

Nebraska

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Nebraska Criminal Code

28-808

Obscene literature and material; sale to minor, unlawful; penalty.

(1) It shall be unlawful for a person knowingly to sell, deliver, distribute, display for sale, or provide to a minor or knowingly to possess with intent to sell, deliver, distribute, display for sale, or provide to a minor:

(a) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body or any replica, article, or device having the appearance of either male or female genitals which predominantly pruriently, shamefully, or morbidly depicts nudity, sexual conduct, sexual excitement, or sadomasochistic abuse and which, taken as a whole, is harmful to minors; or

(b) Any book, pamphlet, magazine, printed matter however produced, or sound recording which contains any matter enumerated in subdivision (1)(a) of this section or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse of a predominantly prurient, shameful, or morbid nature and which, taken as a whole, is harmful to minors.

(2) Any person who violates this section shall be guilty of a Class I misdemeanor.

Source:

Laws 1977, LB 38, § 164; Laws 1988, LB 117, § 2.

28-809

Obscene motion picture, show, or presentation; admit minor; unlawful; penalty.

(1) It shall be unlawful for any person knowingly to exhibit to a minor or knowingly to provide 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, predominantly pruriently, shamefully, or morbidly depicts nudity, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to minors.

(2) Any person who violates this section shall be guilty of a Class I misdemeanor.

Source:

Laws 1977, LB 38, § 165; Laws 1988, LB 117, § 3.

28-810

Prosecution; defense.

It shall be a defense to a prosecution under sections 28-808 and 28-809 that:

(1) Such person had reasonable cause to believe that the minor involved was eighteen years of age or more, and that such reasonable cause is based on but not limited to the presentation by the minor exhibited to such person of a draft card, driver's license, birth certificate, or other official or

apparently official document purporting to establish that such minor was eighteen years of age or more;

(2) The minor was accompanied by his parent or guardian and such person had reasonable cause to believe that the person accompanying the minor was the parent or guardian of that minor;

(3) Such person had reasonable cause to believe that the person was the parent or guardian of the minor; and

(4) Such person's activity falls within the defenses to a prosecution contained in section 28-815.

Source:

Laws 1977, LB 38, § 166.

28-811

False representation; unlawful employment of minor; exceptions; penalty.

(1) It shall be unlawful for any minor to falsely represent to any person mentioned in section 28-808 or 28-809, or to his or her agent, that such minor is eighteen years of age or older with the intent to procure any materials set forth in section 28-808 or with the intent to procure such minor's admission to any motion picture, show, or other presentation as set forth in section 28-809.

(2) It shall be unlawful for any person to knowingly make a false representation to any person mentioned in section 28-808 or 28-809, or to his or her agent, that he or she is the parent or guardian of any minor or that any minor is eighteen

years of age with the intent to procure any material set forth in section 28-808 or with the intent to procure such minor's admission to any motion picture, show, or other presentation as set forth in section 28-809.

(3) It shall be unlawful for any person to hire as an employee a minor whose duties it will be to assist in any manner the sale, delivery, distribution, or exhibition of material declared obscene by sections 28-807 to 28-829, except that this section shall not apply if such minor's parents or legal guardian should consent to such employment by giving the employer a written affidavit prior to the minor's employment.

(4) Any person who violates this section shall be guilty of a Class II misdemeanor.

Source:

Laws 1977, LB 38, § 167; Laws 1988, LB 117, § 4.

28-812

Repealed. Laws 1988, LB 117, s. 8.

28-813

Obscene literature or material; prepares; distributes; promotes; penalty.

(1) It shall be unlawful for a person knowingly to (a) print, copy, manufacture, prepare, produce, or reproduce obscene material for the purpose of sale or distribution, (b) publish, circulate, sell, rent, lend, transport in interstate commerce, distribute, or exhibit any obscene

material, (c) have in his or her possession with intent to sell, rent, lend, transport, or distribute any obscene material, or (d) promote any obscene material or performance.

