

1 **INMATE ACCESS TO PUBLICATIONS**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: R. Mont Evans**

5 AN ACT RELATING TO CORRECTIONS; LIMITING OFFENDER ACCESS TO SEXUALLY
6 EXPLICIT MATERIAL; AND PROVIDING FOR AN ADMINISTRATIVE
7 RECONSIDERATION PROCESS.

8 This act affects sections of Utah Code Annotated 1953 as follows:

9 ENACTS:

10 **64-13-41**, Utah Code Annotated 1953

11 *Be it enacted by the Legislature of the state of Utah:*

12 Section 1. Section **64-13-41** is enacted to read:

13 **64-13-41. Limitations on offender access to sexually explicit material.**

14 (1) As used in this section:

15 (a) (i) "Commercially published information or material" means any book, booklet,
16 pamphlet, magazine, periodical, newsletter, or similar document, including stationery and greeting
17 cards, and video and audio tapes, disks, or other recording, that is distributed or made available
18 through any means or media for a commercial purpose.

19 (ii) "Commercially published information or material" includes an extraction, photocopy,
20 clipping, or electronically created copy made from any of the items under Subsection (1)(a)(i).

21 (b) (i) "Features nudity" means the information or material:

22 (A) that, in the case of a one-time publication or issue, promotes itself based upon
23 depictions of nudity or sexually explicit conduct; or

24 (B) that, in the case of information or material other than under Subsection (1)(b)(i)(A),
25 contains depictions of nudity or sexually explicit conduct on a routine or regular basis.

26 (ii) The department may by rule, pursuant to Title 63, Chapter 46a, Utah Administrative
27 Rulemaking Act, exclude from the definition in Subsection (1)(b)(i) information or material

28 containing nudity that is illustrative of medical, educational, or anthropological content.

29 (c) "Nudity" means a pictorial depiction where genitalia or female breasts are exposed.

30 (d) "Offender" means any person who has been convicted of a crime and is housed in a
31 prison, jail, youth detention facility, or community correctional center.

32 (e) "Sexually explicit" means a pictorial depiction of actual or simulated sexual acts,
33 including sexual intercourse, sodomy, or masturbation.

34 (f) "State funds" means state or local funding provided to the department, and includes
35 legislative appropriations to the department, dedicated credits, grants, and monies for jail
36 reimbursement to county correctional facilities under Title 64, Chapter 13, private providers, and
37 contractors.

38 (2) State funds may not be used to distribute or make available any commercially
39 published information or material to an offender when the state employee, contractor, or private
40 provider who has the authority to expend the funds knows that the commercially published
41 information or material is sexually explicit or features nudity.

42 (3) (a) When the department rejects commercially published information or material for
43 distribution to an offender under this section, the department shall advise the publisher or sender
44 that it may request reconsideration by the department of the decision to reject the material.
45 However, the department need advise the publisher or sender only once in the case of information
46 or material that on a routine or regular basis either depicts sexually explicit material or features
47 nudity.

48 (b) The department shall make rules pursuant to Title 63, Chapter 46a, Utah
49 Administrative Rulemaking Act, to establish an administrative reconsideration process.

50 (c) For purposes of extraordinary relief under Rule 65B, Utah Rules of Civil Procedure,
51 this administrative reconsideration process is a plain, speedy, and adequate legal remedy that must
52 be exhausted before extraordinary relief is available.

53 (d) There is no right to judicial review of the department's decision under this section to
54 reject material for distribution.

55 (4) This section does not apply to sexually explicit material used under Section
56 76-10-1207.5 for the assessment or treatment of an offender.

Legislative Review Note

as of 2-22-00 5:07 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel