
By: Delegates T. Murphy, Perry, Jacobs, M. Burns, and Turner

Introduced and read first time: January 29, 1997

Assigned to: Judiciary

A BILL ENTITLED

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 (1996 Replacement Volume)

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

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1 416G.

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

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

10 419.

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

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

28 [(3)] (2) The provision of services or facilities by a telephone company
 29 pursuant to tariffs approved by the Public Service Commission is not a violation of the
 30 provisions of paragraph (1) of this subsection that relate to recorded telephone AND
 31 COMPUTER messages.

32 [(4)] (3) An owner, operator, franchisee, manager, or any employee with
 33 managerial responsibility of a newsstand or any other place of business may not [openly
 34 and knowingly display at the newsstand or other place of business, if it is frequented by]
 35 RECKLESSLY PERMIT OR ALLOW persons under the age of 18 years[,] TO ENTER OR
 36 REMAIN IN ANY PART OF THE PREMISES WHERE any of the items whose sale, [display,
 37 exhibition,] showing, or advertising is prohibited by paragraph (1) of this subsection ARE
 38 ON DISPLAY, VISIBLE TO A MINOR, WITHIN ACCESS OR REACH OF A MINOR, OR
 39 OTHERWISE SITUATED IN A WAY THAT WOULD ALLOW A MINOR TO EXAMINE OR
 40 PERUSE THE MATERIAL.

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

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

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

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

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

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

5 (2) "Distributing" includes renting.

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

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

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

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

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

19 [(3)] (5) "Nude or partially denuded figures" means:

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

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

25 [(4)] "Obscene" means:

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

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

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

33 424.

34 (A) [Violation] EXCEPT FOR A VIOLATION OF § 419 OF THIS SUBTITLE,
35 VIOLATION of this subtitle is punishable upon conviction by a fine not to exceed \$1,000
36 or by imprisonment not to exceed [one] 1 year, or both unless otherwise provided. Any
37 subsequent conviction of a violation of this subtitle is punishable by a fine not to exceed

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1 \$5,000 or by imprisonment not to exceed [three] 3 years, or both unless otherwise
2 provided.

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

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 1997.