

## SENATE BILL No. 531

By Committee on Federal and State Affairs

2-22

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1 AN ACT concerning children and minors; relating to material harmful to  
2 minors; creating a civil cause of action against schools that give or  
3 make available such materials to minors; relating to the criminal  
4 offenses of promoting obscenity and material harmful to minors;  
5 removing an affirmative defense for public and nonpublic schools  
6 thereof; amending K.S.A. 21-6401 and 21-6402 and repealing the  
7 existing sections.

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

10 New Section 1. (a) As used in this section:

11 (1) "Harmful to minors" means the same as defined in K.S.A. 21-  
12 6402, and amendments thereto.

13 (2) "Material" means the same as defined in K.S.A. 21-6402, and  
14 amendments thereto.

15 (3) "Minor" means an individual under 18 years of age.

16 (4) "School" means a public school or accredited nonpublic school,  
17 private postsecondary educational institution as defined in K.S.A. 74-  
18 3201b, and amendments thereto, or postsecondary educational institution  
19 as defined in K.S.A. 74-3201b, and amendments thereto.

20 (b) Notwithstanding any other provision of law, a school or an agent  
21 thereof shall not promote, present or display any material that is harmful to  
22 minors in such a way that minors will obtain or be exposed to view such  
23 material.

24 (c) Any minor who obtains or views such material from a school, or  
25 the parent or guardian of such child, shall have a civil cause of action  
26 against such school if:

27 (1) Employees or agents of the school gave or made available  
28 material harmful to minors; or

29 (2) the school failed to take reasonable steps to restrict access to  
30 material harmful to minors.

31 (d) Any minor, parent or legal guardian who prevails in an action  
32 brought under this section may recover \$2,500 in statutory damages  
33 including actual damages, injunctive relief and any other appropriate  
34 relief.

35 (e) It shall be an affirmative defense to this section that the employee  
36 or agent of the school:

1 (1) Had reasonable belief that the minor involved was 18 years of age  
2 or older or such minor showed a draft card, driver's license, birth  
3 certificate or other official or apparently official document purporting to  
4 establish that such minor was 18 years of age or older; or

5 (2) verified that the minor was accompanied, at the time of the act, by  
6 the minor's parent or guardian or another adult purporting to be the minor's  
7 parent or guardian who signed a written statement to that effect.

8 Sec. 2. K.S.A. 21-6401 is hereby amended to read as follows: 21-  
9 6401. (a) Promoting obscenity is recklessly:

10 (1) Manufacturing, mailing, transmitting, publishing, distributing,  
11 presenting, exhibiting or advertising any obscene material or obscene  
12 device;

13 (2) possessing any obscene material or obscene device with intent to  
14 mail, transmit, publish, distribute, present, exhibit or advertise such  
15 material or device;

16 (3) offering or agreeing to manufacture, mail, transmit, publish,  
17 distribute, present, exhibit or advertise any obscene material or obscene  
18 device; or

19 (4) producing, presenting or directing an obscene performance or  
20 participating in a portion thereof ~~which that~~ is obscene or ~~which that~~  
21 contributes to its obscenity.

22 (b) Promoting obscenity to minors is promoting obscenity, as defined  
23 in subsection (a), ~~where~~ if a recipient of the obscene material or obscene  
24 device or a member of the audience of an obscene performance is a child  
25 under the age of 18 years.

26 (c) (1) Promoting obscenity is a:

27 (A) Class A nonperson misdemeanor, except as provided in (c)(1)(B);  
28 and

29 (B) severity level 9, person felony upon a second or subsequent  
30 conviction.

31 (2) Promoting obscenity to minors is a:

32 (A) Class A nonperson misdemeanor, except as provided in (c)(2)(B);  
33 and

34 (B) severity level 8, person felony upon a second or subsequent  
35 conviction.

36 (3) Conviction of a violation of a municipal ordinance prohibiting  
37 acts ~~which that~~ constitute promoting obscenity or promoting obscenity to  
38 minors shall be considered a conviction of promoting obscenity or  
39 promoting obscenity to minors for the purpose of determining the number  
40 of prior convictions and the classification of the crime under this section.

41 (d) Upon any conviction of promoting obscenity or promoting  
42 obscenity to minors, the court may require, in addition to any fine or  
43 imprisonment imposed, that the defendant enter into a reasonable

1 recognizance with good and sufficient surety, in such sum as the court may  
2 direct, but not to exceed \$50,000, conditioned that, in the event the  
3 defendant is convicted of a subsequent offense of promoting obscenity or  
4 promoting obscenity to minors within two years after such conviction, the  
5 defendant shall forfeit the recognizance.

6 (e) Evidence that materials or devices were promoted to emphasize  
7 their prurient appeal shall be relevant in determining the question of the  
8 obscenity of such materials or devices. There shall be a rebuttable  
9 presumption that a person promoting obscene materials or obscene devices  
10 did so knowingly or recklessly if:

11 (1) The materials or devices were promoted to emphasize their  
12 prurient appeal; or

13 (2) the person is not a wholesaler and promotes the materials or  
14 devices in the course of the person's business.

