

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 881 Session of  
1995

INTRODUCED BY ARMSTRONG, LEH, LYNCH, DURHAM, FICHTER, SCHULER,  
BIRMELIN, PITTS, STERN, BAKER, E. Z. TAYLOR, HERSHEY, TIGUE,  
CLARK, CIVERA, HENNESSEY, TRUE, BATTISTO, CLYMER, FARGO,  
PHILLIPS AND FEESE, FEBRUARY 27, 1995

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 27, 1995

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, further providing for the regulation  
3 of obscenity.

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

6 Section 1. Section 5903(b) and (h) of Title 18 of the  
7 Pennsylvania Consolidated Statutes are amended to read:

8 § 5903. Obscene and other sexual materials and performances.

9 \* \* \*

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

13 "Community." For the purpose of applying the "contemporary  
14 community standards" in this section, community means [the  
15 State] the political subdivision from which persons are drawn to  
16 serve as jurors in a criminal proceeding.

17 "Knowing." As used in subsection (a), knowing means having

1 general knowledge of, or reason to know or a belief or ground  
2 for belief which warrants further inspection or inquiry of, the  
3 character and content of any material or performance described  
4 therein which is reasonably susceptible of examination by the  
5 defendant.

6 "Material." Any literature, including any book, magazine,  
7 pamphlet, newspaper, storypaper, bumper sticker, comic book or  
8 writing; any figure, visual representation, or image, including  
9 any drawing, photograph, picture, videotape or motion picture.

10 "Nude." Means showing the human male or female genitals,  
11 pubic area or buttocks with less than a fully opaque covering,  
12 or showing the female breast with less than a fully opaque  
13 covering of any portion thereof below the top of the nipple.

14 "Obscene." Any material or performance, 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 "Performance." Means any play, dance or other live  
25 exhibition performed before an audience.

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

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

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

13 \* \* \*

14 (h) Criminal prosecution.--

15 (1) Any person who violates subsection (a), (c), (d) or  
16 (f) is guilty of a [misdemeanor of the first degree] felony  
17 of the third degree. [Violation of subsection (a) is a felony  
18 of the third degree if the offender has previously been  
19 convicted of a violation of subsection (a) or if the material  
20 was sold, distributed, prepared or published for the purpose  
21 of resale.]

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

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

29 \* \* \*

30 Section 2. If any provision of this act or the application

1   thereof to any person or circumstances is held invalid, such  
2   invalidity shall not affect other provisions or application of  
3   this act which can be given effect without the invalid provision  
4   or applicaiton, and to this end, the provisions of this act are  
5   severable.

6       Section 3.   This act shall take effect in 60 days.