

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

VF
C.1

ELECTIONS -
1986
(June)

INITIATED BILL

Do you want to make it a crime
to make, sell, give for value,
or otherwise promote
obscene material in Maine?

(Including a Brief Explanatory Statement by the
Attorney General as to Intent and Content)



To be Voted Upon at the Special Election,
Tuesday, June 10, 1986

RODNEY S. QUINN
Secretary of State

Appropriation 1060.1

MAY 28 1986

STATE OF MAINE

To the 112th Legislature of the State of Maine:

In accordance with Section 18 of Article IV, Part Third of the Constitution of the State of Maine, the undersigned electors of the State of Maine, qualified to vote for Governor, residing in said State, whose names have been certified, hereby respectfully propose to the Legislature for its consideration the following entitled bill: "An Act to Prohibit the Promotion and Wholesale Promotion of Pornographic Material in the State of Maine." The full text of said Act is printed here below on this Petition.

DO YOU WANT TO MAKE IT A CRIME TO MAKE, SELL, GIVE FOR VALUE, OR OTHERWISE PROMOTE OBSCENE MATERIAL IN MAINE?

Title 17, M.R.S.A., Chapter 93-C, is enacted to read as follows:

§ 2931. Definitions.

As used in this chapter, unless the context otherwise indicates, the following terms shall have the following meanings.

1. Material. "Material" means anything tangible that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner, including but not limited to any book, magazine, article, pamphlet, writing, printing, illustration, picture, sound recording, video tape, or coin-operated machine, but excluding an actual three-dimensional obscene device.

2. Obscene. "Obscene" means material or a performance that:

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

B. Depicts or describes:

(1) Patently offensive representations or descriptions of ultimate sexual acts, heterosexual or homosexual, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or

(2) Patently offensive representations or descriptions of masturbation, fellatio, cunnilingus, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and

C. Taken as a whole, lacks serious literary artistic, political, or scientific value.

3. Obscene device. "Obscene device" means a device, including an artificial penis, dildo, or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs.

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

5. Performance. "Performance" means a play, show, skit, motion picture, dance, or other exhibition performed before an audience.

6. Promote. "Promote" means, for consideration, to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do any of these acts.

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

8. Simulated. "Simulated" means the explicit depiction or description of any of the types of conduct set forth in subsection 2, paragraph B of this section, which creates the appearance of such conduct.

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

§ 2932. Obscenity.

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

A. Promotes, or possesses with intent to promote, any obscene material or obscene device; or

B. Produces, presents, or directs an obscene performance or participates in a portion thereof which is obscene or which contributes to its obscenity.

2. Penalty. Obscenity is a Class D crime.

§ 2933. Wholesale promotion of obscenity.

1. Offense. A person is guilty of committing the offense of wholesale promotion of obscenity when, knowing its content and character, he wholesale promotes, or possesses with intent to wholesale promote, any obscene material or obscene device.

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

§ 2934. Obscenity; presumptions.

1. Knowledge of content and character. A person who promotes or wholesale promotes obscene material or an obscene device, or possesses obscene material or an obscene device with intent to promote or wholesale promote it, in the course of his business is presumed to do so with knowledge of its content and character.

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

§ 2935. Obscenity; miscellaneous provisions.

1. Exemption from prosecution. Any person who possesses or distributes obscene material or obscene devices or participates in conduct otherwise prescribed by this chapter shall be exempt from prosecution under this chapter when the possession, participation, or conduct occurs in the course of law enforcement activities.

2. Affirmative defense. In any prosecution for obscenity or wholesale promotion of obscenity, when such prosecution in-

volves the promotion or wholesale promotion of an obscene device, it is an affirmative defense that the promotion or wholesale promotion of the device was by a licensed physician or a licensed psychologist to a person whose receipt of such device was authorized in writing by such physician or psychologist in the course of medical or psychological treatment or care.

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

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

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

STATE OF MAINE

In House April 14, 1986

~~WHEREAS~~, the Legislature may order a special election on any measure that is subject to a vote of the people pursuant to the Constitution of Maine, Article IV, Part Third, Section 18, Subsection 2; and

~~WHEREAS~~, direct initiative legislation has been transmitted to the Legislature which is identified as Legislative Document No. 2092, Initiated Bill 2, "AN ACT to Prohibit the Promotion and Wholesale Promotion of Pornographic Material in the State of Maine;" and

~~WHEREAS~~, it is the intent of the Legislature to refer this measure to the electors of the State at the next statewide election to be held on June 10, 1986, for determination by the people; now, therefore, be it

~~ORDERED~~, the Senate concurring, that the Office of the Secretary of State submit to the electors of the State for determination by the people at the next statewide election to be held June 10, 1986, the subject matter of "AN ACT to Prohibit the Promotion and Wholesale Promotion of Pornographic Material in the State of Maine;" and be it further

~~ORDERED~~, that a copy of this order be immediately transmitted to the Secretary of State.

(Rep. P. PARADIS)

SPONSORED BY: _____

TOWN: Augusta

HP1705

0512W041086

HOUSE OF
REPRESENTATIVES
READ AND PASSED
APR 14 1986
SENT UP FOR CONCURRENCE

IN SENATE CHAMBER

APR 14 1986
READ

EDWIN H. PERT, Clerk
ORDERED SENT FORTHWITH

JOY J. O'BRIEN, Secretary
IN CONCURRENCE
Ordered Sent Forthwith

IN SENATE CHAMBER
TABLED BY PRESIDENT
OF _____

President laid before the
Senate and
Passed (22-10)

APR 14 1986

APR 14 1986

PENDING Passage
JOY J. O'BRIEN, Secretary
LATER IN THE DAY

JOY J. O'BRIEN, Secretary

IN CONCURRENCE

Ordered Sent Forthwith

Do you want to make it a crime to make, sell, give for value or otherwise promote obscene material in Maine?

INTENT AND CONTENT

This initiated legislation would make it a state crime to make, transfer, exhibit, advertise, or otherwise "promote" any obscene material or device, for value, or to offer or agree to do so. It would also become a criminal offense to present any obscene exhibition before an audience. Promoting any obscene device or material for resale is made a more serious crime.

The proposed law defines an exhibition or material to be obscene if it represents or depicts sexual activity in a manner that goes substantially beyond customary limits of candor, and that an average person would consider to be shameful or morbid, and which lacks serious literary, artistic, political or scientific value.

Possession of an obscene device or material is sufficient for conviction if the person in possession intends to promote the device or material. Possession of six similar articles or devices can justify an inference that the possessor intends to promote them.

Current state law does not regulate or prohibit commerce in materials, devices or exhibitions that are covered by this proposed law, except when children or minors are involved. As far as adults are concerned, the regulation of obscene materials is now left to the cities and towns.

A "YES" vote favors making the promotion of obscene material a crime.

A "NO" vote opposes that action.