

# MAINE STATE LEGISLATURE

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L.D. 698

STATE OF MAINE  
SENATE  
110TH LEGISLATURE  
FIRST REGULAR SESSION

(Filing No. S-190)

Bill,  
COMMITTEE AMENDMENT "A" to S.P. 243, L.D. 698,/"AN  
ACT to Prohibit the Dissemination of Obscene Material."

Amend the Bill by striking out all of section 2 and inserting  
in its place the following:

'Sec. 2. 17 MRSA c. 93-C is enacted to read:

CHAPTER 93-C

DISSEMINATION OF OBSCENE MATERIAL

§2931. Definitions

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

1. Material. "Material" means any printed or written matter,  
live performance, sound recording or visual representation, including  
motion pictures. Material is considered obscene within the meaning  
of this chapter notwithstanding that processing or other acts may  
be required prior to dissemination to the ultimate consumer.

2. Obscene. Material is "obscene" if, considered as a whole,  
to the average person:

A. When applying contemporary community standards, its pre-  
dominant appeal is to the prurient interest in sex;

B. It depicts or describes sexual conduct in a manner which,  
when applying contemporary community standards, is patently offensive;  
and

C. It lacks serious literary, artistic, political or scientific  
value.

The fact that material is advertised, suggested or represented to  
appeal to an erotic interest may be considered in determining whether

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material is obscene under this chapter.

3. Sexual conduct. "Sexual conduct" means:

A. Human masturbation or excretion;

B. Sexual intercourse, as defined in Title 17-A, section 251, subsection 1, paragraph B, whether actual or simulated;

C. Sexual act, as defined in Title 17-A, section 251, subsection 1, paragraph C, whether actual or simulated;

D. Lewd exhibition of the genitals;

E. Flagellation, torture or other acts of sadomasochistic abuse in the context of a sexual relationship; or

F. An act of sexual gratification performed with an animal that would be sexual intercourse or a sexual act if performed with a person.

4. Simulated. "Simulated" means that the depiction or representation of sexual intercourse or sexual act gives the appearance of consummation of the sexual intercourse or sexual act.

§2932. Dissemination of obscene material

1. Offense. A person is guilty of dissemination of obscene material if he intentionally or knowingly:

A. Sells, delivers or provides, or offers or agrees to sell, deliver or provide, any obscene material;

B. Presents or directs an obscene play, dance or performance, or participates in that portion thereof which makes it obscene;

C. Publishes, exhibits or otherwise makes available, any obscene material; or

D. Possesses any obscene material with the intent to sell or commercially disseminate that material.

2. Presumption. For the purpose of subsection 1, paragraph

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D, possession of 10 or more copies of the same item of material determined to be obscene pursuant to this chapter shall give rise to a presumption that that possession is with intent to sell or commercially disseminate.

3. This section does not apply to any noncommercial distribution or exhibition for purely educational purposes by any library, art gallery, museum, public school, private school or institution of learning, nor to any commercial distribution or exhibition by any art gallery or museum.

4. Dissemination of obscene material is a Class D crime.

§2933. Preliminary hearing

Whenever the Attorney General or any district attorney has probable cause to believe that a person is disseminating obscene material, he may petition the Superior Court to declare the matter obscene pursuant to Title 14, sections 5951 to 5963. The Attorney General or district attorney may join all persons he reasonably believes to be disseminating that matter as parties to the action.

Trial by jury.

1./ Trial on the issue of obscenity may be by jury.

Intervention.

2./ Intervention by others disseminating the same matter

shall be freely allowed.

Relitigation.

3./ Determination by a court pursuant to this section that a matter is obscene shall not bar relitigation of that issue in a criminal prosecution under this chapter.'

Statement of Fact

This amendment replaces the original bill, section 2, to correct several printing errors. Additionally, it clarifies the definition

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Title 17,  
of the term "sexual conduct" in section 2931, subsection 3, and  
adds an exemption for noncommercial distribution which is for  
educational purposes.

Reported in Report "A" by the Committee on Legal Affairs.  
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May 11, 1981 (Filing No. S-190)