

1 IN THE HOUSE

BY MILLER, MARTIN AND
LEMAN

2

HOUSE BILL NO. 133

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST 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
13 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
19 (i) obscene material for sale other than for
20 purposes of resale; or

21 (ii) material that visually depicts conduct that,
22 under AS 11.41.455, constitutes unlawful exploitation of a
23 minor;

24 (C) possesses or controls obscene material with the
25 intent to perform an act prohibited by this section; or

26 (D) poses for obscene material knowing that the ob-
27 scene material is to be commercially or publicly promoted;

28 (2) having knowledge of the character of the performance,
29 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 for the purposes of
22 resale, or possesses obscene material with intent to promote the
23 material for purposes of 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

1 (1) a physician, psychologist, legislator, judge, prosecu-
2 tor, or law enforcement officer; or

3 (2) a person who is affiliated with an individual specified
4 in (1) of this section and the obscene material or performance was
5 disseminated or promoted in the performance of the person's duties.

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

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

12 Sec. 11.66.340. AFFIRMATIVE DEFENSE. It is an affirmative
13 defense in a prosecution under AS 11.66.330 that the sexual device was
14 promoted for a bona fide medical, psychological, legislative, judi-
15 cial, or law enforcement purpose, by or to

16 (1) a physician, psychologist, legislator, judge, prosecu-
17 tor, or law enforcement officer; or

18 (2) a person who is affiliated with an individual specified
19 in (1) of this section, and the sexual device was promoted in the
20 performance of the person's duties.

21 Sec. 11.66.350. MAKING AN OBSCENE DRAWING. (a) A person com-
22 mits the crime of making an obscene drawing if, in public or in a
23 public place, the person makes, draws, colors, paints, scratches,
24 cuts, or otherwise produces an obscene drawing, writing, graffiti,
25 picture, or other obscene material that the person intends to display
26 or that is visible to the public in that place.

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

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

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

3 (A) promotes or otherwise furnishes or presents to a
4 minor material that is obscene or harmful to a person under 18
5 years of age;

6 (B) possesses or controls obscene materials with the
7 purpose or intent to furnish or present the materials to a minor;
8 or

9 (2) having knowledge of the character of the performance,
10 the person promotes or otherwise presents to a minor a performance
11 that is obscene or harmful to a minor.

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

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

17 (1) the minor exhibited to the person or the person's agent
18 or employee personal identification or a document purporting to show
19 that the minor was 18 years of age or older, and the person to whom
20 the identification or document was exhibited did not otherwise have
21 reasonable cause to believe that the minor was under 18 years of age;
22 or

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

29 (b) It is an affirmative defense in a prosecution under

1 AS 11.66.360 involving material that is obscene or harmful to a minor
2 that

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

5 (2) the material or performance involved was disseminated
6 or promoted for a bona fide medical, psychological, judicial, or law
7 enforcement purpose by

8 (A) a physician, psychologist, prosecutor, or law
9 enforcement officer; or

10 (B) a person who is affiliated with an individual
11 specified in (A) of this paragraph, and the material or perfor-
12 mance was disseminated to the minor in the performance of the
13 person's duties.

14 Sec. 11.66.380. UNLAWFUL EXHIBITION OF MATERIAL HARMFUL TO A
15 MINOR. (a) A person commits the crime of unlawful exhibition of
16 material harmful to a minor if the person has responsibility for a
17 business premises and, having knowledge of the character of the mater-
18 ial, the person

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

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

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

26 (2) employs or allows in the premises a minor under circum-
27 stances that would allow the minor to handle material that is harmful
28 to the minor.

29 (b) Unlawful exhibition of harmful material to a minor is a

1 class A misdemeanor.

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

5 (1) the minor exhibited to the defendant or the defendant's
6 employee or agent identification purporting to show that the person
7 was 18 years of age or older, and the defendant, or the defendant's
8 employee or agent, to whom the identification was exhibited did not
9 have reasonable cause to believe that the person was not at least 18
10 years of age;

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

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

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

16 (a) A person commits the crime of deception to obtain matter harmful
17 to a minor if the person, for the purpose of enabling a minor to
18 obtain any material or to gain admission to a performance that is
19 harmful to a minor,

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

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

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

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

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

3 (c) Deception to obtain matter harmful to a minor is a class A
4 misdemeanor.

5 Sec. 11.66.410. COMPELLING ACCEPTANCE OF OBJECTIONABLE MATERI-
6 ALS. (a) A person commits the crime of compelling acceptance of
7 objectionable materials if, as a condition to the sale or delivery of
8 any material or goods and despite the objection of the purchaser or
9 consignee, the person requires the purchaser or consignee to accept
10 material reasonably believed by the purchaser to be obscene or which,
11 if furnished or presented to a minor, would be harmful to the minor.

12 (b) Compelling acceptance of objectionable materials is a
13 class A misdemeanor.

