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**By: Senators Stone, Haines, Jimeno, Pica, Middlebrooks, and Ferguson** ~~Ferguson,~~  
~~Forehand, Green, Colburn, and Kelley~~

Introduced and read first time: January 17, 1996

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 13, 1996

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CHAPTER \_\_\_\_

1 AN ACT concerning

2 **Obscenity - Providing Minors with Access to Harmful Materials**

3 FOR the purpose of prohibiting certain persons from exhibiting to, selling tickets to, or  
4 admitting certain minors to certain presentations under certain circumstances;  
5 prohibiting certain persons from selling, showing, advertising for sale or  
6 distribution, or distributing certain material to certain minors under certain  
7 circumstances; prohibiting certain persons from allowing certain minors to gain  
8 access to certain materials under certain circumstances; establishing certain  
9 penalties; defining certain terms; and generally relating to the prohibition against  
10 providing minors with access to harmful materials.

11 BY repealing and reenacting, with amendments,  
12 Article 27 - Crimes and Punishments  
13 Section 416C, 416G, 419, and 424  
14 Annotated Code of Maryland  
15 (1992 Replacement Volume and 1995 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article 27 - Crimes and Punishments**

19 416C.

20 [Any] A person, firm or corporation [which, for a monetary consideration or other  
21 valuable commodity or service,] MAY NOT knowingly [exhibits] EXHIBIT to a minor who  
22 is unaccompanied by his parent or guardian, [or] knowingly [sells] SELL to a minor an  
23 admission ticket or other means to gain entrance to, or knowingly [admits] ADMIT a

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1 minor who is unaccompanied by his parent or guardian to premises where there is  
2 exhibited a motion picture show or other presentation, whether animated or live, which  
3 [in whole or in part depicts or reveals sexual conduct, sexual excitement or  
4 sadomasochistic abuse, or which includes obscenities or explicit verbal descriptions or  
5 narrative accounts of sexual conduct, is guilty of a misdemeanor] CONTAINS MATERIAL  
6 HARMFUL TO MINORS AS DEFINED IN § 419(B)(3) OF THIS ARTICLE.

7 416G.

8 (A) EXCEPT FOR A VIOLATION OF § 416C OF THIS SUBTITLE, [Any] A person,  
9 firm or corporation which violates the provisions of this subtitle shall[,] upon  
10 conviction[,] be subject to a fine of up to one thousand dollars (\$1,000) or imprisonment  
11 for up to six (6) months.

12 (B) A PERSON WHO VIOLATES § 416C OF THIS SUBTITLE IS GUILTY OF A  
13 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE OF NOT LESS THAN \$500  
14 AND NOT MORE THAN \$1,000 OR IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR  
15 BOTH.

16 419.

17 (a) (1) A person may not [willfully or knowingly engage in the business of  
18 displaying, exhibiting, selling, showing, advertising for sale, or distributing], WITH  
19 KNOWLEDGE OF THE CHARACTER AND CONTENT OF THE SUBJECT MATTER,  
20 RECKLESSLY SELL, SHOW, ADVERTISE FOR SALE OR DISTRIBUTION, OR DISTRIBUTE  
21 to any person under the age of 18 years any still OR MOVING picture, photograph, FILM,  
22 DRAWING, WRITING, book, pocket OR COMIC book, pamphlet, magazine, videodisc,  
23 video tape, [film, computer disc, or] recorded OR LIVE telephone OR COMPUTER  
24 messages, COMPUTER DISC, COMPUTER IMAGE OR GRAPHIC FILE, OR OTHER VISIBLE  
25 OR AUDIBLE MATTER OR COMMUNICATION the cover or content of which [is  
26 principally made up of obscene] CONTAINS descriptions or depictions of illicit sex[,] or  
27 [which consists of obscene pictures of] nude or partially denuded figures IN A WAY THAT  
28 IS HARMFUL TO MINORS AS DEFINED IN SUBSECTION (B)(3) OF THIS SECTION.

29 [(2) A person may not willfully or knowingly display or exhibit to any person  
30 under the age of 18 years any still picture, photograph, book, pocket book, pamphlet,  
31 magazine, videodisc, videotape, film, computer disc, or recorded telephone messages the  
32 cover or content of which is principally made up of obscene descriptions or depictions of  
33 illicit sex, or which consists of obscene pictures of nude or partially denuded figures.]

