

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 698

S. P. 243

In Senate, February 6, 1981

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

MAY M. ROSS, Secretary of the Senate

Presented by Senator Hichens of York.

Cosponsors: Senator Brown of Washington, Representative Carrier of Westbrook and Representative Drinkwater of Belfast.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Prohibit the Dissemination of Obscene Material.

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

Sec. 1. 17 MRSA c. 93-A, as amended, is repealed.

Sec. 2. 17 MRSA c. 93-A 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. Disseminate. "Disseminate" means to publish, product, print, manufacture, distribute, sell, lease, exhibit, display or provide.

2. 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.

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

- A.** When applying contemporary community standards, its predominant 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 material is obscene under this chapter.

4. Sexual conduct. "Sexual conduct" means:

- A.** Human masturbation or excretion;
- B.** Sexual intercourse, as defined in Title 17-A, section 251, subsection 1, subparagraph B, whether actual or simulated;
- C.** Any act of sexual gratification, actual or simulated, which involves direct physical contact between the sex organs of one person and the mouth or anus of another, or direct physical contact between the sex organs of one and the sex organs of another, or direct physical contact between the sex organs of one and an instrument or device manipulated by another; or
- D.** Lewd exhibition of the genitals, flagellation, torture or other acts of sado-masochistic abuse in the context of a sexual relationship and bestiality.

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

§ 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;
- D.** Possesses any obscene material with the intent to sell or commercially disseminate that material.

2. Presumption. For the purpose of subsection 1, paragraph 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 the intent to sell or commercially disseminate.

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

§ 2933. Preliminary hearing

Whenever the Attorney General or any district attorney reasonably believes 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.

A. Trial on the issue of obscenity shall be by jury.

B. Intervention by others disseminating the same matter shall be freely allowed.

C. 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

The purpose of this bill is to prohibit the dissemination of obscene material in the State. The definition of obscenity is based on United States Supreme Court rulings.

The bill provides for a preliminary hearing to determine, in a civil declaratory judgment action whether material is obscene. Intervention in the preliminary action would be freely allowed so that schools, museums, public libraries or governmental agencies using material subject to the preliminary action could be heard.