15 (f) As used in this section:

16 (1) Any material or performance is "obscene" if:

17 (A) The average person applying contemporary community standards  
18 would find that the material or performance, taken as a whole, appeals to  
19 the prurient interest;

20 (B) the average person applying contemporary community standards  
21 would find that the material or performance has patently offensive  
22 representations or descriptions of:

23 (i) Ultimate sexual acts, normal or perverted, actual or simulated,  
24 including sexual intercourse or sodomy; or

25 (ii) masturbation, excretory functions, sadomasochistic abuse or lewd  
26 exhibition of the genitals; and

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

30 (2) "material" means any tangible thing—~~which~~ *that* is capable of  
31 being used or adapted to arouse interest, whether through the medium of  
32 reading, observation, sound or other manner;

33 (3) "obscene device" means a device, including a dildo or artificial  
34 vagina, designed or marketed as useful primarily for the stimulation of  
35 human genital organs, except such devices disseminated or promoted for  
36 the purpose of medical or psychological therapy;

37 (4) "performance" means any play, motion picture, dance or other  
38 exhibition performed before an audience;

39 (5) "sexual intercourse" and "sodomy" mean the same as in K.S.A.  
40 21-5501, and amendments thereto; and

41 (6) "wholesaler" means a person who distributes or offers for  
42 distribution obscene materials or devices only for resale and not to the  
43 consumer and who does not manufacture, publish or produce such

1 materials or devices.

2 (g) It shall be a defense to a prosecution for promoting obscenity and  
3 promoting obscenity to minors that the:

4 (1) Persons to whom the allegedly obscene material or obscene  
5 device was disseminated, or the audience to an allegedly obscene  
6 performance, consisted of persons or institutions having scientific,  
7 educational or governmental justification for possessing or viewing the  
8 same;

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

13 (3) allegedly obscene material or obscene device was purchased,  
14 leased or otherwise acquired by a ~~public, private or parochial school,~~  
15 college or university; and ~~that~~ such material or device was either sold,  
16 leased, distributed or disseminated by a ~~teacher,~~ an instructor, professor or  
17 other faculty member or administrator of such ~~school~~ college or university  
18 as part of or incidental to an approved course or program of instruction at  
19 such ~~school~~ college or university.

20 (h) Notwithstanding the provisions of K.S.A. 21-5204, and  
21 amendments thereto, to the contrary, it shall be an affirmative defense to  
22 any prosecution for promoting obscenity to minors that:

23 (1) The defendant had reasonable cause to believe that the minor  
24 involved was 18 years old or over, and such minor exhibited to the  
25 defendant a draft card, driver's license, birth certificate or other official or  
26 apparently official document purporting to establish that such minor was  
27 18 years old or more; or

28 (2) an exhibition in a state of nudity is for a bona fide scientific or  
29 medical purpose, or for an educational or cultural purpose for a bona fide  
30 school, museum or library.

31 (i) The provisions of this section and the provisions of ordinances of  
32 any city prescribing a criminal penalty for exhibit of any obscene motion  
33 picture shown in a commercial showing to the general public shall not  
34 apply to a projectionist; or assistant projectionist, if such projectionist or  
35 assistant projectionist has no financial interest in the show or in its place of  
36 presentation other than regular employment as a projectionist or assistant  
37 projectionist and no personal knowledge of the contents of the motion  
38 picture. The provisions of this section shall not exempt any projectionist or  
39 assistant projectionist from criminal liability for any act unrelated to  
40 projection of motion pictures in commercial showings to the general  
41 public.

42 Sec. 3. K.S.A. 21-6402 is hereby amended to read as follows: 21-  
43 6402. (a) No person having custody, control or supervision of any

1 commercial *or public* establishment shall knowingly:

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

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

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

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

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

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

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

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

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

30 (5) with respect to a prosecution for an act described by subsection  
31 (a)(2) or (a)(3), the defendant had reasonable cause to believe that the  
32 minor involved was 18 years old or over, and such minor exhibited to the  
33 defendant a draft card, driver's license, birth certificate or other official or  
34 apparently official document purporting to establish that such minor was  
35 18 years old or more; and

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

39 (d) As used in this section:

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

42 (2) "harmful to minors" means that quality of any description,  
43 exhibition, presentation or representation, in whatever form, of nudity,

1 sexual conduct, sexual excitement or sadomasochistic abuse when the  
2 material or performance, taken as a whole or, with respect to a prosecution  
3 for an act described by subsection (a)(1), that portion of the material that  
4 was actually exposed to the view of minors, has the following  
5 characteristics:

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

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

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

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

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

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

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

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

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

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

39 (e) The provisions of this section shall not apply to a retail sales clerk,  
40 if such clerk has no financial interest in the materials or performance or in  
41 the commercial establishment displaying, presenting or distributing such  
42 materials or presenting such performance other than regular employment  
43 as a retail sales clerk. The provisions of this section shall not exempt any

1 retail sales clerk from criminal liability for any act unrelated to regular  
2 employment as a retail sales clerk.

3 Sec. 4. K.S.A. 21-6401 and 21-6402 are hereby repealed.

4 Sec. 5. This act shall take effect and be in force from and after its  
5 publication in the statute book.