMAN TRAFFICKING AND SLAVERY.

SECTION 5. In Colorado Revised Statutes, 12-48.5-110, **amend** (1) (f); and **add** (1) (g) as follows:

12-48.5-110. Unlawful acts. (1) It is unlawful for any person:

(f) To ~~fail~~ OPERATE A MASSAGE PARLOR WHILE FAILING to display at all times in a prominent place on the licensed premises a printed card with a minimum height of fourteen inches and a width of eleven inches with each letter a minimum of one-half inch in height, which shall read as follows:

WARNING

IT IS ILLEGAL FOR ANY PERSON UNDER EIGHTEEN YEARS OF AGE TO BE IN OR UPON THESE PREMISES AT ANY TIME, UNLESS HE OR SHE IS ACCOMPANIED BY HIS OR HER PARENT OR HAS A PHYSICIAN'S PRESCRIPTION FOR MASSAGE SERVICES.

IT IS ILLEGAL FOR ANY PERSON TO ALLOW A PERSON UNDER EIGHTEEN YEARS OF AGE TO BE IN OR UPON THESE PREMISES AT ANY TIME, UNLESS HE OR SHE IS ACCOMPANIED BY HIS OR HER PARENT OR HAS A PHYSICIAN'S PRESCRIPTION FOR MASSAGE SERVICES.

PART 5 OF ARTICLE 3 OF TITLE 18, COLORADO REVISED STATUTES, PROHIBITS TRAFFICKING OF ADULTS, TRAFFICKING OF CHILDREN, AND COERCION OF INVOLUNTARY SERVITUDE AND ESTABLISHES CRIMINAL PENALTIES FOR THESE OFFENSES.

FINES OR IMPRISONMENT MAY BE IMPOSED BY THE COURTS FOR VIOLATION OF THESE PROVISIONS UNDER ARTICLE 48.5 OF TITLE 12, COLORADO REVISED STATUTES.

(g) TO OPERATE A MASSAGE PARLOR WHILE FAILING TO DISPLAY AT ALL TIMES IN A PROMINENT PLACE ON THE LICENSED PREMISES A PRINTED CARD WITH A MINIMUM HEIGHT OF FOURTEEN INCHES AND A WIDTH OF ELEVEN INCHES WITH EACH LETTER A MINIMUM OF ONE-HALF INCH IN HEIGHT, WHICH PROVIDES THE NAME AND CONTACT INFORMATION OF A STATE OR LOCAL ORGANIZATION THAT PROVIDES SERVICES OR OTHER ASSISTANCE TO VICTIMS OF HUMAN TRAFFICKING.

SECTION 6. In Colorado Revised Statutes, 19-1-306, **add** (5) (d) and (6) (a.5) as follows:

19-1-306. Expungement of juvenile delinquent records.

(5) (d) THE COURT SHALL ORDER EXPUNGED ALL RECORDS IN THE CUSTODY OF THE COURT AND ANY RECORDS IN THE CUSTODY OF ANY OTHER AGENCY OR OFFICIAL THAT PERTAIN TO THE PETITIONER'S CONVICTION FOR PROSTITUTION, AS DESCRIBED IN SECTION 18-7-201, C.R.S.; SOLICITING FOR PROSTITUTION, AS DESCRIBED IN SECTION 18-7-202, C.R.S.; KEEPING A PLACE OF PROSTITUTION, AS DESCRIBED IN SECTION 18-7-204, C.R.S.; PUBLIC INDECENCY, AS DESCRIBED IN SECTION 18-7-301, C.R.S.; SOLICITING FOR CHILD PROSTITUTION, AS DESCRIBED IN SECTION 18-7-402, C.R.S., OR ANY CORRESPONDING MUNICIPAL CODE OR ORDINANCE IF, AT THE HEARING, THE COURT FINDS THAT THE PETITIONER WHO IS THE SUBJECT OF THE HEARING HAS ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE THAT, AT THE TIME HE OR SHE COMMITTED THE OFFENSE, HE OR SHE:

(I) HAD BEEN SOLD, EXCHANGED, BARTERED, OR LEASED BY ANOTHER PERSON, AS DESCRIBED IN SECTION 18-3-501 OR 18-3-502, C.R.S., FOR THE PURPOSE OF PERFORMING THE OFFENSE; OR

(II) WAS COERCED BY ANOTHER PERSON, AS DESCRIBED IN SECTION 18-3-503, C.R.S., TO PERFORM THE OFFENSE.

