

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)



120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 852

H.P. 652

House of Representatives, February 15, 2001

An Act to Regulate Obscenity.

Reference to the Committee on Criminal Justice suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative ANDREWS of York.

Cosponsored by Representatives: CHICK of Lebanon, DESMOND of Mapleton, KASPRZAK of Newport, MacDOUGALL of North Berwick, RICHARD of Madison, STEDMAN of Hartland, WESTON of Montville, Senator: LEMONT of York.

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

4 **Sec. 1. 17-A MRSA c. 36** is enacted to read:

6 **CHAPTER 36**

8 **OBSCENITY**

10 **§871. Obscenity**

12 **1. Definitions.** As used in this section, unless the
context otherwise indicates, the following terms have the
following meanings.

14 **A. "Material" means anything tangible that can be used to**
arouse interest through reading, observation, sound or other
medium. The term does not include an obscene device.

18 **B. "Obscene" means material or a performance that:**

20 **(1) To the average person applying contemporary**
community standards, considered as a whole, appeals to
the prurient interest in sex;

24 **(2) Depicts or describes, in a patently offensive way,**
actual or simulated sexual acts described in section
251, subsection 1, paragraph C, masturbation, sadism,
masochism, excretory functions or lewd exhibition of
the genitals; and

30 **(3) Considered as a whole, lacks serious literary,**
artistic, political or scientific value.

34 **C. "Obscene device" means a 3-dimensional object, such as a**
dildo or artificial vagina, designed or marketed as useful
primarily for the stimulation of human genital organs.

38 **D. "Patently offensive" means so offensive on its face as**
to affront contemporary community standards of decency.

42 **E. "Performance" means a play, motion picture, dance or**
other exhibition performed before an audience.

44 **F. "Promote" means to manufacture, issue, sell, give,**
provide, lend, mail, deliver, transfer, transmit, publish,
distribute, circulate, disseminate, present, exhibit,
advertise or offer or agree to engage in one or more of
those activities.

50 **G. "Wholesale promote" means to manufacture, issue, sell,**

2 provide, mail, deliver, transfer, transmit, publish,
3 distribute, circulate, disseminate or offer or agree to
4 engage in one or more of those activities for resale
5 purposes.

6 **2. Promotion of obscenity.** A person is guilty of promotion
7 of obscenity if, knowing its content and character, the person:

8
9 A. Promotes or possesses obscene material or an obscene
10 device with the intent to promote that material or obscene
11 device; or

12
13 B. Produces, presents, directs or participates in an
14 obscene performance or a portion of a performance that is
15 obscene or contributes to the performance's obscenity.

16 Promotion of obscenity is a Class E crime.

17
18 **3. Wholesale promotion of obscenity.** A person is guilty of
19 wholesale promotion of obscenity if, knowing its content and
20 character, the person wholesale promotes or possesses with the
21 intent to wholesale promote obscene material or an obscene device.

22
23 Wholesale promotion of obscenity is a Class D crime.

24
25 **4. Presumptions.** A person is presumed to act with
26 knowledge of the content and character of obscene material or an
27 obscene device if the person promotes or wholesale promotes
28 obscenity or possesses obscene material or an obscene device with
29 the intent to promote or wholesale promote it in the course of
30 the person's business.

31
32 A person who possesses 6 or more identical or similar obscene
33 materials or devices is presumed to possess them with the intent
34 to promote them.

35
36 **5. Affirmative defense.** It is an affirmative defense to
37 prosecution under this section that the person who possesses or
38 promotes obscene material or an obscene device does so for a bona
39 fide medical, psychiatric, educational, scientific, governmental
40 or law enforcement purpose.

41
42 **6. Validity.** If a court of competent jurisdiction declares
43 that a depiction or description of sexual conduct is unlawfully
44 included in this section, that declaration does not invalidate
45 this section with regard to the other sexual conduct that is
46 depicted or described.

2

SUMMARY

4

This bill creates the crimes of promotion of obscenity and wholesale promotion of obscenity.