
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1141 Session of
1989

INTRODUCED BY CALTAGIRONE, BIRMELIN, MOEHLMANN, ADOLPH, ALLEN, ANGSTADT, ARGALL, BARLEY, BATTISTO, BILLOW, BLACK, BOYES, BRANDT, BROUJOS, BUNT, BURD, BUSH, CARLSON, CAPPABIANCA, CESSAR, CHADWICK, CIVERA, CLYMER, COLAIZZO, COLE, DAVIES, DOMBROWSKI, DeLUCA, DEMPSEY, DIETTERICK, DISTLER, DONATUCCI, FARGO, FARMER, FEE, FLEAGLE, FLICK, FOSTER, FOX, FREIND, GALLEN, GAMBLE, GEIST, GRUITZA, GRUPPO, HALUSKA, HASAY, HAYES, HERSHEY, HESS, JACKSON, JADLOWIEC, JOHNSON, KASUNIC, KONDRICH, KOSINSKI, LaGROTTA, LANGTRY, LEH, LLOYD, LUCYK, MAIALE, MARKOSEK, MAYERNIK, McNALLY, MELIO, MERRY, MILLER, MORRIS, MRKONIC, NAHILL, NAILOR, NOYE, O'BRIEN, OLASZ, PERZEL, PETRONE, PHILLIPS, PISTELLA, PITTS, PRESSMANN, RAYMOND, RITTER, ROBBINS, ROBINSON, RUDY, RYAN, RYBAK, SALOOM, SAURMAN, SCHEETZ, SCHULER, SEMMEL, S. H. SMITH, D. W. SNYDER, STEIGHNER, STRITTMATTER, E. Z. TAYLOR, TRELLO, VAN HORNE, VEON, VROON, WASS, WESTON, WOGAN, WOZNIAK, J. L. WRIGHT, DURHAM, MARSICO, WILSON, GLADECK, J. H. CLARK, MOWERY, TELEK, SCRIMENTI AND BOWLEY, APRIL 11, 1989

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, JUNE 26, 1990

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for obscene and
3 other sexual materials; ~~and~~ providing for obscene <—
4 performances; AND PROHIBITING THE DISCLOSURE OF CONFIDENTIAL <—
5 TAX INFORMATION BY CERTAIN PERSONS.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Section 5903 of Title 18 of the Pennsylvania
9 Consolidated Statutes is amended to read:

10 § 5903. Obscene and other sexual materials and performances.

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

(1) display or cause or permit the display of any explicit sexual materials as defined in subsection (c) in or on any window, showcase, newsstand, display rack, billboard, display board, viewing screen, motion picture screen, marquee or similar place in such manner that the display is visible from any public street, highway, sidewalk, transportation facility or other public thoroughfare, or in any business or commercial establishment where minors, as a part of the general public or otherwise, are or will probably be exposed to view all or any part of such materials;

(2) sell, lend, distribute, exhibit, give away or show any obscene materials to any person [17] 18 years of age or older or offer to sell, lend, distribute, exhibit or give away or show, or have in his possession with intent to sell, lend, distribute, exhibit or give away or show any obscene materials to any person [17] 18 years of age or older, or knowingly advertise any obscene materials in any manner;

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

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

(5) produce, present or direct any obscene performance or participate in a portion thereof that is obscene or that

1 contributes to its obscenity; or

2 [(5)] (6) hire, employ, use or permit any minor child to
3 do or assist in doing any act or thing mentioned in this
4 subsection.

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

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

10 "Knowing." As used in subsection (a), knowing means having
11 general knowledge of, or reason to know or a belief or ground
12 for belief which warrants further inspection or inquiry of, the
13 character and content of any material or performance described
14 therein which is reasonably susceptible of examination by the
15 defendant.

16 "[Obscene materials] Material." Any literature, including
17 any book, magazine, pamphlet, newspaper, storypaper, bumper
18 sticker, comic book or writing[, and]; any figure, visual
19 representation, or image including any drawing, photograph,
20 picture, video tape or motion picture[; if:].

