

HB385 INTRODUCED



1 HB385
2 KLCSUAA-1
3 By Representatives Mooney, Stadthagen, Kiel, Sells, Butler,
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8 RFD: State Government
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SYNOPSIS:

Under existing law, the use of any premises to distribute obscene material to minors is a public nuisance.

This bill would further provide that the use of any premises to distribute to minors material that is harmful to minors is a public nuisance.

Under existing law, the term "sexual conduct" is defined.

This bill would further provide for the definition of "sexual conduct."

Under existing law, certain obscenity laws do not apply to public libraries, public school libraries, college libraries, or university libraries, or the employees or agents of any such libraries.

This bill would provide that these criminal obscenity laws do not apply to college or university libraries or their employees or agents, but do apply to public libraries, public school libraries, and their employees or agents.

This bill would also make nonsubstantive, technical revisions to update the existing code language to current style.

Section 111.05 of the Constitution of Alabama of 2022, prohibits a general law whose purpose or effect



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29 would be to require a new or increased expenditure of
30 local funds from becoming effective with regard to a
31 local governmental entity without enactment by a 2/3
32 vote unless: it comes within one of a number of
33 specified exceptions; it is approved by the affected
34 entity; or the Legislature appropriates funds, or
35 provides a local source of revenue, to the entity for
36 the purpose.

37 The purpose or effect of this bill would be to
38 require a new or increased expenditure of local funds
39 within the meaning of the section. However, the bill
40 does not require approval of a local governmental
41 entity or enactment by a 2/3 vote to become effective
42 because it comes within one of the specified exceptions
43 contained in the section.

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A BILL

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TO BE ENTITLED

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AN ACT

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50 Relating to crimes and offenses; to amend Sections
51 6-5-160, 6-5-160.1, 13A-12-200.1, and 13A-12-200.10, Code of
52 Alabama 1975, to provide that the use of any premises to
53 distribute material that is harmful to minors is a public
54 nuisance; to further provide for the definition of "sexual
55 conduct"; to further provide for the applicability of certain
56 criminal provisions; to make nonsubstantive, technical



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57 revisions to update the existing code language to current
58 style; and in connection therewith would have as its purpose
59 or effect the requirement of a new or increased expenditure of
60 local funds within the meaning of Section 111.05 of the
61 Constitution of Alabama of 2022.

62 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

63 Section 1. Sections 6-5-160, 6-5-160.1, 13A-12-200.1,
64 and 13A-12-200.10, Code of Alabama 1975, are amended to read
65 as follows:

66 "§6-5-160

67 The Legislature of Alabama finds and declares:

68 (1) That in order to protect children from exposure to
69 obscenity and material harmful to minors, prevent assaults on
70 the sensibilities of unwilling adults by ~~the purveyor~~
71 purveyors of obscene material, and suppress the proliferation
72 of "adult-only video stores," "adult bookstores," "adult movie
73 houses," and "adult-only entertainment," the sale and
74 dissemination of obscene material and material harmful to
75 minors should be regulated without impinging on the First
76 Amendment rights of free speech by erecting barriers to the
77 open display of erotic and lascivious material.

78 (2) That the premises ~~in which~~ where a violation of
79 Division 5, ~~of~~ of Article 4, ~~of~~ of Chapter 12, ~~of~~ of Title 13A
80 occurs should be declared a public nuisance."

81 "§6-5-160.1

82 It is hereby declared that the use of any ~~premise~~
83 premises to distribute material that is obscene ~~material or~~
84 harmful to minors in violation of Division 5 ~~(commencing with~~



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85 ~~Section 13A-12-200.1~~), of Article 4, of Chapter 12, of Title
86 13A is a public nuisance and the Attorney General, district
87 attorney, or, when authorized by the local governing body, the
88 attorney for the county or municipality may file an action in
89 the circuit courts of this state to abate, enjoin, and prevent
90 the nuisance. A county, by resolution, or a municipality, by
91 ordinance, may authorize the filing of an action in the
92 circuit court within their jurisdiction to abate, enjoin, ~~and~~
93 or prevent the nuisance. The actions shall be commenced by the
94 filing of a complaint alleging the facts constituting the
95 nuisance in circuit court of the county in which the nuisance
96 is situated."

