

1 IN THE HOUSE

BY MILLER AND MARTIN

2

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 449

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to obscenity."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 11.66 is amended by adding new sections to read:

9

ARTICLE 3. OBSCENITY.

10

Sec. 11.66.300. PROMOTING OBSCENITY. (a) A person commits the

11

crime of promoting obscenity if

12

(1) having knowledge of the character of the material, the

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person

14

(A) creates, photographs, produces, reproduces, sells,

15

offers for sale, agrees to offer, or publishes obscene material

16

knowing that the obscene material is to be commercially or pub-

17

licly promoted;

18

(B) exhibits, advertises for promotion, or promotes

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(i) obscene material for sale other than for

20

purposes of resale; or

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(ii) material that visually depicts conduct that,

22

under AS 11.41.455, constitutes unlawful exploitation of a

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minor;

24

(C) possesses or controls obscene material with the

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purpose of violating this section; or

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(D) poses for obscene material knowing that the ob-

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scene material is to be commercially or publicly promoted;

28

(2) having knowledge of the character of the performance,

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the person

1 (A) creates, photographs, tapes, directs, produces, or
2 reproduces an obscene performance knowing that the obscene per-
3 formance is to be commercially or publicly promoted;

4 (B) advertises an obscene performance for presenta-
5 tion, or promotes or participates in promoting an obscene perfor-
6 mance if

7 (i) the performance is presented publicly;

8 (ii) admission is charged; or

9 (iii) the performance is presented or to be pre-
10 sented before an audience; or

11 (C) advertises a performance for presentation, or
12 promotes or participates in promoting a performance, if the
13 performance visually depicts conduct that, under AS 11.41.455,
14 constitutes unlawful exploitation of a minor; or

15 (D) acts in an obscene performance knowing that the
16 obscene performance is to be commercially or publicly promoted.

17 (b) Promoting obscenity is a class A misdemeanor.

18 Sec. 11.66.310. PROMOTING OBSCENE MATERIAL FOR RESALE. (a) A
19 person commits the crime of promoting obscene material for resale if,
20 having knowledge of the character of the material, the person pro-
21 motes, offers, or agrees to offer obscene material, or possesses
22 obscene material with intent to promote the material for purposes of
23 resale.

24 (b) Promoting obscene material for resale is a class C felony.

25 Sec. 11.66.320. AFFIRMATIVE DEFENSE. It is an affirmative
26 defense in a prosecution under AS 11.66.300 or 11.66.310 that the
27 obscene material or performance involved was disseminated or promoted
28 for a bona fide medical, psychological, legislative, judicial, or law
29 enforcement purpose, by or to a physician, psychologist, legislator,

1 judge, prosecutor, or law enforcement officer, or to a person who is
2 legitimately affiliated with one of these individuals in the perfor-
3 mance of the person's duties.

4 Sec. 11.66.330. PROMOTING A SEXUAL DEVICE. (a) A person com-
5 mits the crime of promoting a sexual device if, having knowledge that
6 the device is a sexual device, the person promotes, offers or agrees
7 to promote, sells or offers or agrees to sell, or possesses with
8 intent to promote, a sexual device.

9 (b) Promoting a sexual device is a class A misdemeanor.

10 Sec. 11.66.340. AFFIRMATIVE DEFENSE. It is an affirmative
11 defense in a prosecution under AS 11.66.330 that the sexual device was
12 promoted for a bona fide medical, psychological, legislative, judi-
13 cial, or law enforcement purpose, by or to a physician, psychologist,
14 legislator, judge, prosecutor, law enforcement officer, or other
15 person having a bona fide interest in the device.

16 Sec. 11.66.350. MAKING AN OBSCENE DRAWING. (a) A person com-
17 mits the crime of making an obscene drawing if, in public or in a
18 public place, the person makes, draws, colors, paints, scratches,
19 cuts, or otherwise produces an obscene drawing, writing, graffiti,
20 picture, or other obscene material.

21 (b) Making an obscene drawing is a class B misdemeanor.

