

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 366

Session of  
1979

INTRODUCED BY E. R. LYNCH, NOYE, POLITE, E. H. SMITH, REED,  
E. Z. TAYLOR, BOWSER, PITTS AND VROON, FEBRUARY 20, 1979

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 21, 1979

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, further providing for obscene and  
3 other sexual materials.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Section 5903 of Title 18, act of November 25,  
7 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated  
8 Statutes, is amended to read:

9 § 5903. Obscene and other sexual materials.

10 (a) Offenses defined.--No person, knowing the obscene  
11 character of the materials involved, shall:

12 (1) display or cause or permit the display of any  
13 obscene materials in or on any window, showcase, newsstand,  
14 display rack, billboard, display board, viewing screen,  
15 motion picture screen, marquee or similar place in such  
16 manner that the display is visible from any public street,  
17 highway, sidewalk, transportation facility or other public  
18 thoroughfare;

1           (2) sell, lend, distribute, exhibit, give away or show  
2 any obscene materials to any person 17 years of age or older  
3 or offer to sell, lend, distribute, exhibit or give away or  
4 show, or have in his possession with intent to sell, lend,  
5 distribute, exhibit or give away or show any obscene  
6 materials to any person 17 years of age or older, or  
7 knowingly advertise any obscene materials in any manner;

8           (3) design, copy, draw, photograph, print, utter,  
9 publish or in any manner manufacture or prepare any obscene  
10 materials;

11           (4) write, print, publish, utter or cause to be written,  
12 printed, published or uttered any advertisement or notice of  
13 any kind giving information, directly or indirectly, stating  
14 or purporting to state where, how, from whom, or by what  
15 means any obscene materials can be purchased, obtained or  
16 had; or

17           (5) hire, employ, use or permit any minor child to do or  
18 assist in doing any act or thing mentioned in this  
19 subsection.

20           (b) Definitions.--As used in this section the following  
21 words and phrases shall have the meanings given to them in this  
22 subsection:

23           "Community." For the purpose of applying the "contemporary  
24 community standards" in this section, community means the State.

25           "Knowing." As used in subsection (a), knowing means having  
26 general knowledge of, or reason to know or a belief or ground  
27 for belief which warrants further inspection or inquiry of, the  
28 character and content of any material described therein which is  
29 reasonably susceptible of examination by the defendant.

30           "Necessary expenses incurred by the attorney for the

1 Commonwealth." As used in subsection (g), necessary expenses  
2 incurred by the Commonwealth shall include the reasonable costs  
3 of the following:

4 (1) Witness fees including expert witness fees.

5 (2) Costs for rental facilities or equipment.

6 (3) The reasonable time expended by the attorney for the  
7 Commonwealth and persons acting under his direction and  
8 authority in the conduct of the equity proceeding including  
9 any investigations and preparation related thereto.

10 "Obscene materials." Any literature, including any book,  
11 magazine, pamphlet, newspaper, storypaper, comic book or  
12 writing, and any figure, visual representation, or image  
13 including any drawing, photograph, picture or motion picture,  
14 if:

15 (1) the average person applying contemporary community  
16 standards would find that the subject matter taken as a whole  
17 appeals to the prurient interest;

18 (2) the subject matter depicts or describes in a  
19 patently offensive way, sexual conduct of a type described in  
20 this section; and

21 (3) the subject matter, taken as a whole, lacks serious  
22 literary, artistic, political, educational or scientific  
23 value.

24 "Sexual conduct." Patently offensive representations or  
25 descriptions of ultimate sexual acts, normal or perverted,  
26 actual or simulated, and patently offensive representations or  
27 descriptions of masturbation, excretory functions and lewd  
28 exhibition of the genitals.

29 "Transportation facility." Any conveyance, premises or place  
30 used for or in connection with public passenger transportation,

1 whether by air, rail, motor vehicle or any other method,  
2 including aircraft, watercraft, railroad cars, buses, and air,  
3 boat, railroad and bus terminals and stations.

