

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 1434
SENATE BILL 1059

AN ACT TO REVISE THE NORTH CAROLINA ANTI-OBSCENITY STATUTE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-190.1 as the same now appears in the 1973 Cumulative Supplement to Volume 1B of the General Statutes is hereby rewritten to read as follows:

"§ 14-190.1. **Obscene literature and exhibitions.** — (a) It shall be unlawful for any person, firm or corporation to intentionally disseminate obscenity in any public place. A person, firm or corporation disseminates obscenity within the meaning of this Article if he or it:

- (1) Sells, delivers or provides or offers or agrees to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene; or
 - (2) Presents or directs an obscene play, dance or other performance or participates directly in that portion thereof which makes it obscene; or
 - (3) Publishes, exhibits or otherwise makes available anything obscene; or
 - (4) Exhibits, presents, rents, sells, delivers or provides; or offers or agrees to exhibit, present, rent or to provide; any obscene still or motion picture, film, filmstrip, or projection slide, or sound recording, sound tape, or sound track, or any matter or material of whatever form which is a representation, embodiment, performance, or publication of the obscene.
- (b) For purposes of this Article any material is obscene if:
- (1) The material depicts or describes in a patently offensive way sexual conduct specifically defined by subsection (c) of this section; and
 - (2) The average person applying contemporary statewide community standards relating to the depiction or representation of sexual matters would find that the material taken as a whole appeals to the prurient interest in sex; and
 - (3) The material lacks serious literary, artistic, political, educational or scientific value; and
 - (4) The material as used is not protected or privileged under the Constitution of the United States or the Constitution of North Carolina.
- (c) Sexual conduct shall be defined as:
- (1) Patently offensive representations or descriptions of actual sexual intercourse, normal or perverted, anal or oral;
 - (2) Patently offensive representations or descriptions of excretion in the context of sexual activity or a lewd exhibition of uncovered genitals, in the context of masturbation or other sexual activity.
- (d) Obscenity shall be judged with reference to ordinary adults except that it shall be judged with reference to children or other especially susceptible audiences if it appears from the character of the material or the circumstances of its dissemination to be especially designed for or directed to such children or audiences. In any prosecution for an offense involving dissemination of obscenity under this Article, evidence shall be admissible to show:
- (1) The character of the audience for which the material was designed or to which it was directed;

- (2) Whether the material is published in such a manner that an unwilling adult could not escape it;
- (3) Whether the material is exploited so as to amount to pandering;
- (4) What the predominant appeal of the material would be for ordinary adults or a special audience, and what effect, if any, it would probably have on the behavior of such people;
- (5) Literary, artistic, political, educational, scientific, or other social value, if any, of the material;
- (6) The degree of public acceptance of the material throughout the State of North Carolina;
- (7) Appeal to prurient interest, or absence thereof, in advertising or in the promotion of the material.

Expert testimony and testimony of the author, creator or publisher relating to factors entering into the determination of the issue of obscenity shall also be admissible.

(e) It shall be unlawful for any person, firm or corporation to knowingly and intentionally create, buy, procure or possess obscene material with the purpose and intent of disseminating it unlawfully.

(f) It shall be unlawful for a person, firm or corporation to advertise or otherwise promote the sale of material represented or held out by said person, firm or corporation as obscene.

(g) Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor and, unless a greater penalty is expressly provided for in this Article, shall be fined or imprisoned in the discretion of the court."

Sec. 2. G.S. 14-190.2(a) as the same now appears in the 1973 Cumulative Supplement to Volume 1B of the General Statutes is hereby amended as follows:

"§ 14-190.2. **Adversary hearing prior to seizure or criminal prosecution.** — (a) The purpose of this section is to provide an adversary determination of the question of whether books, magazines, motion pictures, or other materials are obscene prior to their seizure or prior to a criminal prosecution relating to such materials."

Sec. 3. G.S. 14-190.2(f), as the same now appears in the 1973 Cumulative Supplement to Volume 1B of the General Statutes, is hereby rewritten to read as follows:

"(f) No judgment or subsequent order of enforcement thereof, entered pursuant to the provisions of this section, shall be of any force and effect outside the judicial district in which entered; and no such order or judgment shall be res judicata in any proceeding in any other judicial district. Further, evidence of any hearing held pursuant to this section shall not be competent or admissible in any criminal action for the violation of any other section of this Article; provided, however, that in any criminal action, charging the violation of any other section of this Article, against any person, firm or corporation that was a respondent in such hearing, and involving the same material declared to be obscene under the provisions of this section, then evidence of such hearing shall be competent and admissible as bearing on the issue of scienter only."

Sec. 4. G.S. 14-190.2(g), as the same now appears in the 1973 Cumulative Supplement to Volume 1B of the General Statutes, is hereby amended as follows:

"(g) Any respondent described in this section who shall violate any provision of this section or any order issued under any provision of this section shall be subject to punishment, by the court, as for contempt."

Sec. 5. G.S. 14-190.2(h), as the same now appears in the 1973 Cumulative Supplement to Volume 1B of the General Statutes, is hereby amended as follows:

"(h) No person, firm or corporation shall be arrested or indicted for any violation of a provision of G.S. 14-190.1, G.S. 14-190.3, G.S. 14-190.4, G.S. 14-190.5, G.S. 14-190.6, G.S. 14-190.7, G.S. 14-190.8, G.S. 14-190.10 or G.S. 14-190.11 until the material involved has first

been the subject of an adversary determination under the provisions of this section, wherein such person, firm or corporation is a respondent, and wherein such material has been declared by the court to be obscene or in the case of G.S. 14-190.10 or G.S. 14-190.11, to be sexually oriented and until such person, firm or corporation continues, subsequent to such determination, to engage in the conduct prohibited by a provision of the sections hereinabove set forth."

