

**MATERIALS HARMFUL TO MINORS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Aaron Tilton**

Senate Sponsor: Margaret Dayton

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**LONG TITLE**

**General Description:**

This bill modifies criminal provisions related to materials harmful to minors.

**Highlighted Provisions:**

This bill:

- ▶ defines and modifies terms;
- ▶ provides as an affirmative defense the use of blinder racks or other physical means preventing the display of outer portions of materials harmful to minors;
- ▶ allows for local regulation of the use of blinder racks;
- ▶ addresses provisions related to indecent public displays to minors; and
- ▶ makes technical and conforming amendments.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-10-1201**, as last amended by Chapter 9, Laws of Utah 2001

**76-10-1208**, as enacted by Chapter 92, Laws of Utah 1977

**76-10-1210**, as last amended by Chapter 92, Laws of Utah 1977

**76-10-1227**, as last amended by Chapter 46, Laws of Utah 2002

**76-10-1228**, as last amended by Chapter 46, Laws of Utah 2002

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

31 Section 1. Section **76-10-1201** is amended to read:

32 **76-10-1201. Definitions.**

33 For the purpose of this part:

34 (1) "Blinder rack" means an opaque cover that covers the lower 2/3 of a material so  
35 that the lower 2/3 of the material is concealed from view.

36 [~~(1)~~] (2) "Contemporary community standards" means those current standards in the  
37 vicinage where an offense alleged under this ~~[act]~~ part has occurred, is occurring, or will occur.

38 [~~(2)~~] (3) "Distribute" means to transfer possession of materials whether with or without  
39 consideration.

40 [~~(3)~~] (4) "Exhibit" means to show.

41 [~~(4)~~] (5) (a) "Harmful to minors" means that quality of any description or  
42 representation, in whatsoever form, of nudity, sexual conduct, sexual excitement, or  
43 sadomasochistic abuse when it:

44 [~~(a)~~] (i) taken as a whole, appeals to the prurient interest in sex of minors;

45 [~~(b)~~] (ii) is patently offensive to prevailing standards in the adult community as a whole  
46 with respect to what is suitable material for minors; and

47 [~~(c)~~] (iii) taken as a whole, does not have serious value for minors.

48 (b) Serious value includes only serious literary, artistic, political or scientific value for  
49 minors.

50 [~~(5)~~] (6) "Knowingly" means an awareness, whether actual or constructive, of the  
51 character of material or of a performance. A person has constructive knowledge if a reasonable  
52 inspection or observation under the circumstances would have disclosed the nature of the  
53 subject matter and if a failure to inspect or observe is either for the purpose of avoiding the  
54 disclosure or is criminally negligent.

55 [~~(6)~~] (7) "Material" means anything printed or written or any picture, drawing,  
56 photograph, motion picture, or pictorial representation, or any statue or other figure, or any  
57 recording or transcription, or any mechanical, chemical, or electrical reproduction, or anything

58 which is or may be used as a means of communication. Material includes undeveloped  
59 photographs, molds, printing plates, and other latent representational objects.

60 ~~[(7)]~~ (8) "Minor" means any person less than ~~[eighteen]~~ 18 years of age.

61 ~~[(8)]~~ (9) "Nudity" means:

62 (a) the showing of the human male or female genitals, pubic area, or buttocks, with less  
63 than an opaque covering~~[-or]~~;

64 (b) the showing of a female breast with less than an opaque covering, or any portion  
65 ~~[thereof]~~ of the female breast below the top of the ~~[nipple,]~~ areola; or

66 (c) the depiction of covered male genitals in a discernibly turgid state.

67 ~~[(9)]~~ (10) "Performance" means any physical human bodily activity, whether engaged  
68 in alone or with other persons, including ~~[but not limited to]~~ singing, speaking, dancing, acting,  
69 simulating, or pantomiming.

70 ~~[(10)]~~ (11) "Public place" includes a place to which admission is gained by payment of  
71 a membership or admission fee, however designated, notwithstanding its being designated a  
72 private club or by words of like import.

73 ~~[(11)]~~ (12) "Sado-masochistic abuse" means:

74 (a) flagellation or torture by or upon a person who is nude or clad in undergarments, a  
75 mask, or in a revealing or bizarre costume~~[-]~~; or

76 (b) the condition of being fettered, bound, or otherwise physically restrained on the part  
77 of ~~[one so clothed]~~ a person clothed as described in Subsection (12)(a).

78 ~~[(12)]~~ (13) "Sexual conduct" means acts of masturbation, sexual intercourse, or any  
79 touching of a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is a  
80 female, breast, whether alone or between members of the same or opposite sex or between  
81 humans and animals in an act of apparent or actual sexual stimulation or gratification.

82 ~~[(13)]~~ (14) "Sexual excitement" means a condition of human male or female genitals  
83 when in a state of sexual stimulation or arousal, or the sensual experiences of humans engaging  
84 in or witnessing sexual conduct or nudity.

85 Section 2. Section **76-10-1208** is amended to read:

86 **76-10-1208. Affirmative defenses.**

87 (1) It is an affirmative defense to prosecution under this part that the distribution of  
 88 pornographic material ~~[was]~~ is restricted to institutions or persons having scientific,  
 89 educational, governmental, or other similar justification for possessing pornographic material.

90 (2) It is not a defense to prosecution under this part that the actor ~~[was]~~ is a motion  
 91 picture projectionist, usher, ticket-taker, bookstore employee, or otherwise ~~[was]~~ is required to  
 92 violate ~~[any provision of]~~ this part incident to ~~[his]~~ the person's employment.