4 (c) Dissemination to minors.--No person shall knowingly  
5 disseminate by sale, loan or otherwise explicit sexual materials  
6 to a minor. "Explicit sexual materials," as used in this  
7 subsection, means materials which are obscene or:

8 (1) any picture, photograph, drawing, sculpture, motion  
9 picture film, or similar visual representation or image of a  
10 person or portion of the human body which depicts nudity,  
11 sexual conduct, or sadomasochistic abuse and which is harmful  
12 to minors; or

13 (2) any book, pamphlet, magazine, printed matter however  
14 reproduced, or sound recording which contains any matter  
15 enumerated in paragraph (1), or explicit and detailed verbal  
16 descriptions or narrative accounts of sexual excitement,  
17 sexual conduct, or sadomasochistic abuse and which, taken as  
18 a whole, is harmful to minors.

19 (d) Admitting minor to show.--It shall be unlawful for any  
20 person knowingly to exhibit for monetary consideration to a  
21 minor or knowingly to sell to a minor an admission ticket or  
22 pass or knowingly to admit a minor for a monetary consideration  
23 to premises whereon there is exhibited, a motion picture show or  
24 other presentation which, in whole or in part, depicts nudity,  
25 sexual conduct, or sadomasochistic abuse and which is harmful to  
26 minors, except that the foregoing shall not apply to any minor  
27 accompanied by his parent.

28 (e) Definitions.--As used in subsections (c) and (d) of this  
29 section:

30 (1) "Minor" means any person under the age of 17 years.

1           (2) "Nudity" means the showing of the human male or  
2       female genitals, pubic area, or buttocks with less than a  
3       fully opaque covering, or the showing of the female breast  
4       with less than a fully opaque covering of any portion thereof  
5       below the top of the nipple, or the depiction of covered male  
6       genitals in a discernibly turgid state.

7           (3) "Sexual conduct" means acts of masturbation,  
8       homosexuality, sexual intercourse, or physical contact with a  
9       person's clothed or unclothed genitals, pubic area, buttocks  
10      or, if such person be a female, breast.

11          (4) "Sexual excitement" means the condition of human  
12      male or female genitals when in a state of sexual stimulation  
13      or arousal.

14          (5) "Sadomasochistic abuse" means flagellation or  
15      torture by or upon a person clad in undergarments, a mask or  
16      bizarre costume, or the condition of being fettered, bound or  
17      otherwise physically restrained on the part of one so  
18      clothed.

19          (6) "Harmful to minors" means that quality of any  
20      description or representation, in whatever form, of nudity,  
21      sexual conduct, sexual excitement, or sadomasochistic abuse,  
22      when it:

23              (i) predominantly appeals to the prurient, shameful,  
24      or morbid interest of minors; and

25              (ii) is patently offensive to prevailing standards  
26      in the adult community as a whole with respect to what is  
27      suitable material for minors; and

28              (iii) is utterly without redeeming social importance  
29      for minors.

30          (7) "Knowingly" means having general knowledge of, or

1 reason to know, or a belief or ground for belief which  
2 warrants further inspection or inquiry of both:

3 (i) the character and content of any material  
4 described herein which is reasonably susceptible of  
5 examination by the defendant; and

6 (ii) the age of the minor: Provided, however, That  
7 an honest mistake shall constitute an excuse from  
8 liability hereunder if the defendant made a reasonable  
9 bona fide attempt to ascertain the true age of such  
10 minor.

11 (f) Requiring sale as condition of business dealings.--No  
12 person shall knowingly require any distributor or retail seller  
13 as a condition to sale or delivery for resale or consignment of  
14 any literature, book, magazine, pamphlet, newspaper, storypaper,  
15 paper, comic book, writing, drawing, photograph, figure or  
16 image, or any written or printed matter, or any article or  
17 instrument to purchase or take by consignment for purposes of  
18 sale, resale or distribution any obscene literature, book,  
19 magazine, pamphlet, newspaper, storypaper, paper, comic book,  
20 writing, drawing, photograph, figure or image, or any written or  
21 printed matter of an obscene nature or any article or instrument  
22 of an obscene nature.