(2) It shall be unlawful for a person to place an order for any advertising promoting the sale or distribution of material represented or held out to be obscene, whether or not such material exists in fact or is obscene. In all cases in which a charge or violation of this section is brought against a person who cannot be found in this state, the executive authority of this state may demand extradition of such person from the executive authority of the state in which such person may be found.

(3) A person commits an offense of promoting obscene material if knowing its content and character he or she (a) disseminates for monetary consideration any obscene material, (b) produces, presents, or directs obscene performances for monetary consideration, or (c) participates for monetary consideration in that part of a performance which makes it obscene.

(4) Any person who violates this section shall be guilty of a Class I misdemeanor.

Source:

Laws 1977, LB 38, § 169; Laws 1988, LB 117, § 5.

Annotations:

Films which have little plot and which consist of scene after scene of sexual intercourse, lesbianism, homosexuality, cunnilingus, and fellati are obscene as the term is defined. State v. Embassy Corp., 215 Neb. 631, 340 N.W.2d 160 (1983).

Subsection (1) of this statute is not unconstitutionally vague. State v. Embassy Corp., 215 Neb. 631, 340 N.W.2d 160 (1983).

28-813.01

Sexually explicit conduct; visual depiction; unlawful; penalty.

(1) It shall be unlawful for a person to knowingly possess any visual depiction of sexually explicit conduct, as defined in section 28-1463.02, which has a child, as defined in such section, as one of its participants or portrayed observers.

(2) Any person who violates this section shall be guilty of a Class IV felony.

Source:

Laws 1988, LB 117, § 6; Laws 2003, LB 111, § 1.
Effective date April 17, 2003.

28-813.02

Commercial film and photographic print processor; immune from liability; when.

Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, and who participates in an investigation or the making of any report pertaining to any film, photograph, videotape, negative, or slide depicting a child under the age of eighteen years engaged in an act of sexually explicit conduct, as defined in section 28-1463.02, or participates in a judicial proceeding resulting from such participation shall be immune from any liability, civil

or criminal, that might otherwise be incurred or imposed, except for maliciously false statements.

Source:

Laws 1988, LB 117, § 7.

28-814

Criminal prosecutions; trial by jury; waiver; instructions to jury; expert witness.

(1) Criminal prosecutions involving the ultimate issue of obscenity, as distinguished from the issue of probable cause, shall be tried by jury, unless the defendant shall waive a jury trial in writing or by statement in open court entered in the minutes.

(2) The judge shall instruct the jury that the guidelines in determining whether a work, material, conduct, or live exhibition is obscene are: (a) The average person applying contemporary community standards would find the work taken as a whole goes substantially beyond contemporary limits of candor in description or presentation of such matters and predominantly appeals to the prurient, shameful, or morbid interest; (b) the work depicts in a patently offensive way sexual conduct specifically referred to in sections 28-807 to 28-829; (c) the work as a whole lacks serious literary, artistic, political, or scientific value; and (d) in applying these guidelines to the determination of whether or not the work, material, conduct or

live exhibition is obscene, each element of each guideline must be established beyond a reasonable doubt.

(3) In any proceeding, civil or criminal, under sections 28-807 to 28-829, where there is an issue as to whether or not the matter is obscene, either party shall have the right to introduce, in addition to all other relevant evidence, the testimony of expert witnesses on such issue as to any artistic, literary, scientific, political or other societal value in the determination of the issue of obscenity.

Source:

Laws 1977, LB 38, § 170.

28-815

Prosecution; defense.