34 {~~3~~} (2) The provision of services or facilities by a telephone company  
35 pursuant to tariffs approved by the Public Service Commission is not a violation of the  
36 provisions of paragraph (1) of this subsection that relate to recorded telephone AND  
37 COMPUTER messages. }

38 [(4)] {~~2~~} (3) An owner, operator, franchisee, manager, or any employee  
39 with managerial responsibility of a newsstand or any other place of business may not  
40 [openly and knowingly display at the newsstand or other place of business, if it is  
41 frequented by] RECKLESSLY PERMIT OR ALLOW persons under the age of 18 years[,]  
42 TO ENTER OR REMAIN IN ANY PART OF THE PREMISES WHERE any of the items whose  
43 sale, [display, exhibition,] showing, or advertising is prohibited by paragraph (1) of this  
44 subsection ARE ON DISPLAY, VISIBLE TO A MINOR, WITHIN ACCESS OR REACH OF A

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1 MINOR, OR OTHERWISE SITUATED IN A WAY THAT WOULD ALLOW A MINOR TO  
2 EXAMINE OR PERUSE THE MATERIAL.

3 [(5) Violation of this section is a misdemeanor.]

4 (b) In this section the following words have the meanings indicated:

5 (1) "Descriptions or depictions of illicit sex" shall mean:

6 (i) Human genitals in a state of sexual stimulation or arousal;

7 (ii) Acts of human masturbation, sexual intercourse, or sodomy; or

8 (iii) Fondling or other erotic touching of human genitals.

9 (2) "Distributing" includes renting.

10 (3) "HARMFUL TO MINORS" MEANS THAT:

11 (I) THE AVERAGE ADULT APPLYING CONTEMPORARY  
12 COMMUNITY STANDARDS WOULD FIND THAT THE WORK, TAKEN AS A WHOLE,  
13 APPEALS TO THE PRURIENT INTEREST OF MINORS;

14 (II) THE AVERAGE ADULT APPLYING CONTEMPORARY  
15 COMMUNITY STANDARDS WOULD FIND THAT THE DEPICTION OF NUDE OR  
16 PARTIALLY DENUDED FIGURES OR SEXUAL CONDUCT IN THE MATERIAL OR  
17 PERFORMANCE IS PATENTLY OFFENSIVE TO PREVAILING STANDARDS IN THE  
18 ADULT COMMUNITY CONCERNING WHAT IS SUITABLE MATERIAL FOR MINORS; AND

19 (III) THE WORK, TAKEN AS A WHOLE, LACKS SERIOUS LITERARY,  
20 SCIENTIFIC, EDUCATIONAL, ARTISTIC, OR POLITICAL VALUE FOR MINORS.

21 (4) "MINOR" MEANS AN INDIVIDUAL WHO IS LESS THAN 18 YEARS OLD  
22 AND IS NOT MARRIED OR JUDICIALLY EMANCIPATED.

23 [(3)] (5) "Nude or partially denuded figures" means:

24 (i) Less than completely and opaquely covered human genitals, pubic  
25 region, buttocks, or female breast below a point immediately above the top of the areola;  
26 or

27 (ii) Human male genitals in a discernibly turgid state, even if  
28 completely and opaquely covered.

29 [(4) "Obscene" means:

30 (i) That the average adult applying contemporary community  
31 standards would find that the work, taken as a whole, appeals to the prurient interest;

32 (ii) That the work depicts the sexual conduct specified in subsection  
33 (a) of this section in a way that is patently offensive to prevailing standards in the adult  
34 community as a whole with respect to what is suitable material; and

35 (iii) That the work, taken as a whole, lacks serious literary, scientific,  
36 educational, artistic, or political value.]

1 424.

2 (A) [Violation] EXCEPT FOR A VIOLATION OF § 419 OF THIS SUBTITLE,  
3 [Violation] VIOLATION of this subtitle is punishable upon conviction by a fine not to  
4 exceed \$1,000 or by imprisonment not to exceed one year, or both unless otherwise  
5 provided. Any subsequent conviction of a violation of this subtitle is punishable by a fine  
6 not to exceed \$5,000 or by imprisonment not to exceed three years, or both unless  
7 otherwise provided.

8 (B) A PERSON WHO VIOLATES § 419 OF THIS SUBTITLE IS GUILTY OF A  
9 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE OF NOT LESS THAN \$500  
10 AND NOT MORE THAN \$1,000 OR IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR  
11 BOTH. EACH DAY ON WHICH A VIOLATION OF § 419 OF THIS SUBTITLE OCCURS  
12 CONSTITUTES A SEPARATE OFFENSE.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
14 October 1, 1996.