23 (g) Injunction.--The attorney for the Commonwealth may  
24 institute proceedings in equity in the court of common pleas of  
25 the county in which any person violates or clearly is about to  
26 violate this section for the purpose of enjoining such  
27 violation. The court shall issue an injunction only after  
28 written notice and hearing and only against the defendant to the  
29 action. The court shall hold a hearing within three days after  
30 demand by the attorney for the Commonwealth, one of which days

1 must be a business day for the court, and a final decree shall  
2 be filed in the office of the prothonotary within 24 hours after  
3 the close of the hearing. A written memorandum supporting the  
4 decree shall be filed within five days of the filing of the  
5 decree. The attorney for the Commonwealth shall prove the  
6 elements of the violation beyond a reasonable doubt. The  
7 defendant shall have the right to trial by jury at the said  
8 hearing. In the event an injunction is issued by the court, the  
9 defendant shall bear the cost of all necessary expenses incurred  
10 by the attorney for the Commonwealth in connection with the  
11 equity proceeding. In addition, the defendant shall bear those  
12 court costs and be subject to the same procedure prescribed by  
13 statute and general rule for the imposition and taxation of  
14 court costs upon defendants in civil actions.

15 (h) Criminal prosecution for enjoined activities.--

16 (1) Any person who violates subsection (a) or (f) as to  
17 the matters enjoined pursuant to subsection (g) commits a  
18 misdemeanor of the second degree.

19 (2) Any person who violates subsection (c) or (d) as to  
20 matters enjoined pursuant to subsection (g) commits a  
21 misdemeanor of the first degree.

22 (3) Elements of the offense shall be determined de novo  
23 at the criminal proceeding and findings made in the equity  
24 action shall not be binding in the criminal proceedings.

25 (i) Right to jury trial.--The right to trial by jury shall  
26 be preserved in all proceedings under this section.

27 (j) Exemptions.--Nothing in this section shall apply to any  
28 recognized historical society or museum accorded charitable  
29 status by the Federal Government, any county, city, borough,  
30 township or town library, any public library, any library of any

1 school, college or university or any archive or library under  
2 the supervision and control of the Commonwealth or a political  
3 subdivision.

4 (k) Costs.--The defendant or any person or business  
5 enterprise on whose behalf the defendant was acting or employed  
6 in connection with any activity enjoined under subsection (g)  
7 shall pay the costs imposed thereunder within 45 days of receipt  
8 of notice of a court order directing the payment of same. If the  
9 defendant files an appeal the enforcement procedure herein set  
10 forth shall not be stayed unless the defendant first posts  
11 sufficient bond to secure payment of any costs imposed under  
12 subsection (g). If said costs are not paid or sufficient bond  
13 not posted for the payment of same within the prescribed time,  
14 the court, on application of the attorney for the Commonwealth  
15 and following a hearing thereon, shall issue an order enjoining  
16 the defendant and said business enterprise or person from  
17 engaging in any business activity upon the premises whereon the  
18 enjoined activities had taken place. The injunction shall apply  
19 to any successor in interest and shall remain in effect until  
20 such time as all costs imposed under subsection (g) and this  
21 subsection, which shall be taxed and imposed in like manner, are  
22 paid.

23 (l) Hearing on lifting injunction.--If the court issues an  
24 injunction to restrain the exhibition of a motion picture  
25 preview pursuant to subsection (g), the defendant shall also be  
26 enjoined from exhibiting the motion picture as well as the  
27 preview thereof until such time as a determination is made, as  
28 hereinafter provided, that the exhibition of said motion picture  
29 is not violative of this section. The court shall hold a hearing  
30 within three days, one of which shall be a business day for the



1 court, after a demand by the defendant that the injunction be  
2 lifted insofar as the injunction is applicable to the motion  
3 picture in its entirety. No hearing shall be held unless the  
4 defendant first pays costs or posts sufficient bond to secure  
5 payment for the costs of said hearing together with any costs  
6 imposed upon the defendant, remaining unpaid, which were imposed  
7 in connection with subsection (g) proceeding at which the  
8 injunction was issued. Said injunction shall be lifted unless  
9 the attorney for the Commonwealth shall prove the elements of  
10 the violation beyond a reasonable doubt. The defendant shall  
11 have a right to a trial by jury at said hearing. Costs shall be  
12 taxed and imposed in the manner set forth in subsection (g). A  
13 final decree shall be filed with the prothonotary within 24  
14 hours after the close of the hearing.

15       Section 2. This act shall take effect in 60 days.