

## 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 AND J. CLARK, APRIL 11, 1989

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, MAY 22, 1989

## 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.

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

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

9 § 5903. Obscene and other sexual materials and performances.

10 (a) Offenses defined.--No person, knowing the obscene

1 character of the materials or performances involved, shall:

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

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

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

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

28 (5) produce, present or direct any obscene performance  
29 or participate in a portion thereof that is obscene or that  
30 contributes to its obscenity; or

1           [(5)] (6) hire, employ, use or permit any minor child to  
2       do or assist in doing any act or thing mentioned in this  
3       subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) any picture, photograph, drawing, sculpture, motion picture film, video tape or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct, or sadomasochistic abuse and which is

1 harmful to minors; or

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

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

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

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

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

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

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

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

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

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

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

18               (iii) [is utterly without redeeming social  
19 importance for minors] taken as a whole, lacks serious  
20 literary, artistic, political, educational and OR       <—  
21 scientific value for minors.

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

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

28               (ii) the age of the minor: Provided, however, That  
29 an honest mistake shall constitute an excuse from  
30 liability hereunder if the defendant made a reasonable

1           bona fide attempt to ascertain the true age of such  
2           minor.

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

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

(h) Criminal prosecution.--

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

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

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

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

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

(k) Ordinances or resolutions.--Nothing in this chapter shall be construed to invalidate, supersede, repeal or preempt any ordinance or resolution of any political subdivision insofar as it is consistent with this chapter, and political subdivisions further retain the right to regulate any activities, displays, exhibitions or materials not specifically regulated by this chapter.



1       Section 2.   This act shall take effect immediately.