

Approved February 12, 1988
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m./~~pm~~ on February 10, 1988 in room 514-S of the Capitol.

All members were present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Parrish, Steineger, Talkington, Winter and Yost.

Committee staff present:

Gordon Self, Office of Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Senator Parrish requested a bill be introduced as a committee bill concerning attachment to lottery for child support. Following her explanation, Senator Parrish moved to introduce the bill. Senator Gaines seconded the motion. The motion carried.

The chairman recognized the Closeup Students of Kansas who were present.

House Bill 2287 - Displaying materials or performances harmful to minors.

The chairman reviewed the amendments that had been adopted by the committee in a previous meeting. Senator Winter then moved to amend the bill in Section 1 paragraph (1) to return the language to the original version and that wording inserted in line 70. Senator Yost seconded the motion. The motion carried. Senator Gaines moved to amend the bill by striking all of Subsection (3) beginning in line 83. Senator Parrish seconded the motion. The motion carried. Senator Yost moved to amend the bill in line 23 by inserting "or recklessly" following "knowingly" and to add additional language to protect the retailer. Senator Gaines seconded the motion. The motion carried. Senator Gaines moved to report the bill favorably as amended. Senator Burke seconded the motion. The motion carried. Senator Gaines made a substitute motion to report the bill favorably as amended. Senator Burke seconded the motion. Senator Winter made a substitute motion to amend the bill by adding additional defense in Subsection (C), minor was in the presence of their parent or guardian, in lines 30 through 32 in Subsection 1(a)(3). Senator Steineger seconded the motion. The motion carried. On the motion to report the bill favorably as amended, the motion carried.

Senate Bill 532 - Probate code, qualifications of fiduciaries.

The chairman reviewed the bill. Following committee discussion, Senator Gaines moved to report the bill favorably. Senator Parrish seconded the motion. The motion carried.

The meeting adjourned.

A copy of the guest list is attached (See Attachment I).

Copies of the working drafts of the bill are attached (See Attachments II). RE: 2287

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 2-10-88

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Jim Eckhoff	Box 79 Meade Ks.	Ks. Close up
Vonda Newby	HCR 2 Box 13 Meade Ks.	" "
Shannon Classen	HCR-3 Box 49 Meade Ks	" "
Brian Helm	Box 113 Meade, KS	" "
Maudie Moss	Box 487 Meade, Ks 67864	Closeup Kansas
Manessa Laymer	3015 Bonn	" "
Diana Smith	2908 Millwood Wichita	" "
Chantel Mast	3032 S. St. Paul Wichita	" "
Tina Hagar	832 W. Monah. Wichita	" "
Vivian Wellman	Box 115 MEADE, KS.	" "
Pat Rogers	HCR-3 BOX 61 MEADE, KS	" "
Laurie Hartman	1200 HARRISON	Ks. BAR ASS'N
Ed Zeller	301 S. 4TH Marion, Ks.	KS Close-Up
Wayne Bzika	RR 2 Tampa Ks. 67485	KS Close-Up
Paul Gage	3105 Tomhawk	KS Close-Up
Frank McLeary	2514 Harvard Rd	" "
Peter Willmert	1730 W 29 St	CloseUp Kansas
Rebecca Springer	1611 Kentucky Lawrence Ks	Close Up Kansas
Daria Sander	2816 University Dr.	" "
Trevor Gans	2018 CAMELBACK DRIVE	" "
PAMELA McELWEE	R2 BOX 368 LAWRENCE KS	CLOSE-UP KS.
Charles Thompson	3825 Statson Dr. Lawrence	Close-Up
Steve Strick	1409 Alston Marysville	KS "
Ryan L. Gandy	1306 Ann Marysville	KS Close-Up
Brian Shultz	Box 113 Marysville	Closeup

Attach. I

0046 was acquired by a public library and was disseminated in ac-
0047 cordance with regular library policies approved by its governing
0048 body.