It shall be a defense to a prosecution under section 28-813 that:

(1) Such person's activity consists of teaching in regularly established and recognized educational institutions, galleries or libraries, or the publication or use of standard textbooks, films, tapes or visual aids of any such institution, or the practice of licensed practitioners of medicine or of pharmacy in their regular business or profession, or the possession by established schools teaching art, or by public art galleries, or artists or models in the necessary line of their art, or to relevant references to, or accounts or portrayal of, nudity, sex, or excretion in religion, art, literature, history,

science, medicine, public health, law, the judicial process, law enforcement, education, public libraries, or news reports and news pictures by any form of news media of general circulation;

(2) Such person has no financial interest in an activity, product, or event entitling such person to participate in the promotion, management, proceeds, or profits of the activity, product, or event, and such person's only connection with the activity, product, or event entitles such person to a reasonable salary or wages for services actually rendered; and

(3) The provisions of sections 28-807 to 28-829 with respect to the exhibition or the possession with the intent to exhibit of any obscene film shall not apply to a motion picture projectionist, usher, or ticket taker acting within the scope of his employment if such projectionist, usher, or ticket taker has no financial interest in the place wherein he is so employed. Such person shall be required to give testimony regarding such employment in all judicial proceedings brought under sections 28-807 to 28-829 when granted immunity by the trial judge.

Source:

Laws 1977, LB 38, § 171.

28-816

Violations; declaratory judgment.

Any city, village, or county, through its chief law enforcement officer in which a person, firm or

corporation violates or is about to violate sections 28-807 to 28-829 or has in his or its possession with intent to so violate, or is about to acquire possession with intent to so violate, any work, material, conduct or live performance which is obscene or an instrument of obscene use, or purports to be for such use or purpose, may maintain an action in the district court against such person, firm or corporation for a declaratory judgment under the Uniform Declaratory Judgments Act for the purpose of obtaining a judicial determination as to whether or not such work, material, conduct or live performance is obscene.

Source:

Laws 1977, LB 38, § 172.

Cross Reference:

Uniform Declaratory Judgments Act, see section 25-21,164.

28-817

Prosecution; temporary restraining order or injunction; when.

(1) The plaintiff, after the commencement of such action may, if he deems it necessary in order to prevent the continued use of such work, material, conduct or live performance, request a temporary restraining order or injunction against such person, firm or corporation to prevent the violation or further violation except as provided in this section.

(2) No other temporary restraining order or injunction shall issue in advance of final adjudication by the trial court

in actions brought under the provisions of sections 28-816 to 28-818 when the question of whether the work, material, conduct or live performance is obscene is in issue. If an injunction is requested, any party to the action shall be entitled to a trial of the issues within ten calendar days after service of the summons has been completed, and a decision shall be rendered by the court within two judicial days of the conclusion of the trial.

Source:

Laws 1977, LB 38, § 173.

28-818

Order or judgment of injunction; contents.

If an order or judgment of injunction be entered, such order or judgment shall contain either a provision directing the person to surrender to the sheriff or police the work, material, conduct or live performance which has been adjudicated to be obscene for seizure and impoundment by the court or to destroy or remove the same from the state. No order or judgment directing such firm, person, corporation or other legal entity to destroy or to remove such work, material, conduct or live performance from the state under such supervision as the court may direct shall issue until after a final judgment has been made as the result of an appeal or in the absence of an appeal. The court shall require satisfactory proof of compliance

with such order.

Source:

Laws 1977, LB 38, § 174.

28-819

Action; service of summons; effect.

Every person who sells, distributes, or acquires possession with intent to sell, exhibit, or distribute any of the work, material, conduct or live performance described in section 28-808, after service upon him of summons in such action, shall be chargeable with knowledge of the contents thereof in any subsequent prosecution.

Source:

Laws 1977, LB 38, § 175.

28-820

Declaratory judgment; use of.

Any person who exhibits, sells or distributes, or is about to exhibit, sell or distribute or has in his or its possession with intent to sell or distribute, or is about to acquire possession with intent to exhibit, sell or distribute, any work, material, conduct or live performance shall, if such person has genuine doubt as to the question of whether such work, material, conduct or live performance is in fact within the terms and provisions of sections 28-807 to 28-829, have the right to bring an action in the district court for declaratory judgment

under the Uniform Declaratory Judgments Act against the appropriate chief law enforcement officer of the city, village or county in which the work, material, conduct or live performance is located or is intended to be disseminated, distributed, or exhibited, for a judicial determination as to whether or not such work, material, conduct or live performance is obscene. Any such action may be consolidated with a pending action brought under the provisions of sections 28-816 to 28-818, and the defendant in any action brought under this section may seek a declaratory judgment or request a temporary restraining order or an injunction therein in accordance with the provisions of sections 28-816 to 28-818.

