



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

HB5327

Introduced 01/26/06, by Rep. Kevin Joyce

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/11-21

from Ch. 38, par. 11-21

Amends the Criminal Code of 1961. Provides that a seller or distributor of material that is harmful to minors must place such material on shelves that are over 4 feet above the floor of the room where the harmful material is distributed or sold. Provides that a seller or distributor of material that is harmful to minors who violates this provision is guilty of a Class A misdemeanor. Effective immediately.

LRB094 18108 RLC 53413 b

CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 1961 is amended by changing  
5 Section 11-21 as follows:

6 (720 ILCS 5/11-21) (from Ch. 38, par. 11-21)  
7 Sec. 11-21. Harmful material.

8 (a) As used in this Section:

9 "Distribute" means transfer possession of, whether  
10 with or without consideration.

11 "Harmful to minors" means that quality of any  
12 description or representation, in whatever form, of  
13 nudity, sexual conduct, sexual excitement, or  
14 sado-masochistic abuse, when, taken as a whole, it (i)  
15 predominately appeals to the prurient interest in sex of  
16 minors, (ii) is patently offensive to prevailing standards  
17 in the adult community in the State as a whole with respect  
18 to what is suitable material for minors, and (iii) lacks  
19 serious literary, artistic, political, or scientific value  
20 for minors.

21 "Knowingly" means having knowledge of the contents of  
22 the subject matter, or recklessly failing to exercise  
23 reasonable inspection which would have disclosed the  
24 contents.

25 "Material" means (i) any picture, photograph, drawing,  
26 sculpture, film, video game, computer game, video or  
27 similar visual depiction, including any such  
28 representation or image which is stored electronically, or  
29 (ii) any book, magazine, printed matter however  
30 reproduced, or recorded audio of any sort.

31 "Minor" means any person under the age of 18.

32 "Nudity" means the showing of the human male or female

1           genitals, pubic area or buttocks with less than a full  
2           opaque covering, or the showing of the female breast with  
3           less than a fully opaque covering of any portion below the  
4           top of the nipple, or the depiction of covered male  
5           genitals in a discernably turgid state.

6           "Sado-masochistic abuse" means flagellation or torture  
7           by or upon a person clad in undergarments, a mask or  
8           bizarre costume, or the condition of being fettered, bound  
9           or otherwise physically restrained on the part of one  
10          clothed for sexual gratification or stimulation.

11          "Sexual conduct" means acts of masturbation, sexual  
12          intercourse, or physical contact with a person's clothed or  
13          unclothed genitals, pubic area, buttocks or, if such person  
14          be a female, breast.

15          "Sexual excitement" means the condition of human male  
16          or female genitals when in a state of sexual stimulation or  
17          arousal.

18          (b) A person is guilty of distributing harmful material to  
19          a minor when he or she:

20                 (1) knowingly sells, lends, distributes, or gives away  
21                 to a minor, knowing that the minor is under the age of 18  
22                 or failing to exercise reasonable care in ascertaining the  
23                 person's true age:

24                         (A) any material which depicts nudity, sexual  
25                         conduct or sado-masochistic abuse, or which contains  
26                         explicit and detailed verbal descriptions or narrative  
27                         accounts of sexual excitement, sexual conduct or  
28                         sado-masochistic abuse, and which taken as a whole is  
29                         harmful to minors;

30                         (B) a motion picture, show, or other presentation  
31                         which depicts nudity, sexual conduct or  
32                         sado-masochistic abuse and is harmful to minors; or

33                         (C) an admission ticket or pass to premises where  
34                         there is exhibited or to be exhibited such a motion  
35                         picture, show, or other presentation; or

36                 (2) admits a minor to premises where there is exhibited

1 or to be exhibited such a motion picture, show, or other  
2 presentation, knowing that the minor is a person under the  
3 age of 18 or failing to exercise reasonable care in  
4 ascertaining the person's true age.

5 (c) In any prosecution arising under this Section, it is an  
6 affirmative defense:

7 (1) that the minor as to whom the offense is alleged to  
8 have been committed exhibited to the accused a draft card,  
9 driver's license, birth certificate or other official or  
10 apparently official document purporting to establish that  
11 the minor was 18 years of age or older, which was relied  
12 upon by the accused;

13 (2) that the defendant was in a parental or  
14 guardianship relationship with the minor or that the minor  
15 was accompanied by a parent or legal guardian;

16 (3) that the defendant was a bona fide school, museum,  
17 or public library, or was a person acting in the course of  
18 his or her employment as an employee or official of such  
19 organization or retail outlet affiliated with and serving  
20 the educational purpose of such organization;

21 (4) that the act charged was committed in aid of  
22 legitimate scientific or educational purposes; or

23 (5) that an advertisement of harmful material as  
24 defined in this Section culminated in the sale or  
25 distribution of such harmful material to a child under  
26 circumstances where there was no personal confrontation of  
27 the child by the defendant, his employees, or agents, as  
28 where the order or request for such harmful material was  
29 transmitted by mail, telephone, Internet or similar means  
30 of communication, and delivery of such harmful material to  
31 the child was by mail, freight, Internet or similar means  
32 of transport, which advertisement contained the following  
33 statement, or a substantially similar statement, and that  
34 the defendant required the purchaser to certify that he or  
35 she was not under the age of 18 and that the purchaser  
36 falsely stated that he or she was not under the age of 18:

1 "NOTICE: It is unlawful for any person under the age of 18  
2 to purchase the matter advertised. Any person under the age  
3 of 18 that falsely states that he or she is not under the  
4 age of 18 for the purpose of obtaining the material  
5 advertised is guilty of a Class B misdemeanor under the  
6 laws of the State."

7 (d) The predominant appeal to prurient interest of the  
8 material shall be judged with reference to average children of  
9 the same general age of the child to whom such material was  
10 sold, lent, distributed or given, unless it appears from the  
11 nature of the matter or the circumstances of its dissemination  
12 or distribution that it is designed for specially susceptible  
13 groups, in which case the predominant appeal of the material  
14 shall be judged with reference to its intended or probable  
15 recipient group.

16 (e) Distribution of harmful material in violation of this  
17 Section is a Class A misdemeanor. A second or subsequent  
18 offense is a Class 4 felony.

19 (f) Any person under the age of 18 that falsely states,  
20 either orally or in writing, that he or she is not under the  
21 age of 18, or that presents or offers to any person any  
22 evidence of age and identity that is false or not actually his  
23 or her own for the purpose of ordering, obtaining, viewing, or  
24 otherwise procuring or attempting to procure or view any  
25 harmful material is guilty of a Class B misdemeanor.

26 (g) A seller or distributor of material that is harmful to  
27 minors must place such material on shelves that are over 4 feet  
28 above the floor of the room where the harmful material is  
29 distributed or sold. A seller or distributor of material that  
30 is harmful to minors who violates this subsection (g) is guilty  
31 of a Class A misdemeanor.

32 (Source: P.A. 94-315, eff. 1-1-06.)

33 Section 99. Effective date. This Act takes effect upon  
34 becoming law.