

21-6401. Promoting obscenity; promoting obscenity to minors. (a) Promoting obscenity is recklessly:

- (1) Manufacturing, mailing, transmitting, publishing, distributing, presenting, exhibiting or advertising any obscene material or obscene device;
- (2) possessing any obscene material or obscene device with intent to mail, transmit, publish, distribute, present, exhibit or advertise such material or device;
- (3) offering or agreeing to manufacture, mail, transmit, publish, distribute, present, exhibit or advertise any obscene material or obscene device; or
- (4) producing, presenting or directing an obscene performance or participating in a portion thereof which is obscene or which contributes to its obscenity.

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

(c)(1) Promoting obscenity is a:

- (A) Class A nonperson misdemeanor, except as provided in (c)(1)(B); and
- (B) severity level 9, person felony upon a second or subsequent conviction.

(2) Promoting obscenity to minors is a:

- (A) Class A nonperson misdemeanor, except as provided in (c)(2)(B); and
- (B) severity level 8, person felony upon a second or subsequent conviction.

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

(d) Upon any conviction of promoting obscenity or promoting obscenity to minors, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter into a reasonable recognizance with good and sufficient surety, in such sum as the court may direct, but not to exceed \$50,000, conditioned that, in the event the defendant is convicted of a subsequent offense of promoting obscenity or promoting obscenity to minors within two years after such conviction, the defendant shall forfeit the recognizance.

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

- (1) The materials or devices were promoted to emphasize their prurient appeal; or
- (2) the person is not a wholesaler and promotes the materials or devices in the course of the person's business.

(f) As used in this section:

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

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

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

- (i) Ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse or sodomy; or
- (ii) masturbation, excretory functions, sadomasochistic abuse or lewd exhibition of the genitals; and

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

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

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

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

(5) "sexual intercourse" and "sodomy" mean the same as in K.S.A. 2016 Supp. 21-5501, and amendments thereto; and

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

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

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

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

(3) allegedly obscene material or obscene 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 incidental to an approved course or program of instruction at such school.

(h) 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 for promoting obscenity to minors that:

(1) 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; or

(2) 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.

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

History: L. 2010, ch. 136, § 212; L. 2011, ch. 30, § 57; July 1.