97 "§13A-12-200.1

98 As used in this division, the following terms ~~shall~~
99 have the following meanings ~~respectively ascribed to them by~~
100 ~~this section~~:

101 (1) ADULT BOOKSTORES and ADULT VIDEO STORES. A
102 commercial establishment in which is offered for sale or rent
103 any book, video, film, or other medium which in the aggregate
104 ~~constitute~~ constitutes substantially all of its stock or
105 inventory which depicts sexual conduct ~~as defined herein~~.

106 (2) ADULT MOVIE HOUSE. A place where obscene "adult
107 films" depicting sexual conduct are shown.

108 (3) ADULT-ONLY ENTERTAINMENT. Any commercial
109 establishment or private club where entertainers, employees,
110 dancers, or waiters appear nude or semi-nude.

111 (4) BREAST NUDITY. The showing of the post-pubertal
112 human female breasts below a point immediately above the top



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113 of the areola.

114 (5) DISPLAY FOR SALE. To expose, place, exhibit, show,
115 or in any fashion display any material for the purpose of the
116 sale of such material to any person in a manner that a minor
117 can physically examine or see the material.

118 (6) DISSEMINATE PUBLICLY. To expose, place, perform,
119 exhibit, show or in any fashion display, in any location,
120 public or private, any material in a manner that the material
121 can either be readily seen and its content or character
122 distinguished by normal unaided vision or be physically
123 examined, by viewing or examining the material from any public
124 place or any place to which members of the general public are
125 invited.

126 (7) DISTRIBUTE. To import, export, sell, rent, lend,
127 transfer possession of or title to, display, exhibit, show,
128 present, provide, broadcast, transmit, retransmit, communicate
129 by telephone, play, orally communicate, or perform.

130 (8) EXPORT. To send or cause to be sent outside of the
131 ~~State of Alabama~~ state from inside the state.

132 (9) FOR ANY THING OF PECUNIARY VALUE. In exchange for,
133 in return for, or for any consideration consisting of, whether
134 wholly or partly, either of the following:

135 a. Any money, negotiable instrument, debt, credit,
136 chose in action, interest in wealth, or any other property
137 whether real or personal, tangible or intangible; ~~or~~ .

138 b. Any offer or agreement to pay, furnish, or provide
139 any money, negotiable instrument, debt, credit, chose in
140 action, interest in wealth, or any other property whether real



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141 or personal, tangible or intangible.

142 (10) GENITAL NUDITY. The showing of the human male or
143 female genitals or pubic area.

144 (11) HARMFUL TO MINORS. The term means all of the
145 following:

146 a. The average person, applying contemporary community
147 standards, would find that the material, taken as a whole,
148 appeals to the prurient interest of minors; ~~and~~.

149 b. The material depicts or describes sexual conduct,
150 breast nudity, or genital nudity ~~r~~ in a way which is patently
151 offensive to prevailing standards in the adult community with
152 respect to what is suitable for minors; ~~and~~.

153 c. A reasonable person would find that the material,
154 taken as a whole, lacks serious literary, artistic, political, or
155 or scientific value for minors.

156 (12) IMPORT. To bring or cause to be brought into the
157 ~~State of Alabama~~ state from outside of the state.

158 (13) KNOWINGLY. The term means knowingly, as defined by
159 ~~Section 13A-2-2(2)~~ Section 13A-2-2, doing an act involving a
160 material when the person knows the nature of the material.

161 (14) KNOWS THE NATURE OF THE MATERIAL.

162 A person knows the nature of the material when any one
163 of the following exists:

164 a. The person knows the nature of the material; ~~r~~.

165 b. The person has reason to know the nature of the
166 material; ~~r~~.

