

Title 39 – Criminal Offenses

Chapter 17 – Offenses Against Public Health, Safety and Welfare

Part 9 – Obscenity

39-17-901. Part definitions.

The following definitions apply in this part, unless the context requires otherwise:

(1) “Actual or constructive knowledge” means that a person is deemed to have constructive knowledge of the contents of material who has knowledge of facts that would put a reasonable and prudent person on notice as to the suspect nature of the material;

(2) “Community” means the judicial district, as defined in § 16-2-506, in which a violation is alleged to have occurred;

(3) “Distribute” means to transfer possession of, whether with or without consideration;

(4) “Excess violence” means the depiction of acts of violence in such a graphic or bloody manner as to exceed common limits of custom and candor, or in such a manner that it is apparent that the predominant appeal of the material is portrayal of violence for violence's sake;

(5) “Final judgment” or “conviction” means all direct appeals have been exhausted including an application for appeal or for certiorari to the Tennessee or United States supreme court;

(6) “Harmful to minors” means that quality of any description or representation, in whatever form, of nudity, sexual excitement, sexual conduct, excess violence or sadomasochistic abuse when the matter or performance:

(A) Would be found by the average person applying contemporary community standards to appeal predominantly to the prurient, shameful or morbid interests of minors;

(B) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and

(C) Taken as whole lacks serious literary, artistic, political or scientific values for minors;

(7) “Matter” means any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture film, videocassette or other pictorial representation, or any statue, figure, device, theatrical production or electrical reproduction, or any other article, equipment, machine or material that is obscene as defined by this part;

(8) “Minor” means any person who has not reached eighteen (18) years of age and is not emancipated;

(9) “Nudity” means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering or the showing of the female breast with less than a fully opaque covering of any portion below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state;

(10) “Obscene” means:

(A) The average person applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest;

(B) The average person applying contemporary community standards would find that the work depicts or describes, in a patently offensive way, sexual conduct; and

(C) The work, taken as a whole, lacks serious literary, artistic, political, or scientific value;

(11) “Patently offensive” means that which goes substantially beyond customary limits of candor in describing or representing such matters;

(12) “Prurient interest” means a shameful or morbid interest in sex;

(13) “Sadomasochistic abuse” means flagellation or torture or physical restraint by or upon a person for the purpose of sexual gratification of either person;

(14) “Sexual conduct” means:

(A) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated. A sexual act is simulated when it depicts explicit sexual activity that gives the appearance of ultimate sexual acts, anal, oral or genital. “Ultimate sexual acts” means sexual intercourse, anal or otherwise, fellatio, cunnilingus or sodomy; or

(B) Patently offensive representations or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals; and

(15) “Sexual excitement” means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

39-17-902. Producing, importing, preparing, distributing, processing or appearing in obscene material or exhibition — Distribution to or employment of minors.

(a) It is unlawful to knowingly produce, send or cause to be sent, or bring or cause to be brought, into this state for sale, distribution, exhibition or display, or in this state to prepare for distribution, publish, print, exhibit, distribute, or offer to distribute, or to possess with intent to distribute or to exhibit or offer to distribute any obscene matter, or to do any of the

aforementioned with any matter found legally obscene that violates the requirements of 18 U.S.C. § 2257. It is unlawful to direct, present or produce any obscene theatrical production, peep show or live performance, and every person who participates in that part of the production which renders the production or performance obscene is guilty of the offense.

(b) It is unlawful for any person to hire, employ or use a minor to do or assist in doing any of the acts described in subsection (a) with knowledge that the person is a minor under eighteen (18) years of age, or while in possession of the facts that the person should reasonably know that the person is a minor under eighteen (18) years of age. However, this section shall not apply to those acts that are prohibited by §§ 39-17-1003 — 39-17-1005.

(c) (1) A violation of subsection (a) is a Class A misdemeanor, and, in addition, any corporation or business entity that violates this section shall be fined an amount not less than ten thousand dollars (\$10,000) nor more than fifty thousand dollars (\$50,000).

(2) A second or subsequent violation of subsection (a) is a Class E felony; provided, that the second or subsequent violation occurs after a conviction has been obtained for the previous violation; provided further, that the range of fines authorized for a first violation by a corporation or business entity shall also be applicable for second or subsequent violations by the corporation or entity.