93 (3) It is an affirmative defense to prosecution under Section 76-10-1206, 76-10-1227,  
 94 or 76-10-1228 for displaying or exhibiting an outer portion of material, that the material is:

95 (a) in a sealed opaque wrapper that covers at least the lower 2/3 of the material so that  
 96 the lower 2/3 of the material is concealed from view;

97 (b) placed behind a blinder rack; or

98 (c) displayed in an area from which a minor is physically excluded if the material  
 99 cannot be viewed by the minor from an area in which a minor is allowed.

100 Section 3. Section **76-10-1210** is amended to read:

101 **76-10-1210. Relation to other laws.**

102 (1) (a) It is not the intent of this part to prescribe or limit the regulation of pornographic  
 103 materials or materials harmful to minors, and counties, cities, and other political subdivisions  
 104 ~~[of the State of Utah]~~ are specifically given the right ~~[hereby]~~ to further regulate the materials.  
 105 ~~[Specifically, without]~~

106 (b) Without limitation, ~~[these]~~ a political ~~[subdivisions]~~ subdivision may further  
 107 regulate materials by ordinances relating to:

108 (i) zoning[-];

109 (ii) licensing[-];

110 (iii) public nuisances[-, or relating to];

111 (iv) a specific type of business such as adult bookstores or drive-in movies[-]; or

112 (v) use of blinder racks.

113 (2) It is not the intent of this part to preclude the application of other laws of ~~[the State]~~

114 of Utah] this state to pornographic materials or materials harmful to minors. Specifically,  
 115 without limitation, this part is not in derogation of Sections 76-10-803 and 76-10-806.

116 (3) The commission of a crime under this part shall be [~~deemed~~] considered to offend  
 117 public decency under Section 76-10-803. It is the intent of this part to give the broadest  
 118 meaning permissible under the federal and state constitutions to the words "offends public  
 119 decency" in Section 76-10-803.

120 Section 4. Section **76-10-1227** is amended to read:

121 **76-10-1227. Indecent public displays -- Definitions.**

122 (1) For purposes of this [~~part~~] section and Section 76-10-1228:

123 [(+) (a)] "Description or [~~depictions~~] depiction of illicit sex or sexual immorality"  
 124 means:

125 [(a)] (i) human genitals in a state of sexual stimulation or arousal;

126 [(b)] (ii) acts of human masturbation, sexual intercourse, or sodomy;

127 [(c)] (iii) fondling or other erotic touching of human genitals or pubic region; or

128 [(d)] (iv) fondling or other erotic touching of the human buttock or female breast.

129 [(2)] (b) "Nude or partially denuded [~~figures~~] figure" means:

130 [(a)] (i) less than completely and opaquely [~~covered~~] covering human:

131 [(+) (A)] [~~human~~] genitals;

132 [(+) (B)] pubic regions;

133 [(+) (C)] buttock; and

134 [(+) (D)] female breast below a point immediately above the top of the areola; and

135 [(b)] (ii) human male genitals in a discernibly turgid state, even if completely and  
 136 opaquely covered.

137 [(3)] (2) (a) [~~This~~] Subject to Subsection (2)(c), this section [~~does~~] and Section  
 138 76-10-1228 do not apply to any material which, when taken as a whole, has serious value for  
 139 [persons younger than 18 years of age, except as provided under Subsection (3)(c)] minors.

140 (b) As used in Subsection [(3)] (2)(a), "serious value" means having serious literary,  
 141 artistic, political, or scientific value for [~~persons younger than 18 years of age~~] minors, taking

142 into consideration the ages of all minors who could be exposed to the material.

143 (c) ~~[Descriptions or depictions]~~ A description or depiction of illicit sex or sexual  
144 immorality as defined in Subsection (1)(a)(i), ~~[(b)]~~ (ii), or ~~[(c) have]~~ (iii) has no serious value  
145 for ~~[persons younger than 18 years of age]~~ minors.

146 Section 5. Section **76-10-1228** is amended to read:

147 **76-10-1228. Indecent public displays -- Prohibitions -- Penalty.**

148 (1) ~~[A]~~ Subject to the affirmative defense in Subsection 76-10-1208(3), a person is  
149 guilty of a class A misdemeanor who willfully or knowingly:

150 (a) engages in the business of selling, lending, giving away, showing, advertising for  
151 sale, or distributing to ~~[any person under the age of 18]~~ a minor or has in ~~[his]~~ the person's  
152 possession with intent to engage in that business or to otherwise offer for sale or commercial  
153 distribution to ~~[any individual under the age of 18]~~ a minor any material with ~~[descriptions or~~  
154 ~~depictions]~~:

155 (i) a description or depiction of illicit sex~~;~~ or sexual immorality~~;~~; or

156 (ii) a nude or partially denuded ~~[figures]~~ figure; or

157 (b) publicly displays at newsstands or any other establishment frequented by minors  
158 ~~[under the age of 18]~~, or where the minors are or may be invited as a part of the general public,  
159 any motion picture, or any live, taped, or recorded performance, or any still picture or  
160 photograph, or any book, pocket book, pamphlet, or magazine the cover or content of which:

161 (i) exploits, is devoted to, or is principally made up of ~~[indecent]~~ one or more  
162 descriptions or depictions of illicit sex or sexual immorality~~;~~; or ~~[that]~~

163 (ii) consists of one or more pictures of nude or partially denuded figures ~~[posed or~~  
164 ~~presented in a manner to provoke or arouse lust or passion or to exploit lust or perversion]~~.

165 (2) (a) A violation of this section is punishable by:

166 (i) a minimum mandatory fine of not less than \$500; and ~~[by]~~

167 (ii) incarceration, without suspension of sentence in any way, for a term of not less than  
168 30 days.

169 (b) This section supersedes Section 77-18-1.