14 Sec. 11.66.490. PRESUMPTION AND EVIDENCE OF KNOWLEDGE. (a) In
15 a prosecution under AS 11.66.300 - 11.66.499, a person has knowledge
16 of the character of material or of a performance if the person knows,
17 has reason to know, or has a belief or ground for belief that warrants
18 further inquiry, that the material or performance contains, depicts,
19 or describes sexually explicit nudity, sexual conduct, sadomasochistic
20 sexual abuse, or lewd exhibition of the genitals, whether or not the
21 person has precise knowledge of the specific contents of the material
22 or performance. Knowledge of the character of material or of a per-
23 formance may be proven by direct or circumstantial evidence.

24 (b) In a prosecution under AS 11.66.300 - 11.66.499, the owner
25 or manager of a commercial establishment, or the agent or employee of
26 an owner or manager, who engages in promoting materials or a perfor-
27 mance or distributing or handling materials for promotion or for
28 resale may be presumed to have knowledge of the character of the
29 material or the performance if the owner, manager, agent, or employee

1 has actual or constructive notice of the nature of the materials or
2 the performance, whether or not that person has precise knowledge of
3 its contents.

4 (c) In a prosecution under AS 11.66.300 - 11.66.499 in which
5 knowledge of the character of the materials or a performance, or
6 knowledge that a device is a sexual device, is at issue, it is evi-
7 dence of that knowledge that actual notice of the nature of the mater-
8 ial, the performance, or the device was previously provided to the
9 defendant. Without limitation on the manner in which that notice may
10 be given,

11 (1) actual notice of the character of material or of a
12 performance may be given by the attorney general or a prosecuting
13 attorney; the notice, regardless of the manner in which given, must

14 (A) identify the maker of the notice;

15 (B) identify the material or performance;

16 (C) state whether the material or the performance is
17 obscene or harmful to a minor;

18 (D) give a brief description of the contents of the
19 material or performance;

20 (E) state whether the material or performance contains
21 sexually explicit nudity, sexual conduct, sadomasochistic sexual
22 abuse, or lewd exhibition of genitals; and

23 (F) bear the date of the notice;

24 (2) actual notice that the device is a sexual device may be
25 given by the attorney general or a prosecuting attorney; the notice,
26 regardless of the manner in which given, must

27 (A) identify the maker of the notice;

28 (B) identify the device; and

29 (C) bear the date of the notice.

1 (d) In a prosecution under AS 11.66.300 - 11.66.499 in which
2 knowledge of the character of material or a performance, or knowledge
3 that a device is a sexual device, is at issue, the court may accept as
4 proof of that knowledge the following evidence:

5 (1) the sexually explicit nature and character of the mate-
6 rial or performance involved is advertised, marketed, or otherwise
7 publicly exploited for the purpose of attracting purchasers or pa-
8 trons;

9 (2) the owner, or the agent or employee of the owner, of a
10 commercial establishment advertises or represents that the establish-
11 ment

12 (A) possesses sexually explicit materials for pro-
13 motion or resale; or

14 (B) promotes a sexually explicit performance;

15 (3) the commercial establishment is primarily engaged in
16 promoting or the resale of sexually explicit materials or sexually
17 explicit performances.

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

19 (1) "community" means the municipality or village in which
20 the crime occurred;

21 (2) "harmful to a minor" means

22 (A) with respect to material or a performance, the
23 average person, applying contemporary community standards, would
24 find that the material or performance, taken as a whole, appeals
25 to the prurient interest of a minor;

26 (B) the material or performance depicts or describes
27 sexually explicit nudity, sexual conduct, sadomasochistic sexual
28 abuse, or lewd exhibitions of the genitals in a way that is
29 offensive to prevailing standards among adults in the community

1 with respect to what is suitable for minors; and

2 (C) the material or performance, taken as a whole,
3 lacks serious literary, artistic, political, or scientific value
4 for minors;

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

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

10 (5) "obscene" means

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

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

19 (C) with respect to the material or a performance,
20 that a reasonable person would find that the material or the
21 performance, taken as a whole, lacks serious literary, artistic,
22 political, or scientific value;

23 (6) "prurient" means a lascivious, unhealthy, degrading,
24 shameful, or morbid interest in sexual conduct, sexually explicit
25 nudity, sadomasochistic sexual abuse, or lewd exhibition of the geni-
26 tals;

27 (7) "sadomasochistic sexual abuse" means

28 (A) actual or simulated flagellation, rape, torture,
29 or other physical or sexual abuse, by or upon a person who is

1 nude or partially nude; or

2 (B) physical restraint for the actual or simulated
3 purpose of sexual gratification or abuse, or in the context of a
4 sexual relationship;

5 (8) "sexual conduct" includes acts, whether actual or simu-
6 lated, of sexual contact or sexual penetration;

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

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