Source:

Laws 1977, LB 38, § 176.

Cross Reference:

Uniform Declaratory Judgments Act, see section 25-21,164.

28-821

Conviction more than twice; continue business dealing in obscene work or conduct; effect.

Any person who is convicted more than twice under sections 28-807 to 28-829 and continues to use, occupy, establish or conduct a business selling, distributing, disseminating, or exhibiting any obscene work, material, conduct or live performance shall be deemed to be maintaining a nuisance

and shall be enjoined as provided for in sections 28-807 to 28-829.

Source:

Laws 1977, LB 38, § 177.

28-822

Nuisance; action to abate; punished as for contempt; when.

Whenever a nuisance exists as provided for in sections 28-807 to 28-829, any city, village, or county, through its chief law enforcement officer, may bring an action in equity to abate such a nuisance and to perpetually enjoin the person maintaining the same from further maintenance thereof. If any person continues to use the building or place for such purpose he shall be punished as for contempt.

Source:

Laws 1977, LB 38, § 178.

28-823

Temporary injunction; where brought; hearing; restraining order; issuance; inventory; rights of owner of property.

The action provided for in section 28-821 shall be brought in the district court of the county in which the act of nuisance is being conducted. After filing of the petition, application for a temporary injunction may be made to the district court or judge thereof who shall grant a hearing within ten calendar days after the filing.

When such application for temporary injunction is made,

the court or judge thereof may, on application of the complainant, issue a restraining order as otherwise provided for in sections 25-1062 to 25-1080, restraining the defendant and all other persons from removing or in any manner interfering with the personal property and contents of the place where such nuisance is being conducted until the decision of the court or judge granting or refusing such temporary injunction and until the further order of the court thereon. The officers serving such restraining order shall forthwith make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining such nuisance and further violations of sections 28-807 to 28-829. The owner of any real or personal property closed or restrained or to be closed or restrained may appear between the filing of the complaint and the hearing on the application for permanent injunction, and upon payment of all costs incurred and upon the filing of a bond by the owner of the real property with sureties to be approved by the clerk of the district court in the full value of the property to be ascertained by the court, conditioned that such owner will immediately abate the nuisance and prevent the same from being established or kept until the decision of the court is rendered on the application for a permanent injunction, and the court, if satisfied with the good faith of the owner of the real property

and of innocence on the part of the owner of the personal property of any knowledge of the use of such personal property as a nuisance and that, with reasonable care and diligence, such owner could not have known thereof, shall deliver such real or personal property, or both, to the respective owners thereof, and discharge or refrain from issuing at the time of the hearing on the application for the temporary injunction any order closing such real property or restraining the removal or interference with such personal property. The release of any real or personal property under this section shall not release it from any judgment, lien, penalty, or liability to which it may be subjected. In no event shall any work, material, conduct or live performance not adjudicated to be obscene under sections 28-807 to 28-829 be enjoined.

Source:

Laws 1977, LB 38, § 179.

28-824

Trial; precedence; evidence; admissible; existence of nuisance; enjoin defendant.

The action provided for in sections 28-807 to 28-829 shall be set down for trial and shall have precedence over all other cases except crimes, election contests, or injunctions. In such action evidence of the general reputation of the place or an admission or finding of guilt of any person under the criminal

laws of this state against obscenity at any such place shall be admissible for the purpose of proving the existence of such nuisance and shall be prima facie evidence of such nuisance and of knowledge of and acquiescence and participation therein on the part of the person charged with maintaining such nuisance. If the existence of the nuisance is established upon the trial, a judgment shall be entered which shall perpetually enjoin the defendant or the same defendant acting directly or indirectly through other persons from further maintaining the nuisance at the place complained of or at any other location whether within or without the judicial district of the court hearing such proceedings for a period of three years.

