

**HOUSE BILL NO. 410**

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

**BY REPRESENTATIVES KOTT, Ogan**

**Introduced: 1/12/96**

**Referred: Health, Education and Social Services, Labor and Commerce, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the sale or display for sale of material harmful to minors**  
2 **at places where minors are present or allowed to be present."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1. FINDINGS AND INTENT.** (a) The legislature finds as a matter of public  
5 policy and fact that the state has a compelling interest in protecting the health, welfare, and  
6 morals of minors; that the exposure of minors to inappropriate sexual material is deleterious  
7 to their health, welfare, and morals; that minors are exposed, in commercial establishments,  
8 to materials that are obscene even for adults; that minors are exposed, in commercial  
9 establishments, to sexual materials that are not obscene for adults but nonetheless are harmful  
10 to minors; that the exposure of minors to harmful sexual material in commercial  
11 establishments is of a particularly serious nature; and that in many parts of the state the  
12 commercial exposure of minors to harmful sexual materials is increasing.

13 (b) The legislature intends for this Act to limit exposure of minors to obscene  
14 materials and other sexual materials that are harmful to minors.

1 \* **Sec. 2.** AS 11.61 is amended by adding a new section to read:

2 Sec. 11.61.129. SALE OR DISPLAY FOR SALE OF MATERIAL HARMFUL  
3 TO MINORS. (a) A person commits the crime of sale or display for sale of material  
4 harmful to minors if the person knowingly

5 (1) sells material harmful to minors to a person under the age of 18;  
6 or

7 (2) displays for sale material harmful to minors, including the covers  
8 and packaging of the material, in a place where minors are present or are allowed to  
9 be present and where minors are able to view such material unless each item of the  
10 material is

11 (A) sealed in an opaque wrapper; or

12 (B) kept behind devices commonly known as blinder racks so  
13 that the material is not exposed to view.

14 (b) For material other than books, magazines, newspapers, pamphlets, or other  
15 similar material, the requirements of (a)(2) of this section are satisfied if the portions  
16 of the covers or packaging of the material that visually depict material harmful to  
17 minors are blocked by a blinder rack or with an opaque wrapper and the wrapper is  
18 sealed.

19 (c) In a prosecution under (a)(1) of this section, it is an affirmative defense  
20 that the defendant made a reasonable bona fide attempt to ascertain the true age of the  
21 person under the age of 18 before selling the material to the person. In this  
22 subsection, "reasonable bona fide attempt" means an attempt to ascertain the true age  
23 of the person to whom the material is sold by requiring production of a driver's  
24 license, identification card, marriage license, birth certificate, or other governmental  
25 or educational identification card or paper and not relying solely on the oral statements  
26 or apparent age of the person.

27 (d) In this section,

28 (1) "harmful to minors" means any description or representation, in  
29 whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse  
30 when the material, taken as a whole, has the following characteristics: (A) the average  
31 adult person applying contemporary community standards would find that the material

1 has a predominant tendency to appeal to a prurient interest in sex to minors, (B) the  
2 average adult person applying contemporary community standards would find that the  
3 material depicts or describes nudity, sexual conduct, sexual excitement, or sado-  
4 masochistic abuse in a manner that is patently offensive to prevailing standards in the  
5 adult community with respect to what is suitable for minors, and (C) the material lacks  
6 serious literary, scientific, educational, artistic, or political value for minors; in this  
7 paragraph, "contemporary community standards" mean contemporary standards  
8 prevailing in the state as a whole;

9 (2) "material" means a book, magazine, newspaper, pamphlet, poster,  
10 print, picture, figure, image, description, motion picture film, record, compact disc,  
11 recording tape, or video tape;

12 (3) "nudity" means the showing of the human male or female genitals,  
13 pubic area, or buttocks with less than a full opaque covering; the showing of the  
14 female breast with less than a full opaque covering of a portion of the breast below  
15 the top of the nipple; or the depiction of covered male genitals in a discernibly turgid  
16 state;

17 (4) "sado-masochistic abuse" means flagellation or torture by or upon  
18 a person clad in undergarments or bizarre costumes, or the condition of being fettered,  
19 bound, or otherwise physically restrained on the part of one so clothed;

20 (5) "sexual conduct" means acts of masturbation, homosexuality, sexual  
21 intercourse, or physical contact with a person's clothed or unclothed genitals, pubic  
22 area, buttocks, or, if the person is a female, breast;

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

25 (e) Except as provided in (f) of this section, sale or display for sale of material  
26 harmful to minors is a class B misdemeanor.

27 (f) A person convicted under this section is guilty of a class A misdemeanor  
28 if the person has previously been convicted of a violation of this section.