

MAINE STATE LEGISLATURE

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(EMERGENCY)
FIRST SPECIAL SESSION

ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 1747

H. P. 1392

House of Representatives, January 6, 1970

The Committee on Judiciary suggested.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Cox of Bangor.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
AND SEVENTY

AN ACT Providing for the Regulation of Motion Pictures.

Emergency preamble. Whereas, during the past several years the exhibition of motion pictures which are harmful to minors has become a matter of increasingly grave concern to the people of this State; and

Whereas, the regulation of the exhibition of such motion pictures and the consequent protection of minors from the effects of these motion pictures is in the best interest of the morals and general welfare of the citizens of this State, in general, and of minors in this State in particular; and

Whereas, existing Maine statutes are insufficient to provide such protection and regulation; and

Whereas, the Supreme Court of the United States has determined that states may regulate certain materials which are determined to be harmful to minors; and

Whereas, the accomplishment of these ends can be best achieved by the creation of a State Board of Motion Picture Regulation, the function of which is to classify motion pictures as suitable or unsuitable for minors and by the enactment of criminal and civil remedies for the enforcement of the provisions of the statute relating to the regulation of motion pictures to be viewed by minors; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine, and require the

following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. R. S., T. 8, c. 26, additional. Title 8 of the Revised Statutes is amended by adding a new chapter 26, to read as follows:

CHAPTER 26

REGULATION OF MOTION PICTURES FOR EXHIBITION TO MINORS

§ 660. Definitions

1. Harmful to minors. "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse, when it:

- A. Predominantly appeals to the prurient, shameful or morbid interest of minors; and
- B. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and
- C. Is utterly without redeeming social value for minors.

2. Minor. "Minor" means any person under the age of 18 years.

3. Nudity. "Nudity" means the showing of the human male or female genitals, public area or buttock with less than a full opaque covering, or the showing of the female breasts with less than a fully opaque covering or any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernably turgid state.

4. Sado-masochistic abuse. "Sado-masochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

5. Sexual conduct. "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's clothed or unclothed genitals, public area, buttock, or, if such person be a female, breast.

6. Sexual excitement. "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

§ 661. Creation of Maine State Board of Motion Picture Regulation

There is created the Maine State Board of Motion Picture Regulation, hereinafter in this chapter called the Board of Regulation. The Board of Regulation shall consist of 5 persons who are residents of the State of Maine appointed by the Governor with the advice and consent of the Council for terms of 3 years. Of those persons first appointed under this section, 2 persons shall be appointed for terms of 3 years and 3 persons shall be appointed

for terms of 2 years, respectively. The respective terms shall be determined by the Governor with the advice and consent of the Council.

A vacancy in the membership of the board shall be filled, by appointment of a person qualified as aforesaid, for a full term by the Governor with the advice and consent of the Council. Each member of the board shall hold office until the expiration of the term for which he was appointed or until his successor has been duly appointed and has qualified.

The board shall procure and use an official seal, which shall contain the words Maine State Board of Motion Picture Regulation, together with such design engraved thereon as the board may prescribe.

The board shall annually elect from its members a chairman, vice chairman and a clerk. Three members shall constitute a quorum. The board shall convene at such times and places as it deems necessary.

The members of the board shall each receive as compensation for their services the sum of \$50 a day for the time actually spent and their necessary expenses incurred in the discharge of their duties, to be certified by the executive secretary of the board.

The board shall keep a record of its proceedings and shall make such rules and regulations as it deems necessary. The board shall make an annual report of its proceedings to the Governor.

The executive secretary shall receive all fees and moneys payable to the board and shall pay them over forthwith to the Treasurer of State who shall credit them to the General Fund.

The board may employ, subject to the terms of the Personnel Law, such clerical help as it deems necessary including a full-time executive secretary. The executive secretary of the board shall keep a record of all proceedings, issue all notices, permits and classifications, attest all such papers and orders as the board shall direct and carry out any other duties designated by the board.

§ 662. Permit for exhibition and distribution of motion pictures; classification

A permit for exhibition or distribution and a classification shall be obtained from the Board of Regulation for each motion picture publicly exhibited within this State or distributed for public exhibition within this State.

At least 30 calendar days before the first scheduled public showing of a motion picture, the exhibitor or distributor shall apply to the Board of Regulation for a permit to exhibit or distribute a motion picture and for a classification of the motion picture. The application shall include the motion picture's title, a description of its plot, a statement of its content, the place of proposed exhibition or distribution and such other information as the board may require by regulation. The applicant shall also advise the board in its application whether the motion picture contains scenes depicting nudity, sexual conduct, sexual excitement or sado-masochistic abuse.

