

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 487(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/7/94

Referred: Finance

Sponsor(s): REPRESENTATIVE KOTT

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the sale, rental, or display for sale or rental of material
2 harmful to minors 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. The legislature also
13 finds that it is both desirable and possible to limit the exposure of minors to material harmful
14 to minors while not unreasonably interfering with normal trade and commerce in Alaska.

1 **(b) The legislature intends for this Act to limit exposure of minors to explicit materials**
2 **that are harmful to minors. The legislature further intends that the definition of material**
3 **harmful to minors be narrowly construed so that it is not applied to materials in general**
4 **circulation that contain only relatively brief passages or incidental depictions or descriptions**
5 **of material harmful to minors. The legislature intends that the phrase "taken as a whole" in**
6 **the definition of material "harmful to minors" be applied in a broad sense, so as not to unduly**
7 **restrict access to material that has serious literary, scientific, educational, artistic, or political**
8 **value.**

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

10 **Sec. 11.61.127. SALE, RENTAL, OR DISPLAY FOR SALE OR RENTAL**
11 **OF MATERIAL HARMFUL TO MINORS. (a) A person commits the crime of sale,**
12 **rental, or display for sale or rental of material harmful to minors if the person**
13 **knowingly**

14 **(1) sells or rents material harmful to minors to a person under the age**
15 **of 18; or**

16 **(2) displays for sale or rental material harmful to minors, including the**
17 **covers and packaging of the material, in a place where minors are present or are**
18 **allowed to be present and where minors are able to view such material unless each**
19 **item of the material is**

20 **(A) sealed in an opaque wrapper; or**

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

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

28 **(c) In a prosecution under (a)(1) of this section, it is an affirmative defense**
29 **that the defendant made a reasonable bona fide attempt to ascertain the true age of the**
30 **person under the age of 18 before selling the material to the person. In this**
31 **subsection, "reasonable bona fide attempt" means an attempt to ascertain the true age**

1 of the person to whom the material is sold by requiring production of a driver's
2 license, identification card, marriage license, birth certificate, or other governmental
3 or educational identification card or paper and not relying solely on the oral statements
4 or apparent age of the person.

5 (d) In this section,

6 (1) "harmful to minors" means any description or representation, in
7 whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse
8 when the material, taken as a whole, has the following characteristics: (A) the average
9 adult person applying contemporary community standards would find that the material
10 has a predominant tendency to appeal to a prurient interest in sex to minors, (B) the
11 average adult person applying contemporary community standards would find that the
12 material depicts or describes nudity, sexual conduct, sexual excitement, or sado-
13 masochistic abuse in a manner that is patently offensive to prevailing standards in the
14 adult community with respect to what is suitable for minors, and (C) the material lacks
15 serious literary, scientific, educational, artistic, or political value for minors; in this
16 paragraph, "contemporary community standards" mean contemporary standards
17 prevailing in the state as a whole;

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

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

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

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

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

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

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