

CHAPTER 46

OBSCENITY

- 46.01 Obscene Literature, Materials, and Performances
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46.01 OBSCENE LITERATURE, MATERIALS AND PERFORMANCES

(a) **DEFINITIONS.**

- (1) **"Obscene"**. Material is obscene if:
 - a. Its dominant theme taken as a whole appeals to a prurient interest in sex, and
 - b. It is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matter, and
 - c. It lacks serious literary, artistic, political or moral value.
- (2) **"Knowingly"**. A person acts knowingly if he has general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of the character and content of any materials described herein which is reasonably susceptible of examination.
- (3) **"Material"** shall refer to any book, magazine or other newspaper or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any sculpture or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other articles, equipment or machines.
- (4) **"Person"** shall mean any individual, partnership, firm, association, corporation, or other legal entity.
- (5) **"Performance"** shall mean any preview, play, show, skit, film, dance or other exhibition performed before an audience.
- (6) **"Promote"** shall mean to cause, permit, procure, counsel or assist.
- (7) **"Service to Patrons"** shall mean the provision of services to paying guests in establishments providing food and beverages, including, but not limited to, hostessing, hat checking, cooking, bartending, serving, table setting and clearing, waiter and waitressing and entertaining.

(b) **PROHIBITIONS.** It shall be unlawful for any person knowingly:

- (1) To sell, loan for a monetary consideration, deliver or provide, any obscene writing, picture, record or other representation or embodiment of the obscene; or

- (2) To present or direct or participate in an obscene play, dance or performance of knowingly to permit the same on any premises owned or operated by him or under his control; or
- (3) To publish, exhibit, distribute, give away or otherwise make available any obscene material; or
- (4) To possess any obscene material for purposes of sale or other commercial dissemination; or
- (5) To sell, advertise or otherwise commercially disseminate material, whether or not obscene, by representing or suggesting that it is obscene.

State Law Reference: Chapter 944, Wis. Stats.

46.02 EXPOSING MINORS TO HARMFUL MATERIALS

(a) **DEFINITIONS.** As used in this Section:

- (1) **"Minor"** means any person under the age of eighteen (18) years.
- (2) **"Nudity"** means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.
- (3) **"Sexual conduct"** is defined to be acts of sexual intercourse between humans, normal or perverted, actual or simulated, acts of masturbation, fellatio, cunnilingus, and acts of excretory condition and sexual relations between humans and animals.
- (4) **"Sexual excitement"** means the condition of human male or female genitals when in a state of sexual stimulation or arousal.
- (5) **"Sadomasochistic abuse"** means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.
- (6) **"Harmful to minors"** means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sadomasochistic abuse, which taken as a whole appeals to the prurient interest in sex, which taken as a whole portrays sexual conduct in a patently offensive way, and which taken as a whole does not have serious literary, artistic, political or scientific value. Whether a work appeals to the prurient interest and whether it depicts or describes sexual conduct in a patently offensive way, and whether it has serious literary, artistic, political or scientific value is to be determined by applying contemporary community standards in the adult community as a whole with respect to what is suitable material for minors.
- (7) **"Knowingly"** means having general knowledge of, or reason to

know, or a belief or ground for belief which warrants further inspection or inquiry of both:

- a. The character and content of any material described herein which is reasonably susceptible of examination by the defendant, and
 - b. The age of the minor provided, however, that an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.
- (8) **"Knowledge of the minor's age"** means:
- a. Knowledge or information that the person is a minor; or
 - b. Reason to know, or a belief or grounds for belief, which warrants further inspection or inquiry of the age of the minor.
- (b) **ADMISSION PROHIBITED.** It shall be unlawful for any person knowingly to exhibit for a monetary consideration to a minor or knowingly to sell to a minor an admission ticket or pass or knowingly to admit a minor for a monetary consideration to premises whereon there is exhibited a motion picture, show or other presentation which in whole or in part depicts nudity, sexual conduct or sadomasochistic abuse and which is harmful to minors, unless such minor is accompanied by his parent or legal guardian.
- (c) **OTHER PROHIBITIONS.** It shall be unlawful for any person knowingly to sell or loan for monetary consideration to a minor:
- (1) Any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct or sadomasochistic abuse and which is harmful to minors.
 - (2) Any book, pamphlet, magazine, printed matter however reproduced or sound recording which contains any matter enumerated in sub(c)(1) hereof, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sadomasochistic abuse and which, taken as a whole, is harmful to minors.

State Law Reference: §944.25, Wis. Stats.

46.03 COMMERCIAL SEXUAL GRATIFICATION

No person or any legal entity shall offer, make available, permit or in any way participate in the touching of the genitals, pubic area, buttocks, anus or perineum of any person or of the breasts or vulva of a female when such touching can be reasonably construed as being for the purpose of sexual arousal or gratification under circumstances in which it is reasonably expected that money or other consideration will be received therefore. No person or any legal entity shall offer, make available, permit or in any way participate in

the administration of any form of massage for money or other consideration when the genitals, pubic area, buttocks, anus, perineum, vulva or female breast of the administrator of the massage are not fully covered by opaque material.

