

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

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Legislative Document

No. 135

S. P. 54

In Senate, January 8, 1975

Referred to the Committee on Judiciary. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Hichens of York.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-FIVE

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AN ACT to Make the Showing of Pornographic Films a Nuisance and to  
Provide for the Abatement of that Nuisance.

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

17 MRSA, c. 94, is enacted to read:

CHAPTER 94  
OBSCENE FILMS

§ 2931. Definitions

As used in this chapter unless the context otherwise indicates the following words shall have the following meanings:

1. Lewdness. "Lewdness" means and includes all manner of lewd sexual conduct or live exhibition and includes, but is not limited to, any place in or upon which obscene films or plate negatives, film or plate positives, films designed to be projected on a screen for exhibition, films or glass slides either in negative or positive form designed for exhibition by projection on a screen, or photographed, manufactured, developed, screened, exhibited, or otherwise prepared or shown and any place where obscene books, magazines or articles are the principal part of the stock in trade;

2. Person. "Person" means and includes any individual, corporation, association, partnership, trustee, lessee, agent or assignee;

3. Place. "Place" means any building, structure or place, or any separate part or portion of any building, structure or place, or the ground itself.

**§ 2932. Nuisance**

Any person who uses, occupies, establishes or conducts a business involving acts of lewdness as defined in this chapter shall be deemed to be maintaining a nuisance and shall be enjoined as provided for in this chapter.

**§ 2933. Abatement of nuisance**

Whenever a nuisance as defined in section 2932 exists, the Attorney General, the District Attorney in the county in which the nuisance exists or the General Counsel of a municipality, or any person who is a citizen of that county may bring an action of equity in the name of the State to abate the nuisance and to perpetually enjoin the person from further maintaining it. If the action is instituted by a person other than the Attorney General, the District Attorney, or the municipality or its legal officer, the complainant shall execute a bond to the person against whom the complaint is made with good and sufficient surety to be approved by a justice of the Superior Court of the county in which the nuisance lies in the sum of not less than \$500 to secure to the party enjoined the damages he may sustain if the action is wrongfully brought, not prosecuted to final judgment or is dismissed, or is not maintained, or if it is finally decided that the injunction ought not to have been granted. This bond may be in addition to any further bond which may be required for the granting of a temporary injunction. The party who is aggrieved by the issuance of this injunction shall have recourse against this bond for all damages suffered, including damages to his property, person or character and including reasonable attorney's fees incurred by him in making defense to the action.

**§ 2934. Restraining order**

The action provided in section 2933 shall be brought in the Superior Court of the county in which the property is located in which the act of lewdness is being conducted. After filing of the petition, application for a temporary injunction may be made to the justice of that Superior Court who shall grant a hearing within 10 days after the filing.

Where an application for temporary injunction is made, the court may, on application of the complainant, issue a restraining order, restraining the defendant and all other persons from removing or in any manner interfering with the personal property and contents of the place where the lewd act is alleged to exist and the nuisance is being conducted until the decision of the court or justice granting or refusing a temporary injunction and until any further order of the court. The officers serving the restraining order shall make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining the nuisance and lewd acts. The owner of any real or personal property closed or restrained or to be closed or restrained may appear between the filing of the complaint and the hearing on the application for permanent injunction and, upon payment of all costs incurred and upon the filing of a bond by the owner of the real property with sureties to be approved by the clerk of the Superior Court in the full value of the property to be ascertained by the court, conditioned that

such owner will immediately abate the nuisance and prevent it from being established or kept until the decision of the court is rendered on the application for a permanent injunction, then the court, if satisfied with the good faith of the owner of the real property and of innocence on the part of the owner of the personal property of any knowledge of the use of such personal property as a nuisance and that, with reasonable care and diligence, the owner could not have known of it, shall deliver the real or personal property, or both, to its respective owners, and discharge or refrain from issuing at the time of the hearing on the application for the temporary injunction any order closing the real property or restraining the removal or interference with the personal property. The release of any real or personal property, under this section, shall not release it from any judgment, lien, penalty or liability to which it may be subjected.

