

## HOUSE BILL No. 2912

By Committee on Judiciary

2-14

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9 AN ACT concerning crimes and punishment; relating to promoting ob-  
10 scenity; amending K.S.A. 21-4301 and repealing the existing section.

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12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 21-4301 is hereby amended to read as follows: 21-  
14 4301. (a) Promoting obscenity is knowingly or recklessly:

15 (1) Manufacturing, issuing, selling, giving, providing, lending, mail-  
16 ing, delivering, transmitting, publishing, distributing, circulating, dissem-  
17 inating, presenting, exhibiting or advertising any obscene material or ob-  
18 scene device;

19 (2) possessing any obscene material or obscene device with intent to  
20 issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish,  
21 distribute, circulate, disseminate, present, exhibit or advertise such ma-  
22 terial or device;

23 (3) offering or agreeing to manufacture, issue, sell, give, provide,  
24 lend, mail, deliver, transmit, publish, distribute, circulate, disseminate,  
25 present, exhibit or advertise any obscene material or obscene device; or

26 (4) producing, presenting or directing an obscene performance or  
27 participating in a portion thereof which is obscene or which contributes  
28 to its obscenity.

29 (b) Evidence that materials or devices were promoted to emphasize  
30 their prurient appeal ~~or sexually provocative aspect~~ shall be relevant in  
31 determining the question of the obscenity of such materials or devices.  
32 There shall be a presumption that a person promoting obscene materials  
33 or obscene devices did so knowingly or recklessly if:

34 (1) The materials or devices were promoted to emphasize their pru-  
35 rient appeal ~~or sexually provocative aspect~~; or

36 (2) the person is not a wholesaler and promotes the materials or de-  
37 vices in the course of the person's business.

38 (c) (1) Any material or performance is "obscene" if:

39 (A) The average person applying contemporary community standards  
40 would find that the material or performance, taken as a whole, appeals  
41 to the prurient interest;

42 (B) the average person applying contemporary community standards  
43 would find that the material or performance has patently offensive rep-

- 1 resentations or descriptions of (i) ultimate sexual acts, normal or per-  
2 verted, actual or simulated, including sexual intercourse or sodomy, or  
3 (ii) masturbation, excretory functions, sadomasochistic abuse or lewd ex-  
4 hibition of the genitals; and
- 5 (C) taken as a whole, a reasonable person would find that the material  
6 or performance lacks serious literary, educational, artistic, political or sci-  
7 entific value.
- 8 (2) "Material" means any tangible thing which is capable of being  
9 used or adapted to arouse interest, whether through the medium of read-  
10 ing, observation, sound or other manner.
- 11 (3) "Obscene device" means a device, including a dildo or artificial  
12 vagina, designed or marketed as useful primarily for the stimulation of  
13 human genital organs, except such devices disseminated or promoted for  
14 the purpose of medical or psychological therapy.
- 15 (4) "Performance" means any play, motion picture, dance or other  
16 exhibition performed before an audience.
- 17 (5) "Sexual intercourse" and "sodomy" have the meanings provided  
18 by K.S.A. 21-3501 and amendments thereto.
- 19 (6) "Wholesaler" means a person who sells, distributes or offers for  
20 sale or distribution obscene materials or devices only for resale and not  
21 to the consumer and who does not manufacture, publish or produce such  
22 materials or devices.
- 23 (d) It is a defense to a prosecution for obscenity that:
- 24 (1) The persons to whom the allegedly obscene material was dissem-  
25 inated, or the audience to an allegedly obscene performance, consisted  
26 of persons or institutions having scientific, educational or governmental  
27 justification for possessing or viewing the same;
- 28 (2) the defendant is an officer, director, trustee or employee of a  
29 public library and the allegedly obscene material was acquired by such  
30 library and was disseminated in accordance with regular library policies  
31 approved by its governing body; or
- 32 (3) the allegedly obscene material or obscene device was purchased,  
33 leased or otherwise acquired by a public, private or parochial school,  
34 college or university, and that such material was either sold, leased, dis-  
35 tributed or disseminated by a teacher, instructor, professor or other fac-  
36 ulty member or administrator of such school as part of or incident to an  
37 approved course or program of instruction at such school.
- 38 (e) The provisions of this section and the provisions of ordinances of  
39 any city prescribing a criminal penalty for exhibit of any obscene motion  
40 picture shown in a commercial showing to the general public shall not  
41 apply to a projectionist, or assistant projectionist, if such projectionist or  
42 assistant projectionist has no financial interest in the show or in its place  
43 of presentation other than regular employment as a projectionist or as-

1 sistant projectionist and no personal knowledge of the contents of the  
2 motion picture. The provisions of this section shall not exempt any pro-  
3 jectionist or assistant projectionist from criminal liability for any act un-  
4 related to projection of motion pictures in commercial showings to the  
5 general public.

6 (f) (1) Promoting obscenity is a class A nonperson misdemeanor on  
7 conviction of a first offense.

8 (2) Promoting obscenity is a severity level 9, person felony on con-  
9 viction of a second or subsequent offense.

10 (3) Conviction of a violation of a municipal ordinance prohibiting acts  
11 which constitute promoting obscenity shall be considered a conviction of  
12 promoting obscenity for the purpose of determining the number of prior  
13 convictions and the classification of the crime under this section.

14 (g) Upon any conviction of promoting obscenity, the court may re-  
15 quire, in addition to any fine or imprisonment imposed, that the defend-  
16 ant enter into a reasonable recognizance with good and sufficient surety,  
17 in such sum as the court may direct, but not to exceed \$50,000, condi-  
18 tioned that, in the event the defendant is convicted of a subsequent of-  
19 fense of promoting obscenity within two years after such conviction, the  
20 defendant shall forfeit the recognizance.

21 Sec. 2. K.S.A. 21-4301 is hereby repealed.

22 Sec. 3. This act shall take effect and be in force from and after its  
23 publication in the statute book.