

**SENATE BILL No. 401**

By Committee on Judiciary

2-13

1 AN ACT concerning crimes and punishment; relating to promotion to  
2 minors of material harmful to minors; removing an affirmative defense;  
3 amending K.S.A. 2013 Supp. 21-6402 and repealing the existing  
4 section.

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

7 Section 1. K.S.A. 2013 Supp. 21-6402 is hereby amended to read as  
8 follows: 21-6402. (a) No person having custody, control or supervision  
9 of any commercial **or public** establishment shall ~~knowingly~~ **recklessly**:

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

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

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

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

19 (c) Notwithstanding the provisions of K.S.A. 2013 Supp. 21-5204,  
20 and amendments thereto, to the contrary, it shall be an affirmative defense  
21 to any prosecution under this section that:

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

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

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

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

1 (a)(1), the allegedly harmful material was kept behind blinder racks;

2 (5) with respect to a prosecution for an act described by subsection  
3 (a)(2) or (3), the defendant had reasonable cause to believe that the minor  
4 involved was 18 years old or over, and such minor exhibited to the  
5 defendant a draft card, driver's license, birth certificate or other official or  
6 apparently official document purporting to establish that such minor was  
7 18 years old or more; and

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

11 (d) As used in this section:

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

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

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

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

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

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

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

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

41 (6) "performance" means any motion picture, file, video tape, played  
42 record, phonograph, tape recording, preview, trailer, play, show, skit, dance  
43 or other exhibition performed or presented to or before an audience of one

1 or more, with or without consideration;

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

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

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

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

18 Sec. 2. K.S.A. 2013 Supp. 21-6402 is hereby repealed.

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