

21-6402. Promotion to minors of material harmful to minors. (a) No person having custody, control or supervision of any commercial establishment shall knowingly:

(1) Display any material which is harmful to minors in such a way that minors, as a part of the invited general public, will be exposed to view such material or device;

(2) present or distribute to a minor, or otherwise allow a minor to view, with or without consideration, any material which is harmful to minors; or

(3) present to a minor, or participate in presenting to a minor, with or without consideration, any performance which is harmful to a minor.

(b) Violation of this section is a class B nonperson misdemeanor.

(c) Notwithstanding the provisions of K.S.A. 2016 Supp. 21-5204, and amendments thereto, to the contrary, it shall be an affirmative defense to any prosecution under this section that:

(1) The allegedly harmful material or device was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material or device was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incident to an approved course or program of instruction at such school;

(2) the defendant is an officer, director, trustee or employee of a public library and the allegedly harmful material or device was acquired by a public library and was disseminated in accordance with regular library policies approved by its governing body;

(3) an exhibition in a state of nudity is for a bona fide scientific or medical purpose, or for an educational or cultural purpose for a bona fide school, museum or library;

(4) with respect to a prosecution for an act described by subsection (a)(1), the allegedly harmful material was kept behind blinder racks;

(5) with respect to a prosecution for an act described by subsection (a)(2) or (3), the defendant had reasonable cause to believe that the minor involved was 18 years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was 18 years old or more; and

(6) with respect to a prosecution for an act described by subsection (a)(3), the allegedly harmful performance was viewed by the minor in the presence of such minor's parent or parents or such minor's legal guardian.

(d) As used in this section:

(1) "Blinder rack" means a device in which material is displayed in such a manner that the lower 2/3 of the material is not exposed to view;

(2) "harmful to minors" means that quality of any description, exhibition, presentation or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sadomasochistic abuse when the material or performance, taken as a whole or, with respect to a prosecution for an act described by subsection (a)(1), that portion of the material that was actually exposed to the view of minors, has the following characteristics:

(A) The average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest in sex to minors;

(B) the average adult person applying contemporary community standards would find that the material or performance depicts or describes nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and

(C) a reasonable person would find that the material or performance lacks serious literary, scientific, educational, artistic or political value for minors;

(3) "material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape or video tape;

(4) "minor" means any unmarried person under 18 years of age;

(5) "nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering; the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernible state of sexual excitement;

(6) "performance" means any motion picture, file, video tape, played record, phonograph, tape recording, preview, trailer, play, show, skit, dance or other exhibition performed or presented to or before an audience of one or more, with or without consideration;

(7) "sadomasochistic abuse" means flagellation or torture by or upon a person clad in undergarments, in a mask or bizarre costume or in the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed;

(8) "sexual conduct" means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's clothed or unclothed genitals or pubic area or buttocks or with a human female's breast; and

(9) "sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(e) The provisions of this section shall not apply to a retail sales clerk, if such clerk has no financial interest in the materials or performance or in the commercial establishment displaying, presenting or distributing such materials or presenting such performance other than regular employment as a retail sales clerk. The provisions of this section shall not exempt any retail sales clerk from criminal liability for any act unrelated to regular employment as a retail sales clerk.

History: L. 2010, ch. 136, § 213; July 1, 2011.