The applicant for a permit and classification, if requested by the board, shall submit the motion picture to the board for examination and shall furnish a written statement or affidavit that the motion picture to be shown publicly is an exact copy of the original as submitted for examination to the board. The board may require the applicant to furnish facilities for the showing of a motion picture in order that the board may view the picture.

The fee for the permit and classification in each case shall be \$1 for each 1,000 lineal feet of film or fraction thereof. The fee shall be paid to the executive secretary of the board before the permit and classification are issued.

Upon application by the exhibitor or distributor the 30-day time limit may be waived.

§ 663. Review by the board

The Board of Regulation shall determine, on the basis of the information contained in the application, on the basis of a viewing of the motion picture, or upon the basis of information otherwise obtained, whether the motion picture is harmful to minors. A classification shall be assigned to each motion picture either as "suitable for minors" or "unsuitable for minors".

The applicant may, in lieu of a determination by the board, when an application is filed or at any time thereafter, consent in writing to a determination that a motion picture is harmful to minors. The board shall thereupon classify the motion picture as "unsuitable for minors" and it shall issue a permit conditioned upon the exhibition of the motion picture to persons other than minors. In such a case, the determination of the board shall not be binding upon other applicants and a judicial review under section 664 shall not be required.

The board shall make its determination within 3 calendar days from the date of receipt of an application for a permit and a classification. If the board determines that the motion picture is harmful to minors it shall issue a permit conditioned upon the exhibition or distribution of the motion picture to persons other than minors and shall certify the motion picture as "unsuitable for minors". If the board determines the motion picture is not harmful to minors, it shall issue an unconditional permit for general exhibition or distribution and shall classify the motion picture as "suitable for minors".

§ 664. Judicial hearing

If the Board of Regulation determines that a motion picture is harmful to minors and the applicant does not consent to the decision in writing, within 2 calendar days of the date of decision of the Board of Regulation, by a writing filed to that effect with the Board of Regulation, the Board of Regulation shall immediately request the Superior Court in the county in which the proposed exhibition or distribution is to take place, or if exhibition or distribution is to take place in more than one county, the Superior Court of Kennebec County, to hold a hearing in the nature of an appeal to consider

whether the determination of the Board of Regulation is correct. Jurisdiction is granted to the Superior Court to hear and determine such matters and to enter such orders and decrees as the nature of the case may require. The court shall immediately upon receipt of the request set a date for hearing. A written notice containing the decision of the Board of Regulation, and specifying the date and place of the Superior Court hearing, shall be served upon the applicant and the Board of Regulation in person or by registered mail at least 3 calendar days before the day set for hearing. The hearing in the Superior Court shall be de novo and take place not later than 8 calendar days after the date of the decision of the Board of Regulation, unless the applicant requests a postponement. The applicant and the Board of Regulation shall be entitled to present oral and written testimony and arguments at the hearing. The court shall review the motion picture in its entirety and determine whether it is harmful to minors and whether the decision of the Board of Regulation is correct. The decision of the Superior Court shall be rendered within 4 calendar days following the conclusion of the hearing. The burden of proving that the permit and classification were correct shall be on the Board of Regulation. The decision of the Superior Court shall be forthwith certified to the Board of Regulation who shall issue the appropriate permit and classification. An appeal may be taken by the applicant from a decision of the Superior Court to the law court in the same manner as in other actions.

§ 665. Automatic permit

If the Board of Regulation fails to act within the time limits prescribed by this chapter, the applicant may exhibit or distribute the motion picture as if it had been classified as "suitable for minors" until such time as the Board of Regulation makes a determination.

§ 666. Standards for classification

The Board of Regulation or the Superior Court may classify a film as "unsuitable for minors" and issue a permit conditioned upon the exhibition of the motion picture to persons other than minors only if it is determined that the motion picture is harmful to minors.

Evidence that the motion picture is being commercially exploited for the sake of prurient appeal to minors, to the exclusion of all other values, may justify the conclusion that the motion picture is harmful to minors.

§ 667. Effect of prior grant or denial on subsequent application

The granting of a permit for a motion picture under one classification to an applicant shall require the granting of a permit for the same motion picture to another applicant under the same classification except in case of consent as provided in section 663.

