

- 1 HB385
- 2 KLCSUAA-1
- 3 By Representatives Mooney, Stadthagen, Kiel, Sells, Butler,
- 4 Carns, Shaver, Colvin, Stringer, DuBose, Fidler, Gidley, Lamb,
- 5 Yarbrough, Estes, Brown, Paschal, Bedsole, Rehm, Ingram,
- 6 Bolton, Starnes, Harrison, Fincher, Standridge, Oliver,
- 7 Lipscomb, Woods, Ledbetter, Stubbs, Givens
- 8 RFD: State Government
- 9 First Read: 02-Apr-24



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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



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

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

46 A BILL

TO BE ENTITLED

48 AN ACT

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



- 57 revisions to update the existing code language to current
- 58 style; and in connection therewith would have as its purpose
- or effect the requirement of a new or increased expenditure of
- 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,
- and 13A-12-200.10, Code of Alabama 1975, are amended to read
- 65 as follows:
- 66 "\$6-5-160
- The Legislature of Alabama finds and declares:
- (1) That in order to protect children from exposure to
- 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
- 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_{7} of Article 4_{7} of Chapter 12_{7} 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



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 the circuit courts of this state to abate, enjoin, and prevent 89 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 or prevent the nuisance. The actions shall be commenced by the 93 filing of a complaint alleging the facts constituting the 94 95 nuisance in circuit court of the county in which the nuisance is situated." 96

- 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



113 of the areola.

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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

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 distinguished by normal unaided vision or be physically 122 123 examined, by viewing or examining the material from any public 124 place or any place to which members of the general public are invited. 125
- 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:
- a. Any money, negotiable instrument, debt, credit,

 chose in action, interest in wealth, or any other property

 whether real or personal, tangible or intangible; or.
- b. Any offer or agreement to pay, furnish, or provide
 any money, negotiable instrument, debt, credit, chose in
 action, interest in wealth, or any other property whether real



- 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.
- b. The material depicts or describes sexual conduct,
- breast nudity, or genital nudity, in a way which is patently
- offensive to prevailing standards in the adult community with
- respect to what is suitable for minors; and.
- 153 c. A reasonable person would find that the material,
- taken as a whole, lacks serious literary, artistic, political,
- 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
- 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.
- 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 \div .
- 165 b. The person has reason to know the nature of the
- 166 material.
- 167 c. The person has a belief or reasonable ground for
- 168 belief as to the nature of the material which warrants further



- inspection or inquiry of the character and content of the 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,
- 178 (16) MINOR. Any unmarried person under the age of 18
 179 years of age.

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matter, oral communication, live performance, or dance.

- 180 (17) OBSCENE. The term means that all of the following:
- a. The average person, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest; and.
- b. The material depicts or describes, in a patently offensive way, sexual conduct, actual or simulated, normal or perverted; and.
- c. A reasonable person would find that the material,
 taken as a whole, lacks serious literary, artistic, political,
 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



- 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:
- a. Flagellation or torture, in an act of sexual stimulation, by or upon a person who is nude or clad in 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:

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- a. Any act of sexual intercourse, masturbation,
 urination, defecation, lewd exhibition of the genitals,

 sado-masochistic sadomasochistic abuse, bestiality, or the
 fondling of the sex organs of animals; or.
 - b. Any other physical contact with a person's unclothed genitals, pubic area, buttocks, or the breast or breasts of a female, whether alone or between members of the same or opposite sex or between a human and an animal, in an act of sexual stimulation, gratification, or perversion.
- c. Any sexual or gender oriented material that

 knowingly exposes minors to persons who are dressed in

 sexually revealing, exaggerated, or provocative clothing or

 costumes, or are stripping, or engaged in lewd or lascivious

 dancing, presentations, or activities in K-12 public schools,

 public libraries, and other public places where minors are

 expected and are known to be present without parental consent.
 - (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." "\$13A-12-200.10 230 231 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 university libraries." 236 237 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 and application under Section 111.05 of the Constitution of 240 241 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

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1, 2024.