22 Sec. 11.66.360. DISSEMINATING MATTER HARMFUL TO A MINOR. (a) A
23 person commits the crime of disseminating matter harmful to a minor if

24 (1) having knowledge of the character of the material, the
25 person

26 (A) promotes or otherwise furnishes or presents to a
27 minor material that is obscene or harmful to a person under 18
28 years of age;

29 (B) possesses or controls obscene materials with the

1 purpose or intent to furnish or present the materials to a minor;
2 or

3 (2) having knowledge of the character of the performance,
4 the person promotes or otherwise presents to a minor a performance
5 that is obscene or harmful to a minor.

6 (b) Disseminating matter harmful to a minor is a class A misde-
7 meanor.

8 Sec. 11.66.370. AFFIRMATIVE DEFENSE. (a) It is an affirmative
9 defense in a prosecution under AS 11.66.360 involving material that is
10 harmful to a minor but not obscene that

11 (1) the minor exhibited to the person or the person's agent
12 or employee personal identification or a document purporting to show
13 that the minor was 18 years of age or older, and the person to whom
14 the identification or document was exhibited

15 (A) did not otherwise have reasonable cause to believe
16 that the minor was under 18 years of age; and

17 (B) did not rely solely on the minor's verbal rep-
18 resentation as to the minor's age; or

19 (2) at the time the material or performance was promoted,
20 furnished, or presented to the minor, the minor's parent or guardian
21 accompanied the minor and, having knowledge of the character of the
22 material or performance, the parent or guardian consented to the
23 promotion, furnishing, or presentation of the material or performance
24 to the minor.

25 (b) It is an affirmative defense in a prosecution under AS 11.-
26 66.360 involving material that is obscene or harmful to a minor that

27 (1) the defendant is the parent, guardian, or spouse of the
28 minor; or

29 (2) the material or performance involved was disseminated

1 or promoted for a bona fide medical, psychological, judicial, or law
2 enforcement purpose by a physician, psychologist, prosecutor, or law
3 enforcement officer.

4 Sec. 11.66.380. UNLAWFUL EXHIBITION OF MATERIAL HARMFUL TO A
5 MINOR. (a) A person commits the crime of unlawful exhibition of
6 material harmful to a minor if the person has responsibility for a
7 business premises and, having knowledge of the character of the mater-
8 ial, the person

9 (1) displays, exhibits, or otherwise exposes to view mate-
10 rial that is harmful to a minor

11 (A) in a portion of the premises accessible by a minor
12 without parental supervision; or

13 (B) in any part of the premises, whether or not acces-
14 sible by a minor, from which that material may be viewed by a
15 minor;

16 (2) employs or allows in the premises under circumstances
17 that would allow a minor to handle material that is harmful to that
18 person.

19 (b) Unlawful exhibition of harmful material to a minor is a
20 class A misdemeanor.

21 Sec. 11.66.390. AFFIRMATIVE DEFENSE. In a prosecution under
22 AS 11.66.380, it is an affirmative defense that, at the time of the
23 alleged offense,

24 (1) the minor exhibited to the defendant or the defendant's
25 employee or agent identification purporting to show that the person
26 was 18 years of age or older, and the defendant, or the defendant's
27 employee or agent, to whom the identification was exhibited did not
28 have reasonable cause to believe that the person was not at least 18
29 years of age;

1 (2) the parent or guardian accompanied the minor or con-
2 sented to the minor's exposure to the material; or

3 (3) the defendant is the parent, guardian, or spouse of the
4 minor.

5 Sec. 11.66.400. DECEPTION TO OBTAIN MATTER HARMFUL TO A MINOR.

6 (a) A person commits the crime of deception to obtain matter harmful
7 to a minor if the person, for the purpose of enabling a minor to
8 obtain any material or to gain admission to a performance that is
9 harmful to a minor,

10 (1) falsely represents that the person is the parent,
11 guardian, or spouse of the minor; or

12 (2) furnishes a minor with identification or a document
13 purporting to show that the minor is 18 years of age or older.