0049 (3) An exhibition in a state of nudity is for a bona fide
0050 scientific or medical purpose, or for an educational or cultural
0051 purpose for a bona fide school, museum or library.

0052 (4) With respect to a prosecution for an act described by
0053 subsection (a)(1), the allegedly harmful material was kept behind
0054 blinder racks.

0055 (5) With respect to a prosecution for an act described by
0056 subsection (a)(2) or (3), the defendant had reasonable cause to
0057 believe that the minor involved was 18 years old or over, and
0058 such minor exhibited to the defendant a draft card, driver's
0059 license, birth certificate or other official or apparently official
0060 document purporting to establish that such minor was 18 years
0061 old or more.

0062 (d) As used in this section:

0063 (1) "Blinder rack" means a device in which material is dis-
0064 played in such a manner that the lower 2/3 of the material is not
0065 exposed to view.

0066 (2) "Harmful to minors" means that quality of any descrip-
0067 tion, exhibition, presentation or representation, in whatever
0068 form, of nudity, sexual conduct, sexual excitement or sadoma-
0069 sochistic abuse when the material or performance, taken as a
0070 whole, has the following characteristics:

0071 (A) The average adult person applying contemporary com-
0072 munity standards would find that the material or performance
0073 has a predominant tendency to appeal to a prurient interest in
0074 sex to minors;

0075 (B) the average adult person applying contemporary com-
0076 munity standards would find that the material or performance
0077 depicts or describes nudity, sexual conduct, sexual excitement or
0078 sadomasochistic abuse in a manner that is patently offensive to
0079 prevailing standards in the adult community with respect to what
0080 is suitable for minors; and

0081 (C) the material or performance lacks serious literary, scien-
0082 tific, educational, artistic or political value for minors.

or, with respect to a
prosecution for an act
described by subsection
(a)(1), that portion of
material that was
actually exposed to the
view of minors,

Attach II

0083 (3) "Knowingly" means having general knowledge of, reason
0084 to know or a belief or ground for belief which warrants further
0085 inspection or inquiry as to the character and content of any
0086 material or performance which is reasonably susceptible to ex-
0087 amination by the defendant.

0088 (4) "Material" means any book, magazine, newspaper,
0089 pamphlet, poster, print, picture, figure, image, description, mo-
0090 tion picture film, record, recording tape or video tape.

0091 (5) "Minor" means any person under 18 years of age.

0092 (6) "Nudity" means the showing of the human male or fe-
0093 male genitals, pubic area or buttocks with less than a full opaque
0094 covering; the showing of the female breast with less than a full
0095 opaque covering of any portion thereof below the top of the
0096 nipple; or the depiction of covered male genitals in a discernible
0097 state of sexual excitement.

0098 (7) "Performance" means any motion picture, film, video
0099 tape, played record, phonograph, tape recording, preview,
0100 trailer, play, show, skit, dance or other exhibition performed or
0101 presented to or before an audience of one or more, with or
0102 without consideration.

0103 (8) "Sadomasochistic abuse" means flagellation or torture by
0104 or upon a person clad in undergarments, in a mask or bizarre
0105 costume or in the condition of being fettered, bound or otherwise
0106 physically restrained on the part of one so clothed.

0107 (9) "Sexual conduct" means acts of masturbation, homosex-
0108 uality, sexual intercourse or physical contact with a person's
0109 clothed or unclothed genitals or pubic area or buttocks or with a
0110 human female's breast.

0111 (10) "Sexual excitement" means the condition of human
0112 male or female genitals when in a state of sexual stimulation or
0113 arousal.

0114 (e) This section shall be part of and supplemental to the
0115 Kansas criminal code.