(d) A violation of subsection (b) is a Class E felony, and, in addition, a violator shall be fined an amount not less than ten thousand dollars (\$10,000) nor more than one hundred thousand dollars (\$100,000).

(e) It is an exception to this section that the obscene material is possessed by a person having scientific, educational, governmental or other similar justification. **The exception in this subsection (e) does not apply to the possession of obscene material by a local education agency; a public school, including a public charter school; or an employee or private contractor of a local education agency or public school if the obscene material is harmful to minors and possessed on public school premises**

Title 49 – Education

Chapter 6 – Elementary and Secondary Education

Part 3 – Elementary, Middle and Secondary Schools Generally

49-6-3__.

An LEA or public school, including a public charter school, must not allow obscene materials or materials harmful to minors, as defined in § 39-17-901, to be available to students in the school libraries controlled by the LEA or public school.

49-6-3__.

(a) Each local board of education and public charter school shall adopt a policy that allows the parent or legal guardian of a student enrolled in the LEA or public charter

school to report to the director of schools or the director of the public charter school, as applicable, if the parent or legal guardian is aware of material that is obscene, as defined in § 39-17-901, or harmful to minors, as defined in § 39-17-901, being made available to students through the parent's or legal guardian's student's school library.

(b) The policy required under subsection (a) must require the director of schools or the director of the public charter school, as applicable, to remove the questionable material from each school library under the respective director's control for a period of no less than (30) days to allow the local board of education or the governing body of the public charter school, as applicable, to review the material to determine whether the material is obscene, harmful to minors, or appropriate for students.

(c) If the local board of education or the governing body of the public charter school determines that the material is obscene or harmful to minors, then the material must be permanently removed from the school library of each school governed by the local board of education or the governing body of the public charter school. If the local board of education or the governing body of the public charter school determines that the material is appropriate for students, then the material must be returned to each school library from which it was removed by the perspective director upon the local board of education's or the governing body of the public charter school's determination that the material is appropriate for students, or at the end of the thirty-day period identified in subsection (b), whichever is earlier.

(d) The procedures adopted pursuant to this section are not the exclusive means to remove material from a school library, and do not preclude an LEA, a school operated by an LEA, a public charter school, or the governing body of a public charter school from developing or implementing additional policies, practices, or procedures for the removal of materials from a school library.

(e) If an LEA or public charter school fails to comply with the policy adopted pursuant to this section, then the commissioner may withhold state funds, in an amount determined by the commissioner, from the respective LEA or public charter school until the LEA or public charter school is in compliance.

(f) Each LEA shall annually report to the department of education the material that is permanently removed from a school library of the LEA pursuant to subsection (c).

U.S. Code

Title 18 – CRIMES AND CRIMINAL PROCEDURE

Part I – CRIMES

Chapter 110 – SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN

18 U.S. Code § 2257 - Record keeping requirements

(a) Whoever produces any book, magazine, periodical, film, videotape, digital image, digitally- or computer-manipulated image of an actual human being, picture, or other matter which—

(1) contains one or more visual depictions made after November 1, 1990 of actual sexually explicit conduct; and

(2) is produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce;

shall create and maintain individually identifiable records pertaining to every performer portrayed in such a visual depiction.

(b) Any person to whom subsection (a) applies shall, with respect to every performer portrayed in a visual depiction of actual sexually explicit conduct—

(1) ascertain, by examination of an identification document containing such information, the performer's name and date of birth, and require the performer to provide such other indicia of his or her identity as may be prescribed by regulations;

(2) ascertain any name, other than the performer's present and correct name, ever used by the performer including maiden name, alias, nickname, stage, or professional name; and

(3) record in the records required by subsection (a) the information required by paragraphs (1) and (2) of this subsection and such other identifying information as may be prescribed by regulation.

(c) Any person to whom subsection (a) applies shall maintain the records required by this section at his business premises, or at such other place as the Attorney General may by regulation prescribe and shall make such records available to the Attorney General for inspection at all reasonable times.

