

Alabama

Title 13A, Chapter 12, Sections 200.1 to 200.8

- **Definitions**
- **Distribution of obscene material**
- **Dissemination of obscene material**
- **Affirmative defenses**
- **Material harmful to minors**
- **Extradition**
- **Civil action to enjoin violations**
- **Property subject to forfeiture**

Section 13A-12-200.1

Definitions.

As used in this division, the following terms shall have the meanings respectively ascribed to them by this section:

(1) **ADULT BOOKSTORES and ADULT VIDEO STORES.** A commercial establishment in which is offered for sale or rent any book, video, film, or other medium which in the aggregate constitute substantially all of its stock or inventory which depicts sexual conduct as defined herein.

(2) **ADULT MOVIE HOUSE.** A place where obscene "adult films" depicting sexual conduct are shown.

(3) **ADULT-ONLY ENTERTAINMENT.** Any commercial establishment or private club where entertainers, employees, dancers, or waiters appear nude or semi-nude.

(4) **BREAST NUDITY.** The showing of the post-pubertal human female breasts below a point immediately above the top of the areola.

(5) **DISPLAY FOR SALE.** To expose, place, exhibit, show, or in any fashion display any material for the purpose of the sale of such material to any person in a manner that a minor can physically examine or see the material.

(6) **DISSEMINATE PUBLICLY.** To expose, place, perform, exhibit, show or in any fashion display, in any location, public or private, any material in a manner that the material can either be readily seen and its content or character distinguished by normal unaided vision or be physically examined, by viewing or examining the material from any public place or any place to which members of the general public are invited.

(7) **DISTRIBUTE.** To import, export, sell, rent, lend, transfer possession of or title to, display, exhibit, show, present, provide, broadcast, transmit, retransmit, communicate by telephone, play, orally communicate or perform.

(8) EXPORT. To send or cause to be sent outside of the State of Alabama from inside the state.

(9) FOR ANY THING OF PECUNIARY VALUE. In exchange for, in return for, or for any consideration consisting of, whether wholly or partly:

a. Any money, negotiable instrument, debt, credit, chose in action, interest in wealth, or any other property whether real or personal, tangible or intangible; or

b. Any offer or agreement to pay, furnish or provide any money, negotiable instrument, debt, credit, chose in action, interest in wealth, or any other property whether real or personal, tangible or intangible.

(10) GENITAL NUDITY. The showing of the human male or female genitals or pubic area.

(11) HARMFUL TO MINORS. The term means:

a. The average person, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest of minors; and

b. The material depicts or describes sexual conduct, breast nudity or genital nudity, in a way which is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and

c. A reasonable person would find that the material, taken as a whole, lacks serious literary, artistic, political or scientific value for minors.

(12) IMPORT. To bring or cause to be brought into the State of Alabama from outside of the state.

(13) KNOWINGLY. The term means knowingly, as defined by Section 13A-2-2(2), doing an act involving a material when the person knows the nature of the material.

(14) KNOWS THE NATURE OF THE MATERIAL.

A person knows the nature of the material when any one of the following exists:

a. The person knows the nature of the material;

b. The person has reason to know the nature of the material;

c. The person has a belief or reasonable ground for belief as to the nature of the material which warrants further inspection or inquiry of the character and content of the material.

(15) MATERIAL. Any book, magazine, newspaper, printed or written matter, writing, description, picture, drawing, animation, photograph, motion picture, film, video tape, pictorial representation, depiction, image, electrical or electronic reproduction, broadcast, transmission, telephone communication, sound recording, article, device, equipment, matter, oral communication, live performance, or dance.

(16) MINOR. Any unmarried person under the age of 18 years.

(17) OBSCENE. The term means that:

a. The average person, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest; and

b. The material depicts or describes, in a patently offensive way, sexual conduct, actual or simulated, normal or perverted; and

c. A reasonable person would find that the material, taken as a whole, lacks serious literary, artistic, political or scientific value.

(18) PERSON. Any individual and, except where inappropriate, any partnership, firm, association, corporation or other legal entity.