0116 Sec. 2. This act shall take effect and be in force from and
0117 after its publication in the statute book.

HOUSE BILL No. 2287

By Representative Smith

2-11

0017 AN ACT concerning crimes and punishments; relating to mate-
0018 rial or performances harmful to minors; prohibiting certain
0019 acts and providing penalties therefor.
0020

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. (a) No person having custody, control or supervi-
0023 sion of any commercial establishment shall knowingly:

0024 (1) Display any material ~~which is harmful to minors~~ in such a
0025 way that minors, as a part of the invited general public, will be
0026 exposed to view ~~such material or device;~~

nudity, sexual conduct, sexual excitement
or sadomasochistic abuse

0027 (2) sell, furnish, present, distribute or disseminate to a minor,
0028 or otherwise allowing a minor to view, with or without consid-
0029 eration, any material which is harmful to minors; or

0030 (3) present to a minor, or participate in presenting to a minor,
0031 with or without consideration, any performance which is harmful
0032 to a minor.

0033 (b) Violation of subsection (a) is a class ~~B~~ misdemeanor. ^c

0034 (c) Notwithstanding the provisions of K.S.A. 21-3202 and
0035 amendments thereto ~~to the contrary~~, it shall be an affirmative
0036 defense to any prosecution under this section that:

0037 (1) The allegedly harmful material or device was purchased,
0038 leased or otherwise acquired by a public, private or parochial
0039 school, college or university, and that such material or device
0040 was either sold, leased, distributed or disseminated by a teacher,
0041 instructor, professor or other faculty member or administrator of
0042 such school as part of or incidental to an approved course or
0043 program of instruction at such school.

0044 (2) The defendant is an officer, director, trustee or employee
0045 of a public library and the allegedly harmful material or device

0016 was acquired by a public library and was disseminated in ac-
 0017 cordance with regular library policies approved by its governing
 0018 body.

0019 (3) An exhibition in a state of nudity is for a bona fide
 0020 scientific or medical purpose, or for an educational or cultural
 0021 purpose for a bona fide school, museum or library.

0022 (4) With respect to a prosecution for an act described by
 0023 subsection (a)(1), the allegedly harmful material was kept behind
 0024 blinder racks.

0025 (5) With respect to a prosecution for an act described by
 0026 subsection (a)(2) or (3), the defendant had reasonable cause to
 0027 believe that the minor involved was ~~18~~ years old or over, and
 0028 such minor exhibited to the defendant a draft card, driver's
 0029 license, birth certificate or other official or apparently official
 0030 document purporting to establish that such minor was ~~18~~ years
 0031 old or more.

16

16

0032 (d) As used in this section:

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 0034 played in such a manner that the lower $\frac{2}{3}$ of the material is not
 0035 exposed to view.

0036 (2) "Harmful to minors" means that quality of any descrip-
 0037 tion, exhibition, presentation or representation, in whatever
 0038 form, of nudity, sexual conduct, sexual excitement or sadoma-
 0039 sochistic abuse when the material or performance, taken as a
 0040 whole, has the following characteristics:

0041 (A) The average adult person applying contemporary com-
 0042 munity standards would find that the material or performance
 0043 has a predominant tendency to appeal to a prurient interest in
 0044 sex to minors;

0045 (B) the average adult person applying contemporary com-
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 0047 depicts or describes nudity, sexual conduct, sexual excitement or
 0048 sadomasochistic abuse in a manner that is patently offensive to
 0049 prevailing standards in the adult community with respect to what
 0050 is suitable for minors; and

0051 (C) the material or performance lacks serious literary, scien-
 0052 tific, educational, artistic or political value for minors.

a reasonable person would find that

0083 (3) "Knowingly" means having ~~general knowledge of, reason~~
0084 ~~to know or a belief or ground for belief which warrants further~~
0085 ~~inspection or inquiry as to~~ the character and content of any
0086 material or performance ~~which is reasonably susceptible to ex-~~
0087 ~~amination by the defendant.~~

and, with respect to a prosecution for an act described by subsection (a)(1), that the material is exposed to view

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0089 pamphlet, poster, print, picture, figure, image, description, mo-
0090 tion picture film, record, recording tape or video tape.

0091 (5) "Minor" means any ~~person under 18 years of age.~~

unmarried
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0094 covering; the showing of the female breast with less than a full
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