(6) A person is eligible to petition for an expungement order:

(a.5) AT ANY TIME FOR THE PURPOSES DESCRIBED IN PARAGRAPH (d) OF SUBSECTION (5) OF THIS SECTION;

SECTION 7. In Colorado Revised Statutes, **add** 24-72-308.7 as follows:

24-72-308.7. Sealing of criminal conviction records information for offenses committed by victims of human trafficking. (1) **Definitions.** FOR PURPOSES OF THIS SECTION, "CONVICTION RECORDS" MEANS ARREST AND CRIMINAL RECORDS INFORMATION AND ANY RECORDS PERTAINING TO A JUDGMENT OF CONVICTION.

(2) **Sealing of conviction records.** (a) (I) A DEFENDANT MAY PETITION THE DISTRICT COURT OF THE DISTRICT IN WHICH ANY CONVICTION RECORDS PERTAINING TO THE DEFENDANT'S CONVICTION FOR PROSTITUTION, AS DESCRIBED IN SECTION 18-7-201, C.R.S.; SOLICITING FOR PROSTITUTION, AS DESCRIBED IN SECTION 18-7-202, C.R.S.; KEEPING A PLACE OF PROSTITUTION, AS DESCRIBED IN SECTION 18-7-204, C.R.S.; PUBLIC INDECENCY, AS DESCRIBED IN SECTION 18-7-301, C.R.S., OR ANY CORRESPONDING MUNICIPAL CODE OR ORDINANCE ARE LOCATED FOR THE SEALING OF THE CONVICTION RECORDS, EXCEPT FOR BASIC IDENTIFYING INFORMATION.

(II) IF A PETITION IS FILED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) FOR THE SEALING OF A RECORD OF CONVICTION FOR PROSTITUTION, AS DESCRIBED IN SECTION 18-7-201, C.R.S.; SOLICITING FOR PROSTITUTION, AS DESCRIBED IN SECTION 18-7-202, C.R.S.; KEEPING A PLACE OF PROSTITUTION, AS DESCRIBED IN SECTION 18-7-204, C.R.S., OR PUBLIC INDECENCY, AS DESCRIBED IN SECTION 18-7-301, C.R.S., THE COURT SHALL ORDER THE RECORD SEALED AFTER:

(A) THE PETITION IS FILED;

(B) THE FILING FEE IS PAID; AND

(C) THE DEFENDANT ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE THAT, AT THE TIME HE OR SHE COMMITTED THE OFFENSE, HE OR SHE HAD BEEN SOLD, EXCHANGED, BARTERED, OR LEASED BY ANOTHER PERSON, AS DESCRIBED IN SECTION 18-3-501 OR 18-3-502, C.R.S., FOR THE PURPOSE OF PERFORMING THE OFFENSE, OR HE OR SHE WAS COERCED BY ANOTHER PERSON, AS DESCRIBED IN SECTION 18-3-503, C.R.S., TO PERFORM THE OFFENSE.

(III) AN ORDER ENTERED PURSUANT TO THIS SECTION SHALL BE DIRECTED TO EACH CUSTODIAN WHO MAY HAVE CUSTODY OF ANY PART OF THE CONVICTION RECORDS THAT ARE THE SUBJECT OF THE ORDER.

WHENEVER A COURT ENTERS AN ORDER SEALING CONVICTION RECORDS PURSUANT TO THIS SECTION, THE DEFENDANT SHALL PROVIDE THE COLORADO BUREAU OF INVESTIGATION AND EACH CUSTODIAN OF THE CONVICTION RECORDS WITH A COPY OF THE ORDER AND SHALL PAY TO THE BUREAU ANY COSTS RELATED TO THE SEALING OF HIS OR HER CRIMINAL CONVICTION RECORDS THAT ARE IN THE CUSTODY OF THE BUREAU. THEREAFTER, THE DEFENDANT MAY REQUEST AND THE COURT MAY GRANT AN ORDER SEALING THE CIVIL CASE IN WHICH THE CONVICTION RECORDS WERE SEALED.

