

Arkansas
Title 5, Chapter 68
Offenses Generally

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5-68-201. Exhibition of obscene figures.

(a) Every person publicly exhibiting any obscene figures shall be deemed guilty of a misdemeanor.

(b) Every person convicted under the provisions of this section shall be fined in any sum not less than fifty dollars (\$50.00).

History. Rev. Stat., ch. 44, div. 6, art. 2, §§ 2, 3; C. & M. Dig., §§ 2700, 2701; Pope's Dig., §§ 3386, 3387; A.S.A. 1947, §§ 41-3551, 41-3552.

5-68-202. Sale or possession of literature rejected by U.S. mails.

(a) It shall be unlawful for any person, firm, or corporation to sell or to offer for sale, or to have in possession, any magazine, paper, or other literature or printed book, picture, or matter, the