Source:

Laws 1977, LB 38, § 180.

28-825

Nuisance; existence; order of abatement; closing order.

If the existence of a nuisance is admitted or established in an action as provided for in sections 28-807 to 28-829, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the place of all personal property and contents used in conducting the nuisance, and not already released under authority of the court as provided in section 28-823, and shall direct the sale of such thereof as belonging to the defendants notified or

appearing in the manner provided for the sale of personal property under execution. Such order shall also require the renewal for one year of any bond furnished by the owner of the real property as provided for in sections 28-807 to 28-829 or, if not so furnished, shall continue for one year any closing order issued at the time of the granting of the temporary injunction or, if no such closing order was then issued, shall include an order directing the effectual closing of the place against its use for any illegal purpose unless otherwise released. The owner of any place closed and not released under bond may then appear and obtain such release in the manner and upon fulfilling the requirements provided for in sections 28-807 to 28-829. The release of the property under this section shall not release it from any judgment, lien, penalty, or liability to which it may be subject. Owners of unsold personal property and contents so seized may appear and claim the same within ten days after such order of abatement is made and prove innocence to the satisfaction of the court of any knowledge of such use thereof and that with reasonable care and diligence they could not have known thereof. Every defendant in the action is presumed to have had knowledge of the general reputation of the place. If such innocence is established, such unsold personal property and contents shall be delivered to the owner, otherwise it shall be

sold as provided in this section and all consideration received is recoverable as damages to the county where the nuisance was located.

Source:

Laws 1977, LB 38, § 181; Laws 1978, LB 748, § 14.

28-826

Tenant or occupant of building; use to commit violations; conviction; right of possession in owner.

If a tenant or occupant of a building or tenement under lawful title used such place for the purposes of committing a violation of sections 28-807 to 28-829, and if such tenant or occupant is convicted of such violation, such conviction shall make the lease or other title which he holds void at the option of the owner, and without any act of the owner, cause the right of possession to revert and vest in such owner, who may without further process of law make immediate entry upon the premises and retake possession.

Source:

Laws 1977, LB 38, § 182.

28-827

Material or work; adjudicated obscene; contraband; proceeds of sale to county; other copies; disposal.

Material or work introduced in evidence and judicially adjudicated to be obscene is contraband and there are

no property rights therein. All monetary consideration received for such work, material, conduct or live performance is recoverable as damages to the county where sold or exhibited. The defendant, as part of the court order, shall be required to remove from the state all other identical copies owned or controlled by such defendant within five days after a court determination of obscenity thereof or the same shall be deemed forfeited to the state for destruction by the state.

Source:

Laws 1977, LB 38, § 183; Laws 1978, LB 748, § 15.

28-828

Proceeding, civil or criminal; application to court for copy of material; order; contempt of court, when.

In any proceeding, civil or criminal under sections 28-807 to 28-829, the party charged with possession of any obscene material shall be required, upon application by petitioner and order of the court, to provide one copy of such material to petitioner to be used in the preparation and trial of such proceedings. Failure to comply with this section shall be punishable as contempt of court.

Source:

Laws 1977, LB 38, § 184.

28-829

Sections; uniform application; laws and regulations of political subdivisions; void.

In order to provide for the uniform application of sections 28-807 to 28-829 within this state, it is intended that the sole and only regulation of the commercial distribution of any work, material, conduct or live performance described as obscene shall be under sections 28-807 to 28-829, and no municipality, county, or other governmental unit within this state shall make any law, ordinance or regulation relating to obscenity, or licenses or taxes respecting the obscene work, material, conduct or live performance as regulated by the state under sections 28-807 to 28-829. All such laws, ordinances, regulations, special or discriminatory taxes, or licenses, whether enacted or issued before or after sections 28-807 to 28-829, shall be void, unenforceable, and of no effect.

Source:

Laws 1977, LB 38, § 185.