

## Harmful Matter

To the licensee:

You may not sell, rent, give, or show harmful matter to persons under age 18.

Harmful matter includes, but is not limited to, a book, magazine, newspaper, or video tape that ". . . depicts or describes in a patently offensive way sexual conduct . . . and lacks serious literary, artistic, political, or scientific value for minors."

If you sell harmful matter, you must use reasonable care in ascertaining the true age of a minor.

If you sell or rent videos of harmful matter, you must create an area within your licensed premises for the placement of the videos and label it, "Adults Only."

If you sell books or magazines of harmful matter, you should contact your local police or sheriff's department about any local ordinances that may apply. Some cities and counties require you to place "blinder racks" in front of such material so that the lower two-thirds of the material is not exposed to view.

If you violate Penal Code Section 313.1, you may be subject to criminal penalties as set forth in Penal Code Section 313.4 below, and suspension or revocation of your alcoholic beverage license by the Department of Alcoholic Beverage Control.

### **Penal Code Section 313.1. Distribution or exhibition to minors. . .**

*(a) Every person who, with knowledge that a person is a minor, or who fails to exercise reasonable care in ascertaining the true age of a minor, knowingly sells, rents, distributes, sends, causes to be sent, exhibits, or offers to distribute or exhibit by any means, including, but not limited to, live or recorded telephone messages, any harmful matter to the minor shall be punished as specified in Section 313.4. . . . (Emphasis added.)*

(b) Every person who misrepresents himself or herself to be the parent or guardian of a minor and thereby causes the minor to be admitted to an exhibition of any harmful matter shall be punished as specified in Section 313.4.

(c)(1) Any person who knowingly displays, sells, or offers to sell in any coin-operated or slug-operated vending machine or mechanically or electronically controlled vending machine that is located in a public place, other than a public place from which minors are excluded, any harmful matter displaying to the public view photographs or pictorial representations of the commission of any of the following acts shall be punished as specified in Section 313.4: sodomy, oral copulation, sexual intercourse, masturbation, bestiality, or a photograph of an exposed penis in an erect and turgid state.

(2) Any person who knowingly displays, sells, or offers to sell in any coin-operated vending machine that is not supervised by an adult and that is located in a public place, other than a public place from which minors are excluded, any

harmful matter, as defined in subdivision (a) of Section 313, shall be punished as specified in Section 313.4.

(d) Nothing in this section invalidates or prohibits the adoption of an ordinance by a city, county, or city and county that restricts the display of material that is harmful to minors, as defined in this chapter, in a public place, other than a public place from which minors are excluded, by requiring the placement of devices commonly known as blinder racks in front of the material, so that the lower two-thirds of the material is not exposed to view.

(e) *Any person who sells or rents video recordings of harmful matter shall create an area within his or her business establishment for the placement of video recordings of harmful matter and for any material that advertises the sale or rental of these video recordings. This area shall be labeled "adults only."* The failure to create and label the area is an infraction, punishable by a fine not to exceed one hundred dollars (\$100). The failure to place a video recording or advertisement, regardless of its content, in this area shall not constitute an infraction. . . . [This means licensees may place videos in storage areas that are not exposed to minors.] (Emphasis added.)

### **Penal Code Section 313. Definitions**

. . . (a) "Harmful matter" means matter, taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest, and is matter which, taken as a whole, depicts or describes in a patently offensive way sexual conduct and which, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors. . . .

(b) "Matter" means any book, magazine, newspaper, video recording, or other

printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcription, or mechanical, chemical, or electrical reproduction or any other articles, equipment, machines, or materials. "Matter" also includes live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.

(c) "Person" means any individual, partnership, firm, association, corporation, limited liability company, or other legal entity.

(d) "Distribute" means to transfer possession of, whether with or without consideration.

(e) "Knowingly" means being aware of the character of the matter.

(f) "Exhibit" means to show.

(g) "Minor" means any natural person under 18 years of age.

### **Penal Code Section 313.4 Punishment**

Every person who violates Section 313.1, other than subdivision (e), is punishable by fine of not more than two thousand dollars (\$2,000), by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. However, if the person has been previously convicted of a violation of Section 313.1, other than subdivision (e), or of any section of Chapter 7.5 (commencing with Section 311) of Title 9 of Part 1 of this code, the person shall be punished by imprisonment in the state prison.

Source: California Penal Code