(19) PRODUCE. Create, make, write, film, produce, reproduce, direct, or stage.

(20) RECKLESSLY. The term means recklessly, as defined by Section 13A-2-2(3), doing an act involving a material when the person knows the nature of the material.

(21) SADO-MASOCHISTIC ABUSE. The term means:

a. Flagellation or torture, in an act of sexual stimulation, by or upon a person who is nude or clad in undergarments or in a revealing or bizarre costume; or

b. The binding or physical restraining of a person who is nude or clad in undergarments or in a revealing or bizarre costume in an act of sexual stimulation.

(22) SEXUAL CONDUCT. The term means:

a. Any act of sexual intercourse, masturbation, urination, defecation, lewd exhibition of the genitals, sado-masochistic abuse, bestiality, or the fondling of the sex organs of animals; or

b. Any other physical contact with a person's unclothed genitals, pubic area, buttocks, or the breast or breasts of a female, whether alone or between members of the same or opposite sex or between a human and an animal, in an act of sexual stimulation, gratification or perversion.

(23) SEXUAL INTERCOURSE. Intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal, and whether between persons of the same or opposite sex or between a human and an animal.

(24) WHOLESALER. A person who distributes material for the purpose of resale or commercial distribution at retail.

(Acts 1989, No. 89-402, p. 791, §3; Act 98-467, p. 893, §6.)

Section 13A-12-200.2

Distribution, possession with intent to distribute, production, etc., of obscene material prohibited; penalties; distribution of fines.

(a)(1) It shall be unlawful for any person to knowingly distribute, possess with intent to distribute, or offer or agree to distribute any obscene material or any device designed or marketed as useful primarily for the stimulation of human genital organs for any thing of pecuniary value. Material not otherwise obscene may be obscene under this section if the distribution of the material, the offer to do so, or the possession with the intent to do so is a commercial exploitation of erotica solely for the sake of prurient appeal. Any person who violates this subsection shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than ten thousand dollars (\$10,000) and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than one year. A second or subsequent violation of this subdivision is a Class C felony if the second or subsequent violation occurs after a conviction has been obtained for a previous violation. Upon a second violation, a corporation or business entity shall be fined not less than ten thousand dollars (\$10,000) nor more than fifty thousand dollars (\$50,000).

(2) It shall be unlawful for any person, being a wholesaler, to knowingly distribute, possess with intent to distribute, or offer or agree to distribute, for the purpose of resale or commercial distribution at retail, any obscene material or any device designed or marketed as useful primarily for the stimulation of human genital organs for any thing of pecuniary value. Material not otherwise obscene may be obscene under this section if the distribution of the material, the offer to do so, or the possession with the intent to do so is a commercial exploitation of erotica solely for the sake of their prurient appeal. Any person who violates this subsection shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than twenty thousand dollars (\$20,000) and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than one year. A second or subsequent violation of this subdivision is a Class C felony if the second or subsequent violation occurs after a conviction has been obtained for a previous violation. Upon a second violation, a corporation or business entity shall be fined not less than ten thousand dollars (\$10,000) nor more than fifty thousand dollars (\$50,000).

(3) It shall be unlawful for any person to knowingly produce, or offer or agree to produce, any obscene material or any device designed or marketed as useful primarily for the stimulation of human genital organs for any thing of pecuniary value. Material not

otherwise obscene may be obscene under this section if the distribution of the material, the offer to do so, or the possession with the intent to do so is a commercial exploitation of erotica solely for the sake of prurient appeal. Any person who violates this subsection shall be guilty of a Class C felony.

(4) If a person is held under this section in the county jail, one-half of any fines collected and due to be deposited to the State General Fund for violations of this section shall be paid by the Comptroller to the general fund of the county where the person is held for the operation of the county jail.

(Acts 1989, No. 89-402, p. 791, §4; Act 98–467, p. 893, §6.)

Section 13A-12-200.3

Dissemination of obscene material; penalty; disposition of fines.

It shall be unlawful for any person to knowingly procure or write advertisement for obscene material or disseminate publicly any obscene material. Any person who violates this subsection shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than ten thousand dollars (\$10,000) and may also be imprisoned in the county jail for not more than one year.