21 "Nude." Means showing the human male or female genitals,
22 pubic area, or buttocks with less than a fully opaque covering,
23 or showing the female breast with less than a fully opaque
24 covering of any portion thereof below the top of the nipple.

25 "Obscene." Any material or performance, if:

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

29 (2) the subject matter depicts or describes in a
30 patently offensive way, sexual conduct of a type described in

1 this section; and

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

5 "Performance." Means any play, dance or other live
6 exhibition performed before an audience.

7 "Sadomasochistic abuse." Means, in a sexual context,
8 flagellation or torture by or upon a person who is nude or clad
9 in undergarments, a mask or in a bizarre costume, or the
10 condition of being fettered, bound or otherwise physically
11 restrained on the part of one who is nude or so clothed.

12 "Sexual conduct." Patently offensive representations or
13 descriptions of ultimate sexual acts, normal or perverted,
14 actual or simulated, including sexual intercourse, anal or oral
15 sodomy and sexual bestiality; and patently offensive
16 representations or descriptions of masturbation, excretory
17 functions, sadomasochistic abuse and lewd exhibition of the
18 genitals.

19 "Transportation facility." Any conveyance, premises or place
20 used for or in connection with public passenger transportation,
21 whether by air, rail, motor vehicle or any other method,
22 including aircraft, watercraft, railroad cars, buses, and air,
23 boat, railroad and bus terminals and stations.

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

28 (1) any picture, photograph, drawing, sculpture, motion
29 picture film, video tape or similar visual representation or
30 image of a person or portion of the human body which depicts

1 nudity, sexual conduct, or sadomasochistic abuse and which is
2 harmful to minors; or

3 (2) any book, pamphlet, magazine, printed matter however
4 reproduced, or sound recording which contains any matter
5 enumerated in paragraph (1), or explicit and detailed verbal
6 descriptions or narrative accounts of sexual excitement,
7 sexual conduct, or sadomasochistic abuse and which, taken as
8 a whole, is harmful to minors.

9 (d) Admitting minor to show.--It shall be unlawful for any
10 person knowingly to exhibit for monetary consideration to a
11 minor or knowingly to sell to a minor an admission ticket or
12 pass or knowingly to admit a minor for a monetary consideration
13 to premises whereon there is exhibited, a motion picture show or
14 other presentation or performance which, in whole or in part,
15 depicts nudity, sexual conduct, or sadomasochistic abuse and
16 which is harmful to minors, except that the foregoing shall not
17 apply to any minor accompanied by his parent.

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

20 (1) "Minor" means any person under the age of [17] 18
21 years. <—

22 (2) "Nudity" means the showing of the human male or
23 female genitals, pubic area, or buttocks with less than a
24 fully opaque covering, or the showing of the female breast
25 with less than a fully opaque covering of any portion thereof
26 below the top of the nipple, or the depiction of covered male
27 genitals in a discernibly turgid state.

28 (3) "Sexual conduct" means acts of masturbation,
29 homosexuality, sexual intercourse, sexual bestiality, or
30 physical contact with a person's clothed or unclothed

1 genitals, pubic area, buttocks or, if such person be a
2 female, breast.

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

6 (5) "Sadomasochistic abuse" means flagellation or
7 torture by or upon a person clad in undergarments, a mask or
8 bizarre costume, or the condition of being fettered, bound or
9 otherwise physically restrained on the part of one so
10 clothed.

11 (6) "Harmful to minors" means that quality of any
12 description or representation, in whatever form, of nudity,
13 sexual conduct, sexual excitement, or sadomasochistic abuse,
14 when it:

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

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

20 (iii) [is utterly without redeeming social
21 importance for minors] taken as a whole, lacks serious
22 literary, artistic, political, educational or scientific
23 value for minors.

24 (7) "Knowingly" means having general knowledge of, or
25 reason to know, or a belief or ground for belief which
26 warrants further inspection or inquiry of both:

27 (i) the character and content of any material or
28 performance described herein which is reasonably
29 susceptible of examination by the defendant; and

30 (ii) the age of the minor: Provided, however, That

1 an honest mistake shall constitute an excuse from
2 liability hereunder if the defendant made a reasonable
3 bona fide attempt to ascertain the true age of such
4 minor.

