

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 2092

6
7 Initiated Bill 2

House of Representatives, February 28, 1986

8 Transmitted to the Clerk of the House of the 112th Maine Legislature by
9 the Secretary of State on February 27, 1986 and 2,500 ordered printed.

10 EDWIN H. PERT, Clerk

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-SIX
16

17 AN ACT to Prohibit the Promotion and Wholesale
18 Promotion of Pornographic Material in the State
19 of Maine.
20

21 Be it enacted by the People of the State of Maine as
22 follows:

23 17 MRSA c. 93-C is enacted to read:

24 CHAPTER 93-C

25 PROMOTION OF OBSCENE MATERIAL

26 §2931. Definitions

27 As used in this chapter, unless the context oth-
28 erwise indicates, the following terms shall have the
29 following meanings.

30 1. Material. "Material" means anything tangible
31 that is capable of being used or adapted to arouse
32 interest, whether through the medium of reading, ob-

Relative to Legislative
Document 2092
On Page 3, lines 8 and 21:
should state: to offer or
agree not to offer to agree

1 servation, sound, or in any other manner, including
2 but not limited to any book, magazine, article,
3 pamphlet, writing, printing, illustration, picture,
4 sound recording, video tape, or coin-operated ma-
5 chine, but excluding an actual three-dimensional ob-
6 scene device.

7 2. Obscene. "Obscene" means material or a per-
8 formance that:

9 A. The average person, applying contemporary
10 community standards, would find that taken as a
11 whole appeals to the prurient interest in sex;

12 B. Depicts or describes:

13 (1) Patently offensive representations or
14 descriptions of ultimate sexual acts,
15 heterosexual or homosexual, normal or per-
16 verted, actual or simulated, including sexu-
17 al intercourse, sodomy, and sexual
18 bestiality; or

19 (2) Patently offensive representations or
20 descriptions of masturbation, fellatio,
21 cunnilingus, excretory functions, sadism,
22 masochism, lewd exhibition of the genitals,
23 the male or female genitals in a state of
24 sexual stimulation or arousal, covered male
25 genitals in a discernibly turgid state or a
26 device designed and marketed as useful pri-
27 marily for stimulation of the human genital
28 organs; and

29 C. Taken as a whole, lacks serious literary ar-
30 tistic, political, or scientific value.

31 3. Obscene device. "Obscene device" means a de-
32 vice, including an artificial penis, dildo, or arti-
33 ficial vagina, designed or marketed as useful primar-
34 ily for the stimulation of human genital organs.

35 4. Patently offensive. "Patently offensive"
36 means so offensive on its face as to go substantially
37 beyond customary limits of candor in description or
38 representation of the types of conduct set forth in
39 subsection 2, paragraph B of this section, applying
40 contemporary community standards.

1 5. Performance. "Performance" means a play,
2 show, skit, motion picture, dance, or other exhibi-
3 tion performed before an audience.

4 6. Promote. "Promote" means, for consideration,
5 to manufacture, issue, sell, give, provide, lend,
6 mail, deliver, transfer, transmit, publish, distrib-
7 ute, circulate, disseminate, present, exhibit, or ad-
8 vertise, or to offer to agree to do any of these
9 acts.

10 7. Prurient interest in sex. "Prurient interest
11 in sex" means a shameful or morbid interest in
12 nudity, sex or excretion.

13 8. Simulated. "Simulated" means the explicit
14 depiction or description of any of the types of con-
15 duct set forth in subsection 2, paragraph B of this
16 section, which creates the appearance of such con-
17 duct.

18 9. Wholesale promote. "Wholesale promote" means
19 to manufacture, issue, sell, provide, mail, deliver,
20 transfer, transmit, publish, distribute, circulate,
21 disseminate, or to offer to agree to do any of these
22 acts for purpose of resale.

23 §2932. Obscenity

24 1. Offense. A person is guilty of committing
25 the offense of obscenity when, knowing its content
26 and character, he:

27 A. Promotes, or possesses with intent to pro-
28 mote, any obscene material or obscene device; or

29 B. Produces, presents, or directs an obscene
30 performance or participates in a portion thereof
31 which is obscene or which contributes to its ob-
32 scenity.

33 2. Penalty. Obscenity is a Class D crime.

34 §2933. Wholesale promotion of obscenity

35 1. Offense. A person is guilty of committing
36 the offense of wholesale promotion of obscenity when,

1 knowing its content and character, he wholesale pro-
2 motes, or possesses with intent to wholesale promote,
3 any obscene material or obscene device.

4 2. Penalty. Wholesale promotion of obscenity is
5 a Class C crime.

6 §2934. Obscenity; presumptions

7 1. Knowledge of content and character. A person
8 who promotes or wholesale promotes obscene material
9 or an obscene device, or possesses obscene material
10 or an obscene device with intent to promote or whole-
11 sale promote it, in the course of his business is
12 presumed to do so with knowledge of its content and
13 character.

14 2. Intent to promote. A person who possesses
15 six or more obscene articles or six or more obscene
16 devices, whether such articles or devices are similar
17 or identical, is presumed to possess them with intent
18 to promote them.

19 §2935. Obscenity; miscellaneous provisions

20 1. Exemption from prosecution. Any person who
21 possesses or distributes obscene material or obscene
22 devices or participates in conduct otherwise pre-
23 scribed by this chapter shall be exempt from prosecu-
24 tion under this chapter when the possession, partici-
25 pation, or conduct occurs in the course of law en-
26 forcement activities.

27 2. Affirmative defense. In any prosecution for
28 obscenity or wholesale promotion of obscenity, when
29 such prosecution involves the promotion or wholesale
30 promotion of an obscene device, it is an affirmative
31 defense that the promotion or wholesale promotion of
32 the device was by a licensed physician or a licensed
33 psychologist to a person whose receipt of such device
34 was authorized in writing by such physician or psy-
35 chologist in the course of medical or psychological
36 treatment or care.

37 3. Severability. The provisions of this chapter
38 are severable in the following manner:

1 A. If any of the depictions or descriptions of
2 sexual conduct described in section 2931, subsec-
3 tion 2, paragraph B, are declared by a court of
4 competent jurisdiction to be unlawfully included
5 therein, this declaration shall not invalidate
6 section 2931, subsection 2, paragraph B, as to
7 other patently offensive sexual conduct included
8 therein.

9 B. If any other provision of this chapter is
10 held to be unconstitutional or invalid for any
11 reason by any court of competent jurisdiction,
12 such holding shall not invalidate or otherwise
13 affect the remaining provisions of this chapter.

14 STATEMENT OF FACT

15 The purpose of this bill is to make it a crime to
16 make, sell, give for value, or otherwise promote ob-
17 scene material in Maine.

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