

## LEGISLATIVE BILL 117

Approved by the Governor February 10, 1988

Introduced by Pirsch, 10

AN ACT relating to crimes and punishments; to amend sections 28-807 to 28-809, 28-811, and 28-813, Reissue Revised Statutes of Nebraska, 1943; to define a term; to transfer penalty provisions; to prohibit possession of certain materials as prescribed; to provide immunity from liability for certain individuals; to provide penalties; and to repeal the original sections, and also section 28-812, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 28-807, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-807. As used in sections 28-807 to 28-829 and sections 6 and 7 of this act, unless the context otherwise requires:

(1) Adult shall mean any married person or any unmarried person of the age of eighteen years or older;

(2) Commercial film and photographic print processor shall mean any person who for compensation develops exposed photographic film into negatives, slides, or prints or who for compensation makes prints from negatives or slides. The term shall include, but not be limited to, any employee of such a person but shall not include employees of law enforcement agencies and prosecuting attorneys involved in the investigation and prosecution of criminal offenses or to persons involved in legitimate medical, scientific, or educational activities;

(3) Distribute shall mean to transfer possession, whether with or without consideration, by any means;

(4) ~~(3)~~ Disseminate shall mean to manufacture, issue, publish, sell, lend, distribute, transmit, exhibit, or present materials or to offer in person or through an agent or by placing an advertisement for the same, whether with or without consideration, or agree to do the same;

(5) ~~(4)~~ Knowingly shall mean having general knowledge of, or reason to know, or a belief or

reasonable ground for belief which warrants further inspection or inquiry of the character and content of any material, taken as a whole, described in this section, which is reasonably susceptible to examination by the defendant;

(6) ~~(5)~~ Harmful to minors shall mean that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it: (a) ~~Predominantly~~ predominantly appeals to the prurient, shameful, or morbid interest of minors, (b) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and (c) is lacking in serious literary, artistic, political, or scientific value for minors;

(7) ~~(6)~~ Material or work shall mean any book or magazine, newspaper, comic book, pamphlet, or other printed or written material or any picture, drawing, photograph, figure, image, motion picture, whether or not positive or negative exhibited or screened, play, nightclub, or live performance, television production, other pictorial representation or electric reproduction, or any recording transcription, mechanical or otherwise, or any other articles, equipment, machines, or materials;

(8) ~~(7)~~ Minor shall mean any unmarried person under the age of eighteen years;

(9) ~~(8)~~ Nudity shall mean the showing of the human, post-pubertal male or female genitals, pubic area, or buttocks with less than a full opaque covering, ~~or~~ the depiction of covered male genitals in a discernibly turgid state, or the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple;

(10) ~~(9)~~ Obscene shall mean (a) that an average person applying contemporary community standards would find that the work, material, conduct, or live performance taken as a whole predominantly appeals to the prurient interest or a shameful or morbid interest in nudity, sex, or excretion, (b) the work, material, conduct, or live performance depicts or describes in a patently offensive way sexual conduct specifically set out in sections 28-807 to 28-829, and (c) the work, conduct, material, or live performance taken as a whole lacks serious literary, artistic, political, or scientific value;

(11) ~~(10)~~ Place shall mean any building, structure, or place or any separate part or portion thereof or the ground itself;

(12) ~~(11)~~ Person shall mean any individual, partnership, firm, association, corporation, trustee, lessee, agent, assignee, or other legal entity;

(13) ~~(12)~~ Performance, whether with or without consideration, shall mean any play, motion picture, dance, or other exhibition performed before an audience;

(14) ~~(13)~~ Promote shall mean to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or place an order for advertising, or to knowingly offer in person or through an agent or agree to do the same;

(15) ~~(14)~~ Sexual conduct shall mean acts of masturbation, homosexuality, sodomy, sexual intercourse, or prolonged physical contact with a person's clothed or unclothed genitals, pubic area, or buttocks or, if such person be female, breast;

(16) ~~(15)~~ Sexual excitement shall mean the condition of human male or female genitals when in a state of sexual stimulation or arousal; and

(17) ~~(16)~~ Sadomasochistic abuse shall mean flagellation or torture by or upon a nude person or a person clad in undergarments, a mask, or a bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained when performed to predominantly appeal to the shameful or morbid interest.