If a person is held under this section in the county jail, one-half of any fines collected and due to be deposited to the State General Fund for violations of this section shall be paid by the Comptroller to the general fund of the county where the person is held for the operation of the county jail.

(Acts 1989, No. 89-402, p. 791, §5; Act 98–467, p. 893, §6.)

Section 13A-12-200.4

Affirmative defenses.

It shall be an affirmative defense to a charge of violating Sections 13A-12-200.2 and 13A-12-200.3 that the act charged was done for a bona fide medical, scientific, educational, legislative, judicial, or law enforcement purpose.

(Acts 1989, No. 89-402, p. 791, §6.)

Section 13A-12-200.5

Material harmful to minors - Distribution, possession with intent to distribute, display for sale, etc., prohibited; penalty; affirmative defenses; operation of adult-only enterprise near place frequented by minors; exceptions; disposition of fines.

(1) It shall be unlawful for any person to knowingly or recklessly distribute to a minor, possess with intent to distribute to a minor, or offer or agree to distribute to a minor any

material which is harmful to minors. Any person who violates this subsection shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than ten thousand dollars (\$10,000) and may also be imprisoned in the county jail for not more than one year.

(2)a. It shall be unlawful for any person to openly and knowingly display for sale at any business establishment frequented by minors, or any other place where minors are or may be invited as part of the general public, any material which is harmful to minors or to hire or employ a minor in an establishment that displays or disseminates material containing nudity or sexual conduct; provided, however, that a person shall not be deemed to have violated the provisions of this subsection, relating to display for sale, by displaying material harmful to minors in sealed wrappers or behind opaque covers commonly known as "blinder racks" so that in either event the material is located at a height of not less than five and one-half feet from the floor, the lower two-thirds of the material is concealed from view, the content of such material is not available for inspection by minors, and other reasonable efforts are made to prevent minors from perusing the material. Any person who violates this subsection shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than ten thousand dollars (\$10,000) and may also be imprisoned in the county jail for not more than one year. Any person who hires or employs a person in violation of this subsection is guilty of a Class C felony and, upon conviction, shall be fined not less than ten thousand dollars (\$10,000) nor more than fifty thousand dollars (\$50,000).

b. This section shall not be applicable to employment of minors in establishments that sell or rent video cassettes or films that contain nudity or sexual acts if the cover of the video cassettes or films does not contain a depiction of nudity or sexual acts and the video cassettes or films are displayed in a form that cannot be viewed without electrical or mechanical equipment and the equipment is not being used to produce a visual depiction of the material contained in the video cassette or film.

(3) The following shall be affirmative defenses to a charge of violating this section as it may relate to a particular minor:

a. The minor exhibited to the defendant, his agent or employee a draft card, driver's license, birth certificate, marriage license or other governmental document purporting to show that such minor was not an unmarried person under the age of 18 years and the person to whom the document was exhibited did not otherwise have reasonable cause to believe that the minor was an unmarried person under the age of 18.

b. A parent or legal guardian accompanied the minor or consented to the act charged.

c. The defendant is the parent or legal guardian of the minor.

d. The act charged was done for a bona fide medical, scientific, educational, legislative, judicial or law enforcement purpose.

(4) It shall be unlawful for any person to operate an adult bookstore, adult movie house, adult video store, or other form of adult-only enterprise within 1,000 feet of a church, place of worship, church bookstore, public park, public housing project, daycare center, public or private school, college, recreation center, skating rink, video arcade, public swimming pool, private residence, or any other place frequented by minors. Any person who violates this subsection shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than ten thousand dollars (\$10,000) and may also be imprisoned in the county jail for not more than one year.

(5) This subsection shall not be applicable to any video rental store that does not engage predominantly in and whose principle business is not the sale or rental of adult material, if the material is maintained in compliance with Section 13A-12-200.5(2), or is located in an area that is restricted to adults.

