

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

A Bill

SENATE BILL 507

4
5 By: Senator Hunter
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For An Act To Be Entitled

8
9 "AN ACT TO STRENGTHEN THE PORNOGRAPHY LAWS OF THIS STATE;
10 AND FOR OTHER PURPOSES."
11

Subtitle

12
13 "AN ACT TO STRENGTHEN THE PORNOGRAPHY
14 LAWS OF THIS STATE."
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16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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18 SECTION 1. Arkansas Code 5-68-501 and 502 are amended to read as
19 follows:

20 "§ 5-68-501. Definitions.

21 As used in this subchapter, unless the context otherwise requires:

22 (1) Minor means any person under the age of ~~seventeen (17)~~ eighteen
23 (18) years;

24 (2) Nudity means the showing of the human male or female genitals,
25 pubic area, or buttocks with less than a fully opaque covering, or the showing
26 of the female breast with less than a fully opaque covering of any portion
27 thereof below the top of the nipple, or the depiction of covered male genitals
28 in a discernibly turgid state;

29 (3) Sexual conduct means acts of masturbation, homosexuality, sexual
30 intercourse, or physical contact with a person's clothed or unclothed
31 genitals, pubic area, buttocks, or female breast;

32 (4) Sexual excitement means the condition of the human male or female
33 genitals when in a state of sexual stimulation or arousal;

34 (5) Sadoomasochistic abuse means flagellation or torture by or upon a
35 person clad in undergarments, a mask or bizarre costume, or the condition of
36 being fettered, bound, or otherwise physically restrained on the part of one

1 so clothed;

2 (6) Harmful to minors means that quality of any description,
3 exhibition, presentation or representation, in whatever form, of nudity,
4 sexual conduct, sexual excitement, or sadomasochistic abuse, when ~~it~~ the
5 material or performance, taken as a whole, has the following characteristics:

6 (A) ~~Predominantly appeals to the prurient, shameful, or morbid~~
7 ~~interest of minors~~ The average person eighteen (18) years of age or older
8 applying contemporary community standards would find that the material or
9 performance has a predominant tendency to appeal to a prurient interest in sex
10 to minors; and

11 (B) ~~Is patently offensive to prevailing standards in the adult~~
12 ~~community as a whole with respect to what is suitable material for minors~~ The
13 average person eighteen (18) years of age or older applying contemporary
14 community standards would find that the material or performance depicts or
15 describes nudity, sexual conduct, sexual excitement or sadomasochistic abuse
16 in a manner that is patently offensive to prevailing standards in the adult
17 community with respect to what is suitable for minors; and

18 (C) ~~Is utterly without redeeming social importance for minors~~ The
19 material or performance lacks serious literary, scientific, medical, artistic,
20 or political value for minors;

21 (7) Knowingly means having general knowledge of, or reason to know, or
22 a belief or ground for belief which warrants further inspection or inquiry of
23 both:

24 (A) The character and content of any material described herein
25 which is reasonably susceptible to examination by the defendant; and

26 (B) The age of the minor, provided that an honest mistake shall
27 constitute an excuse from liability hereunder if the defendant made a
28 reasonable bona fide attempt to ascertain the age of the minor;

29 (8) Material means any book, magazine, newspaper, pamphlet, poster,
30 print, picture, figure, image, description, motion picture, film, record,
31 recording tape, CD-ROM disk, Magnetic disk memory, Magnetic tape memory, video
32 tape or other media;

33 (9) CD-ROM means a compact disk which has the capacity to store
34 graphic, audio, video and written materials and may be used by computer or
35 other device to play or display materials harmful to minors;

36 (10) Magnetic disk memory means a memory system that stores and

1 retrieves binary data on record-like metal or plastic disks coated with a
 2 magnetic material, including but not limited to, hard disk drives and floppy
 3 diskettes;

4 (11) Magnetic tape memory means a memory system that stores and
 5 retrieves binary data on magnetic recording tape;

6 (12) Performance means any motion picture, film, video tape, played
 7 record, phonograph or tape, preview, trailer, play, show, skit, dance, or
 8 other exhibition performed or presented to or before an audience of one (1) or
 9 more, with or without consideration;

10 (13) Person means any individual, partnership, association,
 11 corporation, or other legal entity of any kind; and

12 (14) A reasonable bona fide attempt means an attempt to ascertain the
 13 true age of the minor by requiring production of a drivers license, marriage
 14 license, birth certificate or other governmental or educational identification
 15 card or paper and not relying solely on the oral allegations or apparent age
 16 of the minor.

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18 § 5-68-502. Unlawful acts.

19 ~~——(a) It shall be unlawful for any person, including but not limited to,~~
 20 ~~any persons having custody, control or supervision of any commercial~~
 21 ~~establishment, to knowingly to sell or loan for monetary consideration to a~~
 22 ~~minor:~~

23 ~~(1) Any picture, photograph, drawing, sculpture, motion picture~~
 24 ~~film, or similar visual representation or image of a person or portion of the~~
 25 ~~human body which depicts nudity, sexual conduct, or sadomasochistic abuse and~~
 26 ~~which is harmful to minors~~ Display material which is harmful to minors in such
 27 a way that minors, as a part of the invited general public, will be exposed to
 28 view such material. Provided, however, a person shall be deemed not to have
 29 displayed material harmful to minors if the material is kept behind devices
 30 commonly known as blinder racks so that the lower two-thirds (2/3) of the
 31 material is not exposed to view; or

32 ~~(2) Any book, pamphlet, magazine, printed matter, however~~
 33 ~~reproduced, or sound recording which contains any matter enumerated in~~
 34 ~~subdivision (1) of this section or explicit and detailed verbal descriptions~~
 35 ~~or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic~~
 36 ~~abuse and which, taken as a whole, is harmful to minors. Sell, furnish,~~

1 present, distribute, allow to view, or otherwise disseminate to a minor, with
2 or without consideration, any material which is harmful to minors; or

3 (3) Present to a minor or participate in presenting to a minor,
4 with or without consideration, any performance which is harmful to a minor.

5 ~~—(b) It shall be unlawful for any person knowingly to exhibit for a~~
6 ~~monetary consideration to a minor or knowingly to sell to a minor an admission~~
7 ~~ticket or pass or knowingly to admit a minor for a monetary consideration to~~
8 ~~premises whereon there is exhibited a motion picture, show, or other~~
9 ~~presentation which, in whole or in part, depicts nudity, sexual conduct, or~~
10 ~~sadomasochistic abuse and which is harmful to minors."~~

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12 SECTION 2. All provisions of this act of a general and permanent nature
13 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
14 Revision Commission shall incorporate the same in the Code.

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16 SECTION 3. If any provision of this act or the application thereof to
17 any person or circumstance is held invalid, such invalidity shall not affect
18 other provisions or applications of the act which can be given effect without
19 the invalid provision or application, and to this end the provisions of this
20 act are declared to be severable.

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22 SECTION 4. All laws and parts of laws in conflict with this act are
23 hereby repealed.

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