

1 State of Arkansas  
2 94th General Assembly  
3 Regular Session, 2023  
4

# A Bill

SENATE BILL 81

5 By: Senator D. Sullivan  
6 By: Representative Gonzales  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW CONCERNING THE POSSESSION,  
10 SALE, DISTRIBUTION, OR FURNISHING OF OBSCENE  
11 MATERIALS; TO CREATE THE OFFENSE OF FURNISHING A  
12 HARMFUL ITEM TO A MINOR; TO AMEND THE CRIMINAL CODE  
13 IN RELATION TO OBSCENE MATERIALS LOANED BY A LIBRARY;  
14 TO PROVIDE FOR A CIVIL CAUSE OF ACTION AGAINST  
15 GOVERNMENTAL ENTITIES THAT POSSESS, SELL, OR  
16 DISTRIBUTE OBSCENE MATERIALS; AND FOR OTHER PURPOSES.  
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## Subtitle

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20 TO AMEND THE LAW CONCERNING OBSCENE  
21 MATERIALS; TO CREATE THE OFFENSE OF  
22 FURNISHING A HARMFUL ITEM TO A MINOR; AND  
23 TO AMEND THE LAW CONCERNING OBSCENE  
24 MATERIALS LOANED BY A LIBRARY.  
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27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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29 SECTION 1. Arkansas Code Title 5, Chapter 27, Subchapter 2, is amended  
30 to add an additional section to read as follows:

31 5-27-212. Furnishing a harmful item to a minor – Failure to report.

32 (a) As used in this section:

33 (1) "Harmful to minors" means that quality of an item describing  
34 or representing, in any form, nudity, sexual intercourse, deviate sexual  
35 activity, sexual contact, sexual excitement, or sadomasochistic abuse, when:

36 (A) To the average adult applying contemporary state



1 standards with respect to what is suitable for minors the item:

2 (i)(a) Appeals to the prurient interest, when taken  
3 as whole.

4 (b) In order for an item when taken as a whole  
5 to be found or intended to have an appeal to the prurient interest, it is not  
6 necessary that the item be successful in arousing or exciting any particular  
7 form of prurient interest either in the hypothetical average person, in a  
8 member of its intended and probable recipient group, or in the trier of fact;  
9 and

10 (ii) Portrays the description or representation in a  
11 patently offensive way; and

12 (B) Taken as a whole, the item does not have serious  
13 literary, artistic, political, or scientific value for minors;

14 (2) "Internet" means the combination of computer facilities and  
15 electromagnetic transmission media, and related equipment and software,  
16 comprising the interconnected worldwide network of computer networks that  
17 employ the Transmission Control Protocol/Internet Protocol (TCP/IP) or any  
18 successor protocol to transmit information;

19 (3) "Internet website" means a location where material placed in  
20 a computer server-based file archive is publicly accessible over the internet  
21 using hypertext transfer protocol or any successor protocol; and

22 (4)(A) "Item" means a material or performance that depicts or  
23 describes nudity, sexual intercourse, deviate sexual activity, sexual  
24 contact, sexual excitement, or sadomasochistic abuse.

25 (B) "Item" includes without limitation:

26 (i) A book, leaflet, pamphlet, magazine, booklet,  
27 picture, drawing, photograph, film, negative, slide, motion picture, figure,  
28 object, article, novelty device, recording, transcription, live or recorded  
29 telephone message, or other similar item whether tangible or intangible;

30 (ii) A performance, exhibition, transmission, or  
31 dissemination of any of the items listed in subdivision (a)(4)(B)(i) of this  
32 section; and

33 (iii) A live performance or exhibition that depicts  
34 nudity, sexual intercourse, deviate sexual activity, sexual contact, sexual  
35 excitement, or sadomasochistic abuse to the public or an audience of one (1)  
36 or more persons.

1           (b) A person commits furnishing a harmful item to a minor if, knowing  
2 the character of the item involved, the person:

3                   (1) Recklessly furnishes, presents, provides, makes available,  
4 gives, lends, shows, advertises, or distributes to a minor an item that is  
5 harmful to minors; or

6                   (2) Knowingly transmits or sends to a person that he or she  
7 believes to be a minor by means of electronic mail, personal messaging, or  
8 any other direct internet communication an item that is harmful to minors  
9 when the person knows or believes at the time of the transmission that a  
10 minor in this state will receive the item.

11           (c)(1) Subdivision (b)(1) of this section does not apply to the  
12 transmission or sending of items over the internet.