14 (b) A person under 18 years of age commits the crime of decep-
15 tion to obtain matter harmful to a minor if the person, for the pur-
16 pose of obtaining material or gaining admission to a performance that
17 is harmful to a minor,

18 (1) falsely represents that the person is 18 years of age
19 or older; or

20 (2) exhibits identification or a document purporting to
21 show that the person is 18 years of age or older.

22 (c) Deception to obtain matter harmful to a minor is a class A
23 misdemeanor.

24 Sec. 11.66.410. COMPELLING ACCEPTANCE OF OBJECTIONABLE MATERI-
25 ALS. (a) A person commits the crime of compelling acceptance of
26 objectionable materials if, as a condition to the sale or delivery of
27 any material or goods and despite the objection of the purchaser or
28 consignee, the person requires the purchaser or consignee to accept
29 material reasonably believed by the purchaser to be obscene or which,

1 if furnished or presented to a minor, would be harmful to the minor.

2 (b) Compelling acceptance of objectionable materials is a
3 class A misdemeanor.

4 Sec. 11.66.420. COMMERCIAL NUILITY. (a) A person commits the
5 crime of commercial nudity if

6 (1) in premises licensed under AS 04.11 for the manufacture
7 or sale of alcoholic beverages, the person provides service without
8 being minimally clothed; or

9 (2) in the premises of a commercial business or place of
10 public accommodation,

11 (A) the person recklessly uses or promotes the use of
12 the premises by permitting the person's agents, employees, or
13 subordinates to provide service without being minimally clothed;
14 or

15 (B) the person permits or tolerates others to use or
16 promote the use of the premises by allowing agents, employees, or
17 subordinates of the others to provide service without being
18 minimally clothed.

19 (b) The violation of (a)(1) of this section is a class A misde-
20 meanor. The violation of (a)(2) of this section is a class C felony.

21 (c) In this section

22 (1) "minimally clothed" means that a person who provides
23 service wears at least a fully opaque covering of the person's geni-
24 tals, anus, and female breast;

25 (2) "provide service" means the provision or allowance of
26 services, advertisement, or entertainment to a patron of the premises.

27 Sec. 11.66.430. AFFIRMATIVE DEFENSE. In a prosecution under
28 AS 11.66.420, it is an affirmative defense that, at the time of the
29 alleged offense, the person's full or partial nudity has serious

1 literary, artistic, political, or scientific value.

2 Sec. 11.66.440. PRESUMPTION AND EVIDENCE OF KNOWLEDGE. (a) In
3 a prosecution under AS 11.66.300 - 11.66.499, a person has knowledge
4 of the character of material or of a performance if the person knows,
5 has reason to know, or has a belief or ground for belief that warrants
6 further inquiry, that the material or performance contains, depicts,
7 or describes sexually explicit nudity, sexual conduct, sadomasochistic
8 sexual abuse, or lewd exhibition of the genitals, whether or not the
9 person has precise knowledge of the specific contents of the material
10 or performance. Knowledge of the character of material or of a per-
11 formance may be proven by direct or circumstantial evidence.

12 (b) In a prosecution under AS 11.66.300 - 11.66.499, the owner
13 or manager of a commercial establishment, or the agent or employee of
14 an owner or manager, who engages in promoting materials or a perfor-
15 mance or distributing or handling materials for promotion or for
16 resale may be presumed to have knowledge of the character of the
17 material or the performance if the owner, manager, agent, or employee
18 has actual or constructive notice of the nature of the materials or
19 the performance, whether or not that person has precise knowledge of
20 its contents.

21 (c) In a prosecution under AS 11.66.300 - 11.66.499 in which
22 knowledge of the character of the materials or a performance, or
23 knowledge that a device is a sexual device, is at issue, it is evi-
24 dence of that knowledge that actual notice of the nature of the mater-
25 ial, the performance, or the device was previously provided to the
26 defendant. Without limitation on the manner in which that notice may
27 be given,

28 (1) actual notice of the character of material or of a
29 performance may be given by the attorney general or a prosecuting

