

Chapter 160, ADULT ENTERTAINMENT

[HISTORY: Adopted by the City Council of the City of Binghamton as indicated in article histories.
Amendments noted where applicable.]

GENERAL REFERENCES

Curfew -- See Ch. 211.

ARTICLE I, Sale to Minors [Adopted 10-4-1982 by Ord. No. 133-82 (Ch. 14, Art. II, §§ 14-23 through 14-25, of the 1970 Code)]

§ 160-1. Definitions.

As used in this article, the following terms shall have the meanings indicated:

HARMFUL TO MINORS -- That quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when it:

- A. Predominantly appeals to the prurient, shameful or morbid interest of minors;
- B. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
- C. Is, when taken as a whole, lacking in serious literary, artistic, political or scientific value for minors.

KNOWINGLY -- Having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry, or both, of:

- 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; however, 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.

MINOR -- A person less than 17 years of age.

SADOMASOCHISTIC ABUSE -- Actual or explicitly simulated flagellation or torture by or upon a person who is nude or 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.

SEXUAL CONDUCT -- Actual or explicitly simulated acts of masturbation, homosexuality, sexual intercourse, or physical contact in an act of apparent sexual stimulation or gratification with a person's clothed or unclothed genitals, pubic area, buttocks or, if such be female, breast.

SEXUAL EXCITEMENT -- The condition of human male or female genitals when in a state of sexual stimulation or arousal.

SEXUALLY EXPLICIT NUDITY -- A state of undress so as to expose 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 or uncovered male genitals in a discernibly turgid state.

§ 160-2. Unlawful acts.

- A. 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 sexually explicit nudity, sexual conduct or sadomasochistic abuse and which is harmful to minors; or
 - (2) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in Subsection A(1) of this section, 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.

- B. It shall be unlawful for any person knowingly to sell to a minor an admission ticket or pass, or knowingly to admit a minor to premises whereon there is exhibited a motion picture show or other presentation which, in whole or in part, depicts sexually explicit nudity, sexual conduct or sadomasochistic abuse and which is harmful to minors or to exhibit any such motion picture at any such premises which are not designed to prevent viewing from any public way of such motion picture by minors not admitted to any such premises.
- C. It shall be unlawful for any minor falsely to represent to any person mentioned in Subsection A or B hereof, or to his agent, that such minor is 17 years of age or older, with the intent to procure any material set forth in Subsection A, or with the intent to procure such minor's admission to any motion picture, show or other presentation, as set forth in Subsection B.
- D. It shall be unlawful for any person knowingly to make a false representation to any person mentioned in Subsection A or B hereof, or to his agent, that he is the parent or guardian of any minor, or that any minor is 17 years of age or older, with the intent to procure any material set forth in Subsection A or with the intent to procure such minor's admission to any motion picture, show or other presentation, as set forth in Subsection B.
- E. It shall be unlawful for any person knowingly to exhibit, expose or display in public at newsstands or any other business or commercial establishment frequented by minors where minors are or may be invited as part of the general public:
 - (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 sexually explicit nudity, sexual conduct or sadomasochistic abuse which is harmful to minors; or
 - (2) A book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in Subsection E(1) of this subsection, 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.

§ 160-3. Exceptions.

Nothing contained in this article shall be construed to apply to:

- A. The purchase, distribution, exhibition or loan of any work of art, book, magazine, or other printed or manuscript material by any accredited museum, library, school or institution of higher learning.
- B. The exhibition or performance of any play, drama, tableau or motion picture by any theater, museum, school or institution of higher learning, either supported by public appropriation or which is an accredited institution supported by private funds.
- C. Persons who may possess or distribute obscene matter or participate in conduct otherwise prescribed by this article when such possession, participation, distribution or conduct occurs in the course of law enforcement activities, or in the course of bona fide scientific, educational, or comparable research or study, or like circumstances of justification.