#### § 2935. Conduct of action

The action, provided for in this chapter, shall be set down for trial and shall have precedence over all other cases except crimes, election contests or injunctions. In this action, evidence of the general reputation of the place or an admission or finding of guilty of any person under the criminal laws against lewdness at that place shall be admissible for the purpose of proving the existence of a nuisance and shall be prima facie evidence of the nuisance and of knowledge of and of acquiescence and participation in it on the part of the person charged with maintaining the nuisance. If the complaint is filed by a person who is a citizen of the county, it shall not be dismissed except upon a sworn statement by the complainant and his attorney, setting forth the reason why the action should be dismissed and the dismissal approved by the District Attorney in writing or in open court. If the justice is of the opinion that the action ought not to be dismissed, he may direct the District Attorney to prosecute the action to judgment at the expense of the county, and if the action is continued for more than one term of court, any person who is a citizen of the county, or has an office in it, or the Attorney General or the District Attorney, may be substituted for the complainant and prosecute the action to judgment. If the action is brought by a person who is a citizen of the county and the court finds that there were no reasonable grounds or cause for the action, the costs may be taxed to that person. If the existence of the nuisance is established upon the trial, a judgment shall be entered which shall perpetually enjoin the defendant and any other person from further maintaining the nuisance at the place complained of and the defendant from maintaining the nuisance elsewhere.

#### § 2936. Order of abatement

If the existence of a nuisance is admitted or established in an action as provided for in this chapter, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the place of all personal property and contents used in conducting the nuisance, and not already released under authority of the court as provided in section 2934, and shall direct the sale of the property belonging to the defendants notified or appearing, in the manner provided for the sale of chattels under execution. The order shall also require the renewal for one year of any bond

furnished by the owner of the real property, as provided for in this chapter, or if not so furnished, shall continue for one year any closing order issued at the time of the granting of the temporary injunction, or if no closing order was then issued, shall include an order directing the effectual closing of the place against its use for any purpose and keeping it closed for a period of one year unless sooner released. The owner of any place closed and not released under bond may then appear and obtain a release in the manner and upon fulfilling the requirements provided for in this chapter. The release of the property under this section shall not release it from any judgment, lien, penalty or liability to which it may be subject. Owners of unsold personal property and contents so seized must appear and claim it within 10 days after an order of abatement is made and must prove innocence, to the satisfaction of the court, of any knowledge of its use and that with reasonable care and diligence they could not have known of its use. Every defendant in the action is presumed to have had knowledge of the general reputation of the place. If such innocence is established, any unsold personal property and contents shall be delivered to the owner, otherwise it shall be sold as provided in this section.

#### § 2937. Voiding of lease

If a tenant or occupant of a building or tenement, under lawful title uses that place for the purpose of committing a lewd act, that use shall make the lease or other title under which he holds void at the option of the owner and, without any act of the owner, cause the right of possession to revert and vest in the owner, who may without process of law make immediate entry upon the premises and retake possession.

#### § 2938. Obscene matter designated contraband

Obscene matter is contraband and there are no property rights in it. All monetary consideration received in exchange for it or as admission price to exhibitions of it, and the subject matter itself, are the subject of forfeiture to the State and are recoverable as damages in the county where such matter is sold or exhibited. Where the action is brought pursuant to this chapter by a resident of the county, special injury need not be proven and the expenses, including attorney's fees, of such lawsuit are a lien on and recoverable out of the moneys forfeited.

#### § 2939. Application of chapter to projectionist, usher or ticket taker

The provisions of any criminal statutes with respect to the exhibition of, or the possession with the intent to exhibit, any obscene film shall not apply to a motion picture projectionist, usher or ticket taker acting within the scope of his employment, provided that the projectionist, usher or ticket taker has no financial interest in the place where he is employed. Such person shall be required to give testimony regarding his employment in all judicial proceedings brought under this chapter when granted immunity by the trial judge.

### STATEMENT OF FACT

The purpose of this bill is to make the showing of pornographic films a nuisance and to provide for the abatement of that nuisance.