(6) If a person is held under this section in the county jail, one-half of any fines collected and due to be deposited to the State General Fund for violations of this section shall be paid by the Comptroller to the general fund of the county where the person is held for the operation of the county jail.

(Acts 1989, No. 89-402, p. 791, §7; Act 98-467, p. 893, §6.)

Section 13A-12-200.6

Extradition of persons charged with violation of this division.

The Governor of this state may demand from the governor of any other state the extradition of any person found in such other state who is charged with any violation of any of the provisions of this division.

(Acts 1989, No. 89-402, p. 791, §8.)

Section 13A-12-200.7

Civil action to enjoin violations; hearing; procedures; precedence over other matters.

(1) When there is reason to believe that any person is violating or is about to violate any of the provisions of this division, the Attorney General or district attorney may initiate a civil action in the circuit court in the name of the State of Alabama against such person for preliminary and permanent injunctive relief, to prevent or enjoin the violation. The Alabama Rules of Civil Procedure shall apply to the extent that such rules are not inconsistent with this section; provided, however, that no temporary restraining order shall be issued pursuant to this section. No bond shall be required of the official bringing the action and the official, the political subdivision and the officers, agents, and employees of the political subdivision shall not be liable for costs or damages, other than court costs, by reason of injunctive orders not being granted or where judgment is entered in favor of the defendant by the trial or an appellate court.

(2) The court shall hold the hearing on the preliminary injunction at the earliest possible time after service of the complaint and motion for preliminary injunction upon the defendant. The defendant shall be given an opportunity to present evidence prior to the issuance of any preliminary injunction. It shall be the duty of the State of Alabama at the hearing to prove by clear and convincing evidence that the violation is being or is about to be committed. The court shall then issue an order granting or denying the preliminary injunction at the earliest possible time after the conclusion of the hearing.

(3) The defendant shall have the right to demand a trial on the merits to begin within 30 days after issuance or denial of the preliminary injunction. The finding of the court regarding the question of whether the material is obscene or harmful to minors at the preliminary injunction stage shall not be binding upon the final order on the merits at trial on the permanent injunction. The court shall reserve the right to reconsider its preliminary findings based upon the evidence or testimony which may be introduced at such trial. The defendant shall be given an opportunity to present evidence prior to the issuance of any permanent injunction. It shall be the duty of the State of Alabama at trial to prove by clear and convincing evidence that the violation is being or is about to be committed. The court shall then issue an order granting or denying the permanent injunction at the earliest possible time after the conclusion of the trial.

(4) If the court enters a final order denying the permanent injunction on the basis that the material is not obscene or harmful to minors, as the case may be, then no contempt shall be found for violation of any preliminary injunction relating thereto. Nothing in this section shall be deemed to authorize a prior restraint of speech in violation of the United States Constitution. Hearings and determinations required pursuant to this section shall take precedence over all other matters, and, in any event such hearings shall be held and determinations made within time limits mandated by the United States Constitution.

(Acts 1989, No. 89-402, p. 791, §9.)

Section 13A-12-200.8

Property subject to forfeiture for violation of this division; procedures; hearing; forfeiture action; action for money judgment.

(a) The following property is subject to forfeiture:

(1) All obscene material and material which is harmful to minors used, intended to be used or obtained in violation of the provisions of this division;

(2) All moneys, negotiable instruments, and funds used, intended to be used, or obtained in any violation of the provisions of this division;

(3) All proceeds or receipts derived from property which is subject to forfeiture pursuant to subdivisions (a)(1) and (a)(2) of this section.

(b) Property taken or detained under this section shall not be subject to replevin but is deemed to be in the custody of the state, county or municipal law enforcement agency subject only to the orders and judgment of the court having jurisdiction over the forfeiture proceedings. When property is seized under this division, the state, county or municipal law enforcement agency may:

(1) Place the property under seal;

(2) Remove the property to a place designated by it; and

(3) In the case of real property or fixtures, post notice of the seizure on the property, and file and record notice of seizure in the probate office.