Sec. 2. That section 28-808, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-808. (1) It shall be unlawful for a person knowingly to sell, deliver, distribute, display for sale, or provide to a minor, or knowingly to possess with intent to sell, deliver, distribute, display for sale, or provide to a minor:

(a) (1) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body, or any replica, article, or device having the appearance of either male or female genitals which predominantly pruriently, shamefully, or morbidly depicts nudity, sexual conduct, sexual excitement, or sadomasochistic abuse and which, taken as a whole, is harmful to minors; or

(b) (2) Any book, pamphlet, magazine, printed matter however produced, or sound recording which contains any matter enumerated in subdivision (1)(a) of this section, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse, of a

predominantly prurient, shameful, or morbid nature, and which, taken as a whole, is harmful to minors.

(2) Any person who violates this section shall be guilty of a Class I misdemeanor.

Sec. 3. That section 28-809, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-809. (1) It shall be unlawful for any person knowingly to exhibit to a minor or knowingly to provide to a minor an admission ticket or pass or knowingly to admit a minor to premises whereon there is exhibited a motion picture, show, or other presentation which, in whole or in part, predominantly pruriently, shamefully, or morbidly depicts nudity, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to minors.

(2) Any person who violates this section shall be guilty of a Class I misdemeanor.

Sec. 4. That section 28-811, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-811. (1) It shall be unlawful for any minor to falsely represent to any person mentioned in section 28-808 or 28-809, or to his or her agent, that such minor is eighteen years of age or older, with the intent to procure any materials set forth in section 28-808, or with the intent to procure such minor's admission to any motion picture, show, or other presentation as set forth in section 28-809.

(2) It shall be unlawful for any person to knowingly make a false representation to any person mentioned in section 28-808 or 28-809, or to his or her agent, that he or she is the parent or guardian of any minor, or that any minor is eighteen years of age, with the intent to procure any material set forth in section 28-808, or with the intent to procure such minor's admission to any motion picture, show, or other presentation as set forth in section 28-809.

(3) It shall be unlawful for any person to hire as an employee a minor whose duties it will be to assist in any manner the sale, delivery, distribution, or exhibition of material declared obscene by sections 28-807 to 28-829, except, PROVIDED, that this section shall not apply if such minor's parents or legal guardian should consent to such employment by giving the employer a written affidavit prior to the minor's employment.

(4) Any person who violates this section shall be guilty of a Class II misdemeanor.

Sec. 5. That section 28-813, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-813. (1) Any person who knowingly (a) prints, copies, manufactures, prepares, produces, or reproduces obscene material for purpose of sale or distribution; (b) publishes, circulates, sells, rents, lends, transports in intrastate commerce, or distributes or exhibits It shall be unlawful for a person knowingly to (a) print, copy, manufacture, prepare, produce, or reproduce obscene material for the purpose of sale or distribution, (b) publish, circulate, sell, rent, lend, transport in interstate commerce, distribute, or exhibit any obscene material, (c) has in his have in his or her possession with intent to sell, rent, lend, transport, or distribute any obscene material, or (d) promotes promote any obscene material or performance, shall be guilty of a Class I misdemeanor.

(2) Every It shall be unlawful for a person who places to place an order for any advertising promoting the sale or distribution of material represented or held out to be obscene, whether or not such material exists in fact or is obscene, 7 shall be guilty of a Class I misdemeanor. In all cases in which a charge or violation of this section is brought against a person who cannot be found in this state, the executive authority of this state may demand extradition of such person from the executive authority of the state in which such person may be found.

(3) A person commits an offense of promoting obscene material if knowing its content and character he- or she (a) Disseminates disseminates for monetary consideration any obscene material, 7 (b) produces, presents, or directs obscene performances for monetary consideration, 7 or (c) participates for monetary consideration in that part of a performance which makes it obscene.

(4) Any person who violates this section shall be guilty of a Class I misdemeanor.

Sec. 6. (1) It shall be unlawful for a person to knowingly possess any visual depiction of sexually explicit conduct, as defined in section 28-1463.02, which has a minor as one of its participants or portrayed observers.

(2) Any person who violates this section shall be guilty of a Class II misdemeanor.

Sec. 7. Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or

employment, and who participates in an investigation or the making of any report pertaining to any film, photograph, videotape, negative, or slide depicting a child under the age of eighteen years engaged in an act of sexually explicit conduct, as defined in section 28-1463.02, or participates in a judicial proceeding resulting from such participation shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed, except for maliciously false statements.

Sec. 8. That original sections 28-807 to 28-809, 28-811, and 28-813, Reissue Revised Statutes of Nebraska, 1943, and also section 28-812, Reissue Revised Statutes of Nebraska, 1943, are repealed.