

No. 1977-68

## AN ACT

SB 199

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further defining the offense of obscenity, redefining obscene, and further providing for injunctions.

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

Section 1. The heading and subsections (a), (b), (c), (f), (g) and (h) of section 5903 of Title 18, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, are amended and a subsection is added to read:

**§ 5903. Obscenity.**

(a) **Offenses defined.**—Whoever sells, lends, distributes, exhibits, gives away or shows to any person 17 years of age or older or offers to sell, lend, distribute, exhibit or give away or show, or has in his possession with intent to sell, lend, distribute or give away or to show to any person 17 years of age or older, or knowingly advertises in any manner any obscene literature, book, magazine, pamphlet, newspaper, storypaper, paper, comic book, writing, drawing, photograph, figure or image, or any written or printed matter of an obscene nature, or any article or instrument of an obscene nature, or whoever designs, copies, draws, photographs, prints, utters, publishes or in any manner manufactures or prepares any such book, picture, drawing, magazine, pamphlet, newspaper, storypaper, paper, comic book, writing, figure, image, matter, article or thing or whoever writes, prints, publishes or utters or causes to be printed, published or uttered, any advertisement or notice of any kind giving information, directly or indirectly, stating or purporting to state where, how, or whom, or by what means any obscene book, picture, writing, paper, comic book, figure, image, matter, article or thing named in this section can be purchased, obtained or had, or whoever hires, employs, uses or permits any minor or child to do or assist in doing any act or thing mentioned in this section, is guilty of a misdemeanor of the second degree.

(b) **Obscene defined.**—“Obscene,” as used in this section, means that which, to the average person applying contemporary community standards, has as its dominant theme, taken as a whole, an appeal to prurient interest.

(c) **Minors.**—It shall be unlawful for any person knowingly to sell or loan for monetary or other valuable consideration to a minor:]

**§ 5903. Obscene and other sexual materials.**

(a) **Offenses defined.**—No person, knowing the obscene character of the materials involved, shall:

(1) *display or cause or permit the display of any obscene materials 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;*

(2) *sell, lend, distribute, exhibit, give away or show any obscene materials to any person 17 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 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) *hire, employ, use or permit any minor child to do or assist in doing any act or thing mentioned in this subsection.*

(b) *Definitions.—As used in this section the following words and phrases shall have the meanings given to them in this subsection:*

*“Community.” For the purpose of applying the “contemporary community standards” in this section, community means the State.*

*“Knowing.” As used in subsection (a), knowing means having general knowledge of, or reason to know or a belief or ground for belief which warrants further inspection or inquiry of, the character and content of any material described therein which is reasonably susceptible of examination by the defendant.*

*“Obscene materials.” Any literature, including any book, magazine, pamphlet, newspaper, storypaper, comic book or writing, and any figure, visual representation, or image including any drawing, photograph, picture or motion picture, if:*

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

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

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

*“Sexual conduct.” Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, and patently offensive representations or descriptions of masturbation, excretory functions 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, 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 harmful to minors; or

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

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*[(f) Grading.—Any person who violates subsections (c) and (d) of this section is guilty of a misdemeanor of the first degree.*

*(g) Requiring sale.—A person who knowingly requires any distributor or retail seller as a condition to sale or delivery for resale or consignment of any literature, book, magazine, pamphlet, newspaper, storypaper, paper, comic book, writing, drawing, photograph, figure or image, or any written or printed matter of an obscene nature, or any article or instrument of an obscene nature to purchase or take by consignment for purposes of sale, resale, or distribution any obscene literature, book, magazine, pamphlet, newspaper, storypaper, paper, comic book, writing, drawing, photograph, figure or image, or any written or printed matter of an obscene nature or any article or instrument of an obscene nature, is guilty of a misdemeanor of the second degree.*

*(h) Injunction.—The district attorney of any county in which any person sells, lends, distributes, exhibits, gives away or shows, or is about to sell, lend, distribute, exhibit, give away or show, or has in his possession with intent to sell, resell, lend, distribute, exhibit, give away or show, any obscene literature, book, magazine, pamphlet, newspaper, storypaper, paper, comic book, writing, drawing, photograph, figure or image, or any written or printed matter of an obscene nature, or any article or instrument of an obscene nature, may institute proceedings in equity in the court of common pleas of said county for the purpose of enjoining the sale, resale, lending, distribution, exhibit, gift or show of such obscene literature, book, magazine, pamphlet, newspaper, storypaper, paper, comic book, writing, drawing, photograph, figure or image, or any written or printed matter of an obscene nature, or any article or instrument of an obscene nature, contrary to the provisions of this section, and for such purposes jurisdiction is hereby conferred upon said courts. A preliminary injunction*

may issue and a hearing thereafter be held thereon in conformity with the Rules of Civil Procedure upon the averment of the district attorney that the sale, resale, lending, distribution, exhibit, gift or show of such publication constitutes a danger to the welfare or peace of the community. The district attorney shall not be required to give bond.]

*(f) Requiring sale as condition of business dealings.—No person shall knowingly require any distributor or retail seller as a condition to sale or delivery for resale or consignment of any literature, book, magazine, pamphlet, newspaper, storypaper, paper, comic book, writing, drawing, photograph, figure or image, or any written or printed matter, or any article or instrument to purchase or take by consignment for purposes of sale, resale or distribution any obscene literature, book, magazine, pamphlet, newspaper, storypaper, paper, comic book, writing, drawing, photograph, figure or image, or any written or printed matter of an obscene nature or any article or instrument of an obscene nature.*

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

*(h) Criminal prosecution for enjoined activities.—*

*(1) Any person who violates subsection (a) or (f) as to the matters enjoined pursuant to subsection (g) commits a misdemeanor of the second degree.*

*(2) Any person who violates subsection (c) or (d) as to matters enjoined pursuant to subsection (g) commits a misdemeanor of the first degree.*

*(3) Elements of the offense shall be determined de novo at the criminal proceeding and findings made in the equity action shall not be binding in the criminal proceedings.*

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*(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.*

Section 2. The provisions of this act shall be severable. If any provision of this act is found by a court of record to be unconstitutional and void, the remaining provisions of this act shall, nevertheless, remain valid, unless the court finds the valid provisions of this act are so essentially and inseparably connected with, and so depend upon, the void provision, that it cannot be presumed the Legislature would have enacted the remaining valid provisions without the void one; or unless the court finds the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

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

Office of the Secretary of the Commonwealth

November 5, 1977

I do certify that the above bill, entitled "An act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further defining the offense of obscenity, redefining obscene, and further providing for injunctions." was presented to the Governor on the twenty-sixth day of October, one thousand nine hundred and seventy-seven, and was not returned within ten days after it had been presented to him, wherefore it has, agreeably to the Constitution of this Commonwealth, become a law in like manner as if he had signed it.

BARTON A. FIELDS

Secretary of the Commonwealth

*Note.* The date of final enactment of Act No. 1977-68 is Nov. 5, 1977.