(c) The following is the procedure regarding the seizure of property subject to forfeiture under subsection (a) of this section:

(1) Property subject to forfeiture may be seized by state, county or municipal law enforcement agencies upon process issued by any court having jurisdiction over the property upon a showing of probable cause; provided, however, that not more than one copy of each expressive material may be seized prior to a judicial determination, after a hearing at which all proper parties have an opportunity to be heard and present evidence, that the expressive material is obscene material or material which is harmful to minors and, in either case, subject to forfeiture under this division.

(2) In the event of seizure, a forfeiture action pursuant to subdivision (c)(4) of this section shall be instituted promptly and within time limits mandated by the United States Constitution.

(3) At any time after seizure, and prior to trial, the state, defendant, owner, or other proper party, may file with the appropriate circuit court, a written demand for an adversary hearing for the purpose of obtaining with regard to expressive material only a preliminary determination of obscenity, harmfulness to minors, and whether the property is subject to forfeiture. Such adversary hearing shall be held as soon as possible. At such adversary hearing, all proper parties shall be given the opportunity to present evidence. It shall be the duty of the State of Alabama at the hearing to prove by clear and convincing evidence that the seized property is subject to forfeiture under subsection (a) herein. The court shall render a decision within time limits mandated by the United States Constitution and, if the court does not find the property to be subject to forfeiture, it shall immediately order the property to be returned. Should the court find the property to be subject to forfeiture, it shall order the property to be retained as evidence. A finding by the court that the property is subject to forfeiture shall not be binding at the trial on the merits.

(4) The Attorney General or district attorney may initiate a forfeiture action in the name of the State of Alabama in the circuit court. The action shall be heard and determined within time limits mandated by the United States Constitution. It shall be the duty of the

State of Alabama at the hearing to prove by clear and convincing evidence that the property should be forfeited. It shall be an affirmative defense to the forfeiture action to the extent of the owner's interest that the owner of the obscene material, material which is harmful to minors, moneys, negotiable instruments, funds, proceeds or receipts, neither consented to nor had knowledge of the acts which would otherwise result in forfeiture. It shall be an affirmative defense to any bona fide lienholder to the extent of the lienholder's interest that the lienholder neither consented to nor had knowledge of the acts which would otherwise result in forfeiture. The defendant shall be given the opportunity to present evidence.

(d) Nothing in this section shall be deemed to authorize a prior restraint of speech in violation of the United States Constitution. All hearings and determinations required pursuant to this section shall be heard and determined within time limits mandated by the United States Constitution.

(e) After trial on the merits, the court shall issue such forfeiture and seizure orders as are proper under the law and facts. The court shall order obscene material and material which is harmful to minors which is forfeited to be destroyed or retained for official law enforcement use. Where the court orders the forfeiture of one copy of an expressive material, it may also order the seizure and forfeiture of all other copies of such expressive material of the defendant which is subject to forfeiture. The court shall further order such moneys, negotiable instruments, funds, proceeds, or receipts, which are forfeited to be (1) distributed directly to the general fund of the state, county or municipality whose enforcement agencies investigated the acts resulting in forfeiture or (2) sold and distributed, after payment of all proper expenses relating to the forfeiture and sale, to the general fund of the state or any county or municipality whose department, office, or agency contributed to the investigation of the acts resulting in forfeiture, based upon the contribution, including expenses, of the department, office, or agency, or agency as determined by the court.

(f) Where any property owned or possessed by a person is subject to forfeiture pursuant to this section but because of any act, omission, or consent by such person the property (1) cannot be located upon the exercise of due diligence, (2) has been transferred or sold to, or deposited with, a third party, (3) has been placed beyond the jurisdiction of the court, (4) has been substantially diminished in value or, (5) has been commingled with other property which cannot be divided without difficulty, and such person knowingly participated either as a principal, aider and abettor, or conspirator in the acts subjecting the property to forfeiture, the Attorney General or district attorney may initiate a civil action in the name of the State of Alabama against such person for forfeiture of a money judgment amount up to the value of and in lieu of the property described in (1) through (5) of this subsection. Such judgment upon satisfaction shall be distributed as provided in subsection (e) of this section.

(Acts 1989, No. 89-402, p. 791, §10.)