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

17 (g) Injunction.--The attorney for the Commonwealth may
18 institute proceedings in equity in the court of common pleas of
19 the county in which any person violates or clearly is about to
20 violate this section for the purpose of enjoining such
21 violation. The court shall issue an injunction only after
22 written notice and hearing and only against the defendant to the
23 action. The court shall hold a hearing within three days after
24 demand by the attorney for the Commonwealth, one of which days
25 must be a business day for the court, and a final decree shall
26 be filed in the office of the prothonotary within 24 hours after
27 the close of the hearing. A written memorandum supporting the
28 decree shall be filed within five days of the filing of the
29 decree. The attorney for the Commonwealth shall prove the
30 elements of the violation beyond a reasonable doubt. The

1 defendant shall have the right to trial by jury at the said
2 hearing.

3 (h) Criminal prosecution.--

4 (1) Any person who violates subsection (a) or (f) is
5 guilty of a misdemeanor of the first degree. Violation of
6 subsection (a) is a felony of the third degree if the offender
7 has previously been convicted of a violation of subsection (a)
8 or if the material was sold, distributed, prepared or published
9 for the purpose of resale.

10 (2) Any person who violates subsection (c) or (d) is
11 guilty of a misdemeanor of the first degree. Violation of
12 subsection (c) or (d) is a felony of the third degree if the
13 offender has previously been convicted of a violation of
14 subsection (c) or (d).

15 (3) Findings made in an equity action shall not be
16 binding in the criminal proceedings.

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

19 (j) Exemptions.--Nothing in this section shall apply to any
20 recognized historical society or museum accorded charitable
21 status by the Federal Government, any county, city, borough,
22 township or town library, any public library, any library of any
23 school, college or university or any archive or library under
24 the supervision and control of the Commonwealth or a political
25 subdivision.

26 (k) Ordinances or resolutions.--Nothing in this chapter
27 shall be construed to invalidate, supersede, repeal or preempt
28 any ordinance or resolution of any political subdivision insofar
29 as it is consistent with this chapter, and political
30 subdivisions further retain the right to regulate any

1 activities, displays, exhibitions or materials not specifically
2 regulated by this chapter.

3 SECTION 2. TITLE 18 IS AMENDED BY ADDING A SECTION TO READ: <—
4 § 7326. DISCLOSURE OF CONFIDENTIAL TAX INFORMATION.

5 (A) OFFENSE DEFINED.--A PERSON COMMITS A MISDEMEANOR OF THE
6 THIRD DEGREE IF HE DISCLOSES, EXCEPT TO AUTHORIZED PERSONS FOR
7 OFFICIAL GOVERNMENTAL PURPOSES, ANY TAX INFORMATION THAT IS:

8 (1) DESIGNATED AS CONFIDENTIAL BY A STATUTE OR ORDINANCE
9 OF A CITY OF THE SECOND CLASS; AND

10 (2) OBTAINED BY HIM IN CONJUNCTION WITH ANY DECLARATION,
11 RETURN, AUDIT, HEARING OR VERIFICATION REQUIRED OR AUTHORIZED
12 BY STATUTE OR ORDINANCE.

13 (B) EXCEPTION.--SUBSECTION (A) SHALL NOT APPLY WHERE
14 DISCLOSURE IS REQUIRED BY LAW OR BY COURT ORDER.

15 (C) DEFINITION.--AS USED IN THIS SECTION, THE TERM "PERSON"
16 INCLUDES, BUT IS NOT LIMITED TO, A CURRENT OR FORMER OFFICER OR
17 EMPLOYEE OF THE COMMONWEALTH OR ANY OF ITS POLITICAL
18 SUBDIVISIONS AND ANY OTHER INDIVIDUAL WHO HAS ACCESS TO
19 CONFIDENTIAL TAX INFORMATION.

20 Section ~~2~~ 3. This act shall take effect immediately. <—