(IV) AN ORDER SEALING CONVICTION RECORDS SHALL NOT DENY ACCESS TO THE CRIMINAL RECORDS OF A DEFENDANT BY ANY COURT, LAW ENFORCEMENT AGENCY, CRIMINAL JUSTICE AGENCY, PROSECUTING ATTORNEY, OR PARTY OR AGENCY REQUIRED BY LAW TO CONDUCT A CRIMINAL HISTORY RECORD CHECK ON AN INDIVIDUAL. AN ORDER SEALING CONVICTION RECORDS DOES NOT VACATE A CONVICTION. A CONVICTION SEALED PURSUANT TO THIS SECTION MAY BE USED BY A CRIMINAL JUSTICE AGENCY, LAW ENFORCEMENT AGENCY, COURT, OR PROSECUTING ATTORNEY FOR ANY LAWFUL PURPOSE RELATING TO THE INVESTIGATION OR PROSECUTION OF ANY CASE, INCLUDING BUT NOT LIMITED TO ANY SUBSEQUENT CASE THAT IS FILED AGAINST THE DEFENDANT, OR FOR ANY OTHER LAWFUL PURPOSE WITHIN THE SCOPE OF HIS, HER, OR ITS DUTIES. IF A DEFENDANT IS CONVICTED OF A NEW CRIMINAL OFFENSE AFTER AN ORDER SEALING CONVICTION RECORDS IS ENTERED, THE COURT SHALL ORDER THE CONVICTION RECORDS TO BE UNSEALED. A PARTY OR AGENCY REQUIRED BY LAW TO CONDUCT A CRIMINAL HISTORY RECORD CHECK IS AUTHORIZED TO USE ANY SEALED CONVICTION FOR THE LAWFUL PURPOSE FOR WHICH THE CRIMINAL HISTORY RECORD CHECK IS REQUIRED BY LAW.

(V) A DEFENDANT MAY PETITION THE COURT FOR THE SEALING OF CONVICTION RECORDS PURSUANT TO THIS SECTION ONLY ONCE DURING ANY TWELVE-MONTH PERIOD. THE COURT SHALL DISMISS A SECOND OR SUBSEQUENT PETITION FILED WITHIN ANY TWELVE-MONTH PERIOD.

(b) A PETITION TO SEAL CONVICTION RECORDS PURSUANT TO THIS SECTION SHALL INCLUDE A LISTING OF EACH CUSTODIAN OF THE RECORDS TO WHOM THE SEALING ORDER IS DIRECTED AND ANY INFORMATION THAT ACCURATELY AND COMPLETELY IDENTIFIES THE RECORDS TO BE SEALED.

(c) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (IV) OF

PARAGRAPH (a) OF THIS SUBSECTION (2), UPON THE ENTRY OF AN ORDER TO SEAL THE CONVICTION RECORDS, THE DEFENDANT AND ALL CRIMINAL JUSTICE AGENCIES MAY PROPERLY REPLY, UPON AN INQUIRY IN THE MATTER, THAT PUBLIC CONVICTION RECORDS DO NOT EXIST WITH RESPECT TO THE DEFENDANT.

(d) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (IV) OF PARAGRAPH (a) OF THIS SUBSECTION (2), INSPECTION OF THE RECORDS INCLUDED IN AN ORDER SEALING CONVICTION RECORDS MAY THEREAFTER BE PERMITTED BY THE COURT ONLY UPON PETITION BY THE DEFENDANT.

(e) (I) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (IV) OF PARAGRAPH (a) OF THIS SUBSECTION (2), EMPLOYERS, STATE AND LOCAL GOVERNMENT AGENCIES, OFFICIALS, LANDLORDS, AND EMPLOYEES SHALL NOT, IN ANY APPLICATION OR INTERVIEW OR IN ANY OTHER WAY, REQUIRE AN APPLICANT TO DISCLOSE ANY INFORMATION CONTAINED IN SEALED CONVICTION RECORDS. AN APPLICANT NEED NOT, IN ANSWER TO ANY QUESTION CONCERNING CONVICTION RECORDS THAT HAVE BEEN SEALED, INCLUDE A REFERENCE TO OR INFORMATION CONCERNING THE SEALED CONVICTION RECORDS AND MAY STATE THAT THE APPLICANT HAS NOT BEEN CRIMINALLY CONVICTED.

(II) THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (e) DO NOT PRECLUDE THE BAR COMMITTEE OF THE COLORADO STATE BOARD OF LAW EXAMINERS FROM MAKING FURTHER INQUIRIES INTO THE FACT OF A CONVICTION THAT COMES TO THE ATTENTION OF THE BAR COMMITTEE THROUGH OTHER MEANS. THE BAR COMMITTEE OF THE COLORADO STATE BOARD OF LAW EXAMINERS HAS A RIGHT TO INQUIRE INTO THE MORAL AND ETHICAL QUALIFICATIONS OF AN APPLICANT, AND THE APPLICANT DOES NOT HAVE A RIGHT TO PRIVACY OR PRIVILEGE THAT JUSTIFIES HIS OR HER REFUSAL TO ANSWER A QUESTION CONCERNING SEALED CONVICTION RECORDS THAT HAVE COME TO THE ATTENTION OF THE BAR COMMITTEE THROUGH OTHER MEANS.