(d)

(1) No information or evidence obtained from records required to be created or maintained by this section shall, except as provided in this section, directly or indirectly, be used as evidence against any person with respect to any violation of law.

(2) Paragraph (1) of this subsection shall not preclude the use of such information or evidence in a prosecution or other action for a violation of this chapter or chapter 71, or for a violation of any applicable provision of law with respect to the furnishing of false information.

(e)

(1) Any person to whom subsection (a) applies shall cause to be affixed to every copy of any matter described in paragraph (1) of subsection (a) of this section, in such manner and in such form as the Attorney General shall by regulations prescribe, a statement describing where the records required by this section with respect to all performers depicted in that copy of the matter may be located. In this paragraph, the term “copy” includes every page of a website on which matter described in subsection (a) appears.

(2) If the person to whom subsection (a) of this section applies is an organization the statement required by this subsection shall include the name, title, and business address of the individual employed by such organization responsible for maintaining the records required by this section.

(f) It shall be unlawful—

(1) for any person to whom subsection (a) applies to fail to create or maintain the records as required by subsections (a) and (c) or by any regulation promulgated under this section;

(2) for any person to whom subsection (a) applies knowingly to make any false entry in or knowingly to fail to make an appropriate entry in, any record required by subsection (b) of this section or any regulation promulgated under this section;

(3) for any person to whom subsection (a) applies knowingly to fail to comply with the provisions of subsection (e) or any regulation promulgated pursuant to that subsection;

(4) for any person knowingly to sell or otherwise transfer, or offer for sale or transfer, any book, magazine, periodical, film, video, or other matter, produce in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce or which is intended for shipment in interstate or foreign commerce, which—

(A) contains one or more visual depictions made after the effective date of this subsection of actual sexually explicit conduct; and

(B) is produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce;

which does not have affixed thereto, in a manner prescribed as set forth in subsection (e)(1), a statement describing where the records required by this section may be located, but such person shall have no duty to determine the accuracy of the contents of the statement or the records required to be kept; and

(5) for any person to whom subsection (a) applies to refuse to permit the Attorney General or his or her designee to conduct an inspection under subsection (c).

(g) The Attorney General shall issue appropriate regulations to carry out this section.

(h) In this section—

(1) the term “actual sexually explicit conduct” means actual but not simulated conduct as defined in clauses (i) through (v) of section 2256(2)(A) of this title;

(2) the term “produces”—

(A) means—

(i) actually filming, videotaping, photographing, creating a picture, digital image, or digitally- or computer-manipulated image of an actual human being;

(ii) digitizing an image, of a visual depiction of sexually explicit conduct; or, assembling, manufacturing, publishing, duplicating, reproducing, or reissuing a book, magazine, periodical, film, videotape, digital image, or picture, or other matter intended for commercial distribution, that contains a visual depiction of sexually explicit conduct; or

(iii) inserting on a computer site or service a digital image of, or otherwise managing the sexually explicit content, of a computer site or service that contains a visual depiction of, sexually explicit conduct; and

(B) does not include activities that are limited to—

(i) photo or film processing, including digitization of previously existing visual depictions, as part of a commercial enterprise, with no other commercial interest in the sexually explicit material, printing, and video duplication;

(ii) distribution;

(iii) any activity, other than those activities identified in subparagraph (A), that does not involve the hiring, contracting for, managing, or otherwise arranging for the participation of the depicted performers;

(iv) the provision of a telecommunications service, or of an Internet access service or Internet information location tool (as those terms are defined in section 231 of the Communications Act of 1934 (47 U.S.C. 231)); or

(v) the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication, without selection or alteration of the content of the communication, except that deletion of a particular communication or material made by another person in a manner consistent with section 230(c) of the Communications Act of 1934 (47 U.S.C. 230(c)) shall not constitute such selection or alteration of the content of the communication; and

(3) the term “performer” includes any person portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct.

(i) Whoever violates this section shall be imprisoned for not more than 5 years, and fined in accordance with the provisions of this title, or both. Whoever violates this section after having been convicted of a violation punishable under this section shall be imprisoned for any period of years not more than 10 years but not less than 2 years, and fined in accordance with the provisions of this title, or both.