

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 699 Session of  
2001

INTRODUCED BY ARMSTRONG, BARRAR, BENNINGHOFF, BIRMELIN, CLARK,  
CLYMER, COLEMAN, CORRIGAN, DeLUCA, EGOLF, FORCIER, GABIG,  
GEIST, HENNESSEY, HORSEY, KENNEY, LaGROTTA, METCALFE,  
SCHULER, SCRIMENTI, SHANER, STERN, E. Z. TAYLOR, THOMAS,  
TIGUE, WILT, WOGAN, WOJNAROSKI AND YOUNGBLOOD,  
FEBRUARY 13, 2001

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 13, 2001

AN ACT

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

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

5 Section 1. Section 5903(b), (h) and (j) of Title 18 of the  
6 Pennsylvania Consolidated Statutes, amended December 20, 2000  
7 (P.L. , No.98), 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.

1 "Knowing." As used in subsection (a), knowing means having  
2 general knowledge of, or reason to know or a belief or ground  
3 for belief which warrants further inspection or inquiry of, the  
4 character and content of any material or performance described  
5 therein which is reasonably susceptible of examination by the  
6 defendant.

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

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

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

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

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

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

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

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

1 restrained on the part of one who is nude or so clothed.

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

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

14 \* \* \*

15 (h) Criminal prosecution.--

16 (1) Any person who violates subsection [(a),] (a.1) [or  
17 (f)] is guilty of a misdemeanor of the first degree.

18 [Violation of subsection (a) is a felony of the third degree  
19 if the offender has previously been convicted of a violation  
20 of subsection (a) or if the material was sold, distributed,  
21 prepared or published for the purpose of resale.]

22 (2) Any person who violates subsection (a), (c) [or],  
23 (d) or (f) is guilty of a felony of the third degree.

24 Violation of subsection (a), (c) [or], (d) or (f) is a felony  
25 of the second degree if the offender has previously been  
26 convicted of a violation of subsection (a), (c) [or], (d) or  
27 (f).

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

30 \* \* \*

(j) Exemptions.--

(1) 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.

(2) This section shall not apply to the curriculum or materials of any public school district or to the curriculum, materials or courses of any accredited institution of higher education.

\* \* \*

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