(III) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (e), THE DEPARTMENT OF EDUCATION MAY REQUIRE A LICENSED EDUCATOR OR AN APPLICANT FOR AN EDUCATOR'S LICENSE WHO FILES A PETITION TO SEAL A CRIMINAL RECORD TO NOTIFY THE DEPARTMENT OF EDUCATION OF THE PENDING PETITION TO SEAL. THE DEPARTMENT HAS THE RIGHT TO INQUIRE INTO THE FACTS OF THE CRIMINAL OFFENSE FOR

WHICH THE PETITION TO SEAL IS PENDING. THE EDUCATOR OR APPLICANT HAS NO RIGHT TO PRIVACY OR PRIVILEGE THAT JUSTIFIES HIS OR HER REFUSAL TO ANSWER ANY QUESTIONS CONCERNING THE ARREST AND CRIMINAL RECORDS INFORMATION CONTAINED IN THE PENDING PETITION TO SEAL.

(IV) ANY MEMBER OF THE PUBLIC MAY PETITION THE COURT TO UNSEAL ANY FILE THAT HAS BEEN PREVIOUSLY SEALED UPON A SHOWING THAT CIRCUMSTANCES HAVE COME INTO EXISTENCE SINCE THE ORIGINAL SEALING, AND, AS A RESULT, THE PUBLIC INTEREST IN DISCLOSURE NOW OUTWEIGHS THE DEFENDANT'S INTEREST IN PRIVACY.

(f) THE OFFICE OF THE STATE COURT ADMINISTRATOR SHALL POST ON ITS WEB SITE A LIST OF ALL PETITIONS TO SEAL CONVICTION RECORDS THAT ARE FILED WITH A DISTRICT COURT. A DISTRICT COURT MAY NOT GRANT A PETITION TO SEAL CONVICTION RECORDS UNTIL AT LEAST THIRTY DAYS AFTER THE POSTING. AFTER THE EXPIRATION OF THIRTY DAYS FOLLOWING THE POSTING, THE PETITION TO SEAL CONVICTION RECORDS AND INFORMATION PERTINENT THERETO SHALL BE REMOVED FROM THE WEB SITE OF THE OFFICE OF THE STATE COURT ADMINISTRATOR.

(g) NOTHING IN THIS SECTION AUTHORIZES THE PHYSICAL DESTRUCTION OF ANY CONVICTION RECORDS.

(h) NOTWITHSTANDING ANY PROVISION IN THIS SECTION TO THE CONTRARY, IN REGARD TO ANY CONVICTION OF A DEFENDANT RESULTING FROM A SINGLE CASE IN WHICH THE DEFENDANT IS CONVICTED OF MORE THAN ONE OFFENSE, RECORDS OF THE CONVICTION MAY BE SEALED PURSUANT TO THE PROVISIONS OF THIS SECTION ONLY IF THE RECORDS OF EVERY CONVICTION OF THE DEFENDANT RESULTING FROM THAT CASE MAY BE SEALED PURSUANT TO THE PROVISIONS OF THIS SECTION.

(3) Rules of discovery - rules of evidence - witness testimony.
COURT ORDERS SEALING RECORDS OF OFFICIAL ACTIONS PURSUANT TO THIS SECTION DO NOT LIMIT THE OPERATIONS OF:

(a) THE COLORADO RULES OF CIVIL PROCEDURE RELATED TO DISCOVERY OR THE COLORADO RULES OF EVIDENCE PROMULGATED BY THE SUPREME COURT OF COLORADO OR ANY OTHER STATE OR FEDERAL COURT;
OR

(b) THE PROVISIONS OF SECTION 13-90-101, C.R.S., CONCERNING WITNESS TESTIMONY.

SECTION 8. In Colorado Revised Statutes, 18-1.3-602, **add** (4) (e) as follows:

18-1.3-602. Definitions. As used in this part 6, unless the context otherwise requires:

(4) (e) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, "VICTIM" INCLUDES A PERSON LESS THAN EIGHTEEN YEARS OF AGE WHO HAS BEEN TRAFFICKED BY AN OFFENDER, AS DESCRIBED IN SECTION 18-3-502, OR COERCED INTO INVOLUNTARY SERVITUDE, AS DESCRIBED IN SECTION 18-3-503.

SECTION 9. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 8, 2012, if adjournment sine die is on May 9, 2012); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless

approved by the people at the general election to be held in November 2012 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Frank McNulty
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO