

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 833

Session of
1975

INTRODUCED BY DOYLE, STAPLETON, O'KEEFE, LYNCH AND WORRILOW,
MARCH 18, 1975

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 19, 1975

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, specifically prohibiting obscene
3 motion pictures.

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," amended December 6, 1972 (P.L.1482, No.334), is
9 amended to read:

10 § 5903. Obscenity.

11 (a) Offenses defined.--Whoever sells, lends, distributes,
12 exhibits, gives away or shows to any person 17 years of age or
13 older or offers to sell, lend, distribute, exhibit or give away
14 or show, or has in his possession with intent to sell, lend,
15 distribute or give away or to show to any person 17 years of age
16 or older, or knowingly advertises in any manner any obscene
17 literature, motion picture, book, magazine, pamphlet, newspaper,
18 storypaper, paper, comic book, writing, drawing, photograph,

1 figure or image, or any written or printed matter of an obscene
2 nature, or any article or instrument of an obscene nature, or
3 whoever designs, copies, draws, photographs, prints, utters,
4 publishes or in any manner manufactures or prepares any such
5 book, picture, drawing, magazine, pamphlet, newspaper,
6 storypaper, paper, comic book, writing, figure, image, matter,
7 article or thing or whoever writes, prints, publishes or utters
8 or causes to be printed, published or uttered, any advertisement
9 or notice of any kind giving information, directly or
10 indirectly, stating or purporting to state where, how, or whom,
11 or by what means any obscene book, picture, writing, paper,
12 comic book, figure, image, matter, article or thing named in
13 this section can be purchased, obtained or had, or whoever
14 hires, employs, uses or permits any minor or child to do or
15 assist in doing any act or thing mentioned in this section, is
16 guilty of a misdemeanor of the second degree.

17 (b) Obscene defined.--"Obscene," as used in this section,
18 means that which, to the average person applying contemporary
19 community standards, has as its dominant theme, taken as a
20 whole, an appeal to prurient interest.

21 (c) Minors.--It shall be unlawful for any person knowingly
22 to sell or loan for monetary or other valuable consideration to
23 a minor:

24 (1) any picture, photograph, drawing, sculpture, motion
25 picture film, or similar visual representation or image of a
26 person or portion of the human body which depicts nudity,
27 sexual conduct, or sadomasochistic abuse and which is harmful
28 to minors; or

29 (2) any book, pamphlet, magazine, printed matter however
30 reproduced, or sound recording which contains any matter

1 enumerated in clause (1) hereof, or explicit and detailed
2 verbal descriptions or narrative accounts of sexual
3 excitement, sexual conduct, or sadomasochistic abuse and
4 which, taken as a whole, is harmful to minors.

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

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

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

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

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

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

30 (5) "Sadomasochistic abuse" means flagellation or

1 torture by or upon a person clad in undergarments, a mask or
2 bizarre costume, or the condition of being fettered, bound or
3 otherwise physically restrained on the part of one so
4 clothed.

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

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

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

14 (iii) is utterly without redeeming social importance
15 for minors.

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

19 (i) the character and content of any material
20 described herein which is reasonably susceptible of
21 examination by the defendant; and

22 (ii) the age of the minor: Provided, however, That
23 an honest mistake shall constitute an excuse from
24 liability hereunder if the defendant made a reasonable
25 bona fide attempt to ascertain the true age of such
26 minor.

27 (f) Grading.--Any person who violates subsections (c) and
28 (d) of this section is guilty of a misdemeanor of the first
29 degree.

30 (g) Requiring sale.--A person who knowingly requires any

1 distributor or retail seller as a condition to sale or delivery
2 for resale or consignment of any literature, book, magazine,
3 pamphlet, newspaper, storypaper, paper, comic book, writing,
4 drawing, photograph, figure or image, or any written or printed
5 matter of an obscene nature, or any article or instrument of an
6 obscene nature to purchase or take by consignment for purposes
7 of sale, resale, or distribution any obscene literature, book,
8 magazine, pamphlet, newspaper, storypaper, paper, comic book,
9 writing, drawing, photograph, figure or image, or any written or
10 printed matter of an obscene nature or any article or instrument
11 of an obscene nature, is guilty of a misdemeanor of the second
12 degree.

13 (h) Injunction.--The district attorney of any county in
14 which any person sells, lends, distributes, exhibits, gives away
15 or shows, or is about to sell, lend, distribute, exhibit, give
16 away or show, or has in his possession with intent to sell,
17 resell, lend, distribute, exhibit, give away or show, any
18 obscene literature, motion picture, book, magazine, pamphlet,
19 newspaper, storypaper, paper, comic book, writing, drawing,
20 photograph, figure or image, or any written or printed matter of
21 an obscene nature, or any article or instrument of an obscene
22 nature, may institute proceedings in equity in the court of
23 common pleas of said county for the purpose of enjoining the
24 sale, resale, lending, distribution, exhibit, gift or show of
25 such obscene literature, motion picture, book, magazine,
26 pamphlet, newspaper, storypaper, paper, comic book, writing,
27 drawing, photograph, figure or image, or any written or printed
28 matter of an obscene nature, or any article or instrument of an
29 obscene nature, contrary to the provisions of this section, and
30 for such purposes jurisdiction is hereby conferred upon said

1 courts. A preliminary injunction may issue and a hearing
2 thereafter be held thereon in conformity with the Rules of Civil
3 Procedure upon the averment of the district attorney that the
4 sale, resale, lending, distribution, exhibit, gift or show of
5 such publication or motion picture constitutes a danger to the
6 welfare or peace of the community. The district attorney shall
7 not be required to give bond.

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