167 c. The person has a belief or reasonable ground for
168 belief as to the nature of the material which warrants further



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169 inspection or inquiry of the character and content of the
170 material.

171 (15) MATERIAL. Any book, magazine, newspaper, printed
172 or written matter, writing, description, picture, drawing,
173 animation, photograph, motion picture, film, video tape,
174 pictorial representation, depiction, image, electrical or
175 electronic reproduction, broadcast, transmission, telephone
176 communication, sound recording, article, device, equipment,
177 matter, oral communication, live performance, or dance.

178 (16) MINOR. Any unmarried person under ~~the age of 18~~
179 years of age.

180 (17) OBSCENE. The term means ~~that~~ all of the following:

181 a. The average person, applying contemporary community
182 standards, would find that the material, taken as a whole,
183 appeals to the prurient interest; ~~and~~ .

184 b. The material depicts or describes, in a patently
185 offensive way, sexual conduct, actual or simulated, normal or
186 perverted; ~~and~~ .

187 c. A reasonable person would find that the material,
188 taken as a whole, lacks serious literary, artistic, political,
189 or scientific value.

190 (18) PERSON. Any individual and, except where
191 inappropriate, any partnership, firm, association,
192 corporation, or other legal entity.

193 (19) PRODUCE. Create, make, write, film, produce,
194 reproduce, direct, or stage.

195 (20) RECKLESSLY. The term means recklessly, as defined
196 by ~~Section 13A-2-2(3)~~ Section 13A-2-2, doing an act involving a



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197 material when the person knows the nature of the material.

198 (21) ~~SADO-MASOCHISTIC~~ SADOMASOCHISTIC ABUSE. The term
199 means either of the following:

200 a. Flagellation or torture, in an act of sexual
201 stimulation, by or upon a person who is nude or clad in
202 undergarments or in a revealing or bizarre costume; ~~or~~.

203 b. The binding or physical restraining of a person who
204 is nude or clad in undergarments or in a revealing or bizarre
205 costume in an act of sexual stimulation.

206 (22) SEXUAL CONDUCT. The term means any of the
207 following:

208 a. Any act of sexual intercourse, masturbation,
209 urination, defecation, lewd exhibition of the genitals,
210 ~~sado-masochistic~~ sadomasochistic abuse, bestiality, or the
211 fondling of the sex organs of animals; ~~or~~.

212 b. Any other physical contact with a person's unclothed
213 genitals, pubic area, buttocks, or the breast or breasts of a
214 female, whether alone or between members of the same or
215 opposite sex or between a human and an animal, in an act of
216 sexual stimulation, gratification, or perversion.

217 c. Any sexual or gender oriented material that
218 knowingly exposes minors to persons who are dressed in
219 sexually revealing, exaggerated, or provocative clothing or
220 costumes, or are stripping, or engaged in lewd or lascivious
221 dancing, presentations, or activities in K-12 public schools,
222 public libraries, and other public places where minors are
223 expected and are known to be present without parental consent.

224 (23) SEXUAL INTERCOURSE. Intercourse, whether



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225 genital-genital, oral-genital, anal-genital, or oral-anal, and
226 whether between persons of the same or opposite sex or between
227 a human and an animal.

228 (24) WHOLESALER. A person who distributes material for
229 the purpose of resale or commercial distribution at retail."

230 "§13A-12-200.10

231 The criminal provisions of this division shall not
232 apply to ~~bona fide public libraries, or public school or~~
233 college or university libraries, or their employees or agents
234 acting on behalf of the legitimate educational purposes of
235 ~~such public libraries, or public school or~~ college or
236 university libraries."

237 Section 2. Although this bill would have as its purpose
238 or effect the requirement of a new or increased expenditure of
239 local funds, the bill is excluded from further requirements
240 and application under Section 111.05 of the Constitution of
241 Alabama of 2022, because the bill defines a new crime or
242 amends the definition of an existing crime.

243 Section 3. This act shall become effective on October
244 1, 2024.