13                   (2) Subdivision (b)(2) of this section does not apply to:

14                           (A) Posting material on an internet website, bulletin  
15 board, or newsgroup; or

16                           (B) Sending material via a mailing list, listserv, or  
17 other method of internet communication in which a message is sent to an  
18 internet address and then retransmitted to one (1) or more subscribers, that  
19 is not administered by the sender.

20           (d) Furnishing a harmful item to a minor is a Class A misdemeanor.

21           (e) A person who fails to report a violation under subdivision (b)(2)  
22 of this section upon conviction is guilty of a Class A misdemeanor if the  
23 person:

24                   (1) Knows that a violation has occurred under subdivision  
25 (b)(2); and

26                   (2) Is a mandated reporter under § 12-18-402(b), the minor's  
27 guardian, an employee in the minor's school or school district, a temporary  
28 caretaker for the minor, or a person in a position of trust or authority over  
29 the minor.

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31           SECTION 2. Arkansas Code § 5-68-308(c), concerning defenses to state  
32 standards that define and regulate obscenity, is amended to read as follows:

33           (c) No employee, director, or trustee of a bona fide ~~school~~, museum,  
34 ~~or public library~~, acting within the scope of his or her regular employment,  
35 is liable to prosecution for a violation of this subchapter for disseminating  
36 a writing, film, slide, drawing, or other visual reproduction that is claimed

1 to be obscene.

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3 SECTION 3. Arkansas Code § 5-68-405 is amended to read as follows:  
4 5-68-405. Possession, sale, or distribution.

5 (a) ~~Any person that, with knowledge of its contents,~~ A person that  
6 knowingly sends or causes to be sent or brings or causes to be brought into  
7 this state for sale or commercial distribution, or in this state prepares,  
8 publishes, sells, exhibits, loans at a library, or commercially distributes,  
9 or gives away or offers to give away or has in the person's possession with  
10 ~~intent~~ the purpose to sell or commercially distribute or to exhibit or to  
11 give away, ~~any~~ obscene printed or written matter or material other than  
12 mailable matter, or any mailable matter known by the person to have been  
13 judicially found to be obscene under this subchapter, or that knowingly  
14 informs another of when, where, how, or from whom or by what means any of  
15 these things can be purchased or obtained, upon conviction is guilty of a  
16 Class D felony.

17 (b) ~~Any person that, with knowledge of its contents,~~ A person that  
18 knowingly has in the person's possession ~~any~~ obscene printed or written  
19 matter or material other than mailable matter, or any mailable matter known  
20 by that person to have been judicially found to be obscene under this  
21 subchapter, upon conviction is guilty of a Class A misdemeanor.

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23 SECTION 4. Arkansas Code Title 16, Chapter 118, Subchapter 1, is  
24 amended to add an additional section to read as follows:

25 16-118-119. Civil action regarding possession, sale, or distribution  
26 of obscene materials.

27 (a) As used in this section:

28 (1) "Mailable matter" means the same as defined in § 5-68-403;

29 (2) "Obscene" means the same as defined in § 5-68-403;

30 (3) "Person" means an individual who was exposed to obscene  
31 printed or written matter or material other than mailable matter, or any  
32 mailable matter that has been judicially found to be obscene under the  
33 Arkansas Law on Obscenity, § 5-68-401 et seq.; and

34 (4) "Printed or written matter or material" means the same as  
35 defined in § 5-68-403.

36 (b)(1) A person or the parent or legal guardian of a person under

1 eighteen (18) years of age may bring a civil action against the state,  
2 county, or city that, in violation of § 5-68-405, possessed, sold, or  
3 distributed the obscene printed or written matter or material other than  
4 ailable matter, or any aailable matter that had been judicially found to be  
5 obscene under the Arkansas Law on Obscenity, § 5-68-401 et seq., to which the  
6 person was exposed.

7 (2)(A) Before a person may bring an action under subdivision  
8 (b)(1) of this section, the person shall provide notice of the violation of §  
9 5-68-405 to the state, county, or city that committed the violation.

10 (B) If the state, county, or city does not cure the  
11 violation within three (3) days of receiving notice under subdivision  
12 (b)(2)(A) of this section, the person providing notice may bring an action  
13 under this section.

14 (c) A plaintiff who prevails in an action under this section is  
15 entitled to damages in the amount of:

16 (1) Fifty dollars (\$50.00) for each day of the violation under §  
17 5-68-405 after the cure period expires under subdivision (b)(2) of this  
18 section; and

19 (2) If the state, county, or city is determined to have  
20 repeatedly or recklessly violated § 5-68-405, ten thousand dollars (\$10,000).

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