§ 668. Appeal to court by board subsequent to grant of permit

After a permit for a motion picture has been granted and the classification as "suitable for minors" has been made, the Board of Regulation may request the Superior Court in the county where the motion picture is exhibited

or distributed to determine that the permit be revoked or suspended and the classification changed to "unsuitable for minors" because:

1. The applicant's or any advertiser's sole emphasis is on the sexually provocative aspect of the motion picture and such emphasis would have been considered important in determining whether the motion picture should have originally been found to be harmful to minors.

Jurisdiction is granted to the Superior Court to hear and determine such matters and to enter such orders and decrees as the nature of the case may require. An appeal may be taken by the applicant from a decision of the Superior Court to the law court as in other matters.

While the request of the Board of Regulation is pending before the Superior Court, the applicant who has a permit and classification for a motion picture may continue to display it with that classification.

In addition to the above remedy the Attorney General may apply to the Superior Court to enjoin exhibition of the motion picture for the reasons in subsection 1 utilizing the procedures of section 672. While a complaint for injunction is pending, the applicant who has a permit and classification may continue to display it with that classification.

§ 669. Exemption

This chapter shall not apply to any noncommercial exhibition of motion pictures for purely educational, charitable, fraternal or religious purposes by any religious association, fraternal society, library, museum, public school, private school or institution of learning.

§ 670. Permit and certificate

The Board of Regulation shall furnish a permit in writing to each applicant containing a statement of the classification of the motion picture, which permit shall be the license for the motion picture. Said permit shall be conspicuously displayed at the place of exhibition of the motion picture.

§ 671. Penalty

It shall be unlawful for:

1. Any person to publicly show or exhibit or distribute within the State of Maine any motion picture without having first secured a permit therefor and a classification thereof from the Maine State Board of Motion Picture Regulation;

2. Any person to exhibit within the State of Maine any film classified "unsuitable for minors" unless advertising and display media state that a picture is so classified;

3. Any person to sell or give a minor an admission ticket or pass to a motion picture classified "unsuitable for minors", or admit a minor for monetary consideration to premises where such a motion picture is exhibited;

4. Any person to exhibit by public showing with or without consideration within the State of Maine to a minor or minors any motion picture classified "unsuitable for minors".

It shall be a valid defense to any proceeding under subsections 3 and 4 that the minor was accompanied by his parent, legal guardian or spouse or that the exhibition is exempted by section 669.

Any person who violates any of the above provisions, or who violates any other provisions of this chapter for which a penalty is not provided shall be punished by a fine of not less than \$100 nor more than \$500, or by imprisonment for not more than 11 months or by both.

§ 672. Injunctive relief

In addition to the remedies and procedures provided in this chapter, the Superior Court has jurisdiction to enjoin the exhibition or distribution of a motion picture which has previously been determined to be harmful to minors.

The Attorney General or the county attorney of the respective counties may maintain a complaint for injunction against a person who is distributing or exhibiting or intends to distribute or exhibit a motion picture which has previously been determined to be harmful to minors, to prevent the distribution or exhibition of such a motion picture to minors.

The action for injunction shall be commenced by filing a complaint in the county wherein the alleged distribution or exhibition is occurring or is intended to occur. The Superior Court shall give the action priority and shall set a time and place for hearing on the complaint within one day after the summons and complaint has been docketed and shall cause notice thereof to be given the defendant. The hearing shall be held within 10 calendar days of the docketing of the complaint. The defendant shall serve upon the plaintiff a copy of his answer to the complaint at least 3 calendar days before the date of the hearing and shall file the original with the court.

The Superior Court shall, after hearing, and after having reviewed the motion picture in its entirety if not previously so reviewed, render its decree and judgment within 4 calendar days of the conclusion of the hearing and shall determine whether an injunction as prayed for should issue. The court shall have jurisdiction to enter and change such orders and decrees from time to time as the nature of the case may require. An appeal may be taken from any final decree of the Superior Court to the law court in the same manner as in other actions.

Sec. 2. Appropriation. There is appropriated from the General Fund to the Maine State Board of Regulation of Motion Pictures the sum of \$50,000 to carry out the purposes of this Act. The breakdown shall be as follows:

	1069-70	1970-71
Maine State Board of Regulation of Motion Pictures		
Personal services (7)	7,500	30,000
All Other	1,750	7,000
Capital expenditures	750	3,000
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	10,000	40,000

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved for the purpose of appointment of the Board of Regulation. This Act shall not become operative until April 1, 1970.