

HOUSE BILL No. 2165

By Committee on Judiciary

1-30

1 AN ACT concerning crimes and punishment; relating to promotion to
2 minors of material harmful to minors; amending K.S.A. 2012 Supp. 21-
3 6402 and repealing the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2012 Supp. 21-6402 is hereby amended to read as
7 follows: 21-6402. (a) No person having custody, control or supervision
8 of any ~~commercial~~ establishment shall ~~knowingly~~ *recklessly*:

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

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

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

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

18 (c) Notwithstanding the provisions of K.S.A. 2012 Supp. 21-5204,
19 and amendments thereto, to the contrary, it shall be an affirmative defense
20 to any prosecution under this section that:

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

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

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

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

36 (5) with respect to a prosecution for an act described by subsection

1 (a)(2) or (3), the defendant had reasonable cause to believe that the minor
2 involved was 18 years old or over, and such minor exhibited to the
3 defendant a draft card, driver's license, birth certificate or other official or
4 apparently official document purporting to establish that such minor was
5 18 years old or more; and

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

9 (d) As used in this section:

10 (1) "Blinder rack" means a device in which material is displayed in
11 such a manner that the lower $\frac{2}{3}$ of the material is not exposed to view;

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

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

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

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

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

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

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

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

43 (7) "sadomasochistic abuse" means flagellation or torture by or upon

1 a person clad in undergarments, in a mask or bizarre costume or in the
2 condition of being fettered, bound or otherwise physically restrained on
3 the part of one so clothed;

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

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

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

16 Sec. 2. K.S.A. 2012 Supp. 21-6402 is hereby repealed.

17 Sec. 3. This act shall take effect and be in force from and after its
18 publication in the statute book.