Sec. 6. G.S. 14-190.2 as the same now appears in the 1973 Cumulative Supplement to Volume 1B of the General Statutes is hereby amended by adding thereto a new subsection (i) which shall read as follows:

"(i) Any person, firm or corporation which is given written notice by registered mail of the filing of the complaint and of the judgment of the court as provided for in this section shall be deemed a respondent and shall be bound by the judgment of the court."

Sec. 7. G.S. 14-190.2 as the same now appears in the 1973 Cumulative Supplement to Volume 1B of the General Statutes is hereby amended by adding thereto a new subsection (j) which shall read as follows:

"(j) The State or any respondent may appeal from a judgment. Such appeal shall not stay the judgment. If any respondent engages in conduct prohibited by this Article subsequent to notice of the judgment, finding the material to be obscene he shall be subject to criminal prosecution notwithstanding the appeal from the judgment."

Sec. 8. G.S. 14-190.2 as the same now appears in the 1973 Cumulative Supplement to Volume 1B of the General Statutes is hereby amended by adding thereto a new subsection (k) which shall read as follows:

"(k) Any person, firm or corporation which is disseminating or which may disseminate the material challenged in the civil proceeding provided for in this section may intervene in said proceeding as a matter of right. Said intervenor shall have all the rights of a respondent and shall be bound by the judgment."

Sec. 9. Article 26 of Subchapter VII of Chapter 14 of the General Statutes is hereby amended by adding a new section to be numbered G.S. 14-190.10 and to read as follows:

"§ 14-190.10. Disseminating sexually oriented material to minors. — (a) Every person, firm or corporation who intentionally and knowingly disseminates sexually oriented material to any person under 18 years of age shall be guilty of a misdemeanor. A person, firm or corporation disseminates sexually oriented material within the meaning of this section if he, she or it:

- (1) Sells, delivers or provides or offers or agrees to sell, deliver or provide any sexually oriented writing, picture, record or other representation or embodiment that is sexually oriented; or
 - (2) Presents or directs a sexually oriented play, dance or other performance or participates directly in that portion thereof which makes it sexually oriented; or
 - (3) Exhibits, presents, rents, sells, delivers or provides; or offers or agrees to exhibit, present, rent or to provide; any obscene still or motion picture, film, filmstrip, or projection slide, or sound recording, sound tape, or sound track, or any matter or material of whatever form which is a representation, embodiment, performance, or publication that is sexually oriented.
- (b) For purposes of this section any material is sexually oriented if:
- (1) The material is made up in whole or dominant part of representations or descriptions, actual or simulated, of human sexual intercourse, masturbation, sodomy, direct physical stimulation of unclothed genitals, or flagellation or torture in the context of a sexual relationship or which emphasizes the uncovered human genitals; and
 - (2) The material lacks serious literary, artistic, political, educational or scientific value for persons under 18 years of age; and

- (3) The dominant theme of the material appeals to the prurient interests in sex of persons under 18 years of age.
- (c) It shall be an affirmative defense to a prosecution under this section for the defendant to show:
- (1) That the dissemination was made with the consent of a parent or guardian of the recipient, that the defendant was misled as to the existence of parental consent by a misrepresentation of parental status by an individual purporting to be a parent of the recipient, or that the dissemination was made to the recipient by his teacher, clergyman or a librarian in the discharge of official responsibilities;
 - (2) That the recipient was married, or that the defendant was misled in this regard by a misrepresentation of marital status by the recipient;
 - (3) That the defendant was misled as to the age of the recipient by false proof of identification and age offered by the recipient.
- (d) Any person under the age of 18 years who gains admission to any theater by falsely claiming to be 18 years of age or older shall be guilty of a misdemeanor and punished by a fine of not more than fifty dollars (\$50.00)."

Sec. 10. Article 26 of Subchapter VII of Chapter 14 of the General Statutes is hereby amended by adding a new section to be numbered G.S. 14-190.11 and to read as follows:

"§ 14-190.11. Public display of sexually oriented materials. — (a) Every person, firm or corporation who intentionally and knowingly places sexually oriented materials upon public display, or who knowingly and intentionally fails to take prompt action to remove such a display from property in his possession after learning of its existence shall be guilty of a misdemeanor.

(b) For purposes of this section any material is sexually oriented if the material is made up in whole or dominant part of representations or descriptions of actual or simulated human sexual intercourse, masturbation, sodomy, direct physical stimulation of unclothed genitals or flagellation or torture in the context of a sexual relationship or emphasizes the uncovered human genitals and the material lacks serious literary, artistic, political, educational or scientific value and the dominant theme of the material appeals to the prurient interests in sex.

(c) A person, firm or corporation places sexually oriented material upon public display within the meaning of this Article if he, she or it places the material on or in a billboard, viewing screen, theater stage or marquee, newsstand, display rack, window, showcase, display case or similar place so that explicit sexually oriented material is easily visible from a public street, public road or sidewalk or from the normally occupied property of others.

(d) Nothing contained in this section shall be deemed to prohibit or make unlawful the dissemination or display of material, the external visible covers of which do not depict any of the acts embraced within the definition of 'sexually oriented'."

Sec. 11. This act shall become effective July 1, 1974.

In the General Assembly read three times and ratified, this the 13th day of April, 1974.