1 attorney; the notice, regardless of the manner in which given, must
2 (A) identify the maker of the notice;
3 (B) identify the material or performance;
4 (C) state whether the material or the performance is
5 obscene or harmful to a minor;
6 (D) give a brief description of the contents of the
7 material or performance;
8 (E) state whether the material or performance contains
9 sexually explicit nudity, sexual conduct, sadomasochistic sexual
10 abuse, or lewd exhibition of genitals; and
11 (F) bear the date of the notice;
12 (2) actual notice that the device is a sexual device may be
13 given by the attorney general or a prosecuting attorney; the notice,
14 regardless of the manner in which given, must
15 (A) identify the maker of the notice;
16 (B) identify the device; and
17 (C) bear the date of the notice.
18 (d) In a prosecution under AS 11.66.300 - 11.66.499 in which
19 knowledge of the character of material or a performance, or knowledge
20 that a device is a sexual device, is at issue, the court may accept as
21 proof of that knowledge the following evidence:
22 (1) the sexually explicit nature and character of the mate-
23 rial or performance involved is advertised, marketed, or otherwise
24 publicly exploited for the purpose of attracting purchasers or pa-
25 trons;
26 (2) the owner, or the agent or employee of the owner, of a
27 commercial establishment advertises or represents that the establish-
28 ment
29 (A) possesses sexually explicit materials for

1 promotion or resale; or

2 (B) promotes a sexually explicit performance;

3 (3) the commercial establishment is primarily engaged in
4 promoting or the resale of sexually explicit materials or sexually
5 explicit performances.

6 Sec. 11.66.499. DEFINITIONS. In AS 11.66.300 - 11.66.499

7 (1) "community" means the municipality or village in which
8 the crime occurred;

9 (2) "harmful to a minor" means

10 (A) with respect to material or a performance, the
11 average person, applying contemporary community standards, would
12 find that the material or performance, taken as a whole, appeals
13 to the prurient interest of a minor;

14 (B) the material or performance depicts or describes
15 sexually explicit nudity, sexual conduct, sadomasochistic sexual
16 abuse, or lewd exhibitions of the genitals in a way that is
17 offensive to prevailing standards among adults in the community
18 with respect to what is suitable for minors; and

19 (C) the material or performance, taken as a whole,
20 lacks serious literary, artistic, political, or scientific value
21 for minors;

22 (3) "material" means a book, magazine, newspaper, adver-
23 tisement, pamphlet, poster, print, picture, figure, image, drawing,
24 description, film, record, recording tape, video tape, or other thing
25 capable of producing or reproducing an image, picture, or sound;

26 (4) "minor" means a person who is under 18 years of age;

27 (5) "obscene" means

28 (A) with respect to material or a performance, the
29 average person, applying contemporary community standards, would

1 find that the material or performance, taken as a whole, appeals
2 to the prurient interest;

3 (B) the material or performance depicts or describes
4 sexually explicit nudity, sexual conduct, sadomasochistic sexual
5 abuse, or lewd exhibition of the genitals in a way that is offen-
6 sive to prevailing standards in the community; and

7 (C) with respect to the material or a performance,
8 that a reasonable person would find that the material or the
9 performance, taken as a whole, lacks serious literary, artistic,
10 political, or scientific value;

11 (6) "prurient" means a lascivious, unhealthy, degrading,
12 shameful, or morbid interest in sexual conduct, sexually explicit
13 nudity, sadomasochistic sexual abuse, or lewd exhibition of the geni-
14 tals;

15 (7) "sadomasochistic sexual abuse" means

16 (A) actual or simulated flagellation, rape, torture,
17 or other physical or sexual abuse, by or upon a person who is
18 nude or partially nude; or

19 (B) physical restraint for the actual or simulated
20 purpose of sexual gratification or abuse, or in the context of a
21 sexual relationship;

22 (8) "sexual conduct" includes acts, whether actual or simu-
23 lated, of sexual contact and sexual penetration;

24 (9) "sexual device" means an artificial device primarily
25 designed to physically stimulate or manipulate the genitals or anus;

26 (10) "sexually explicit nudity" means the explicit showing
27 of the genitals, anus, or female breast for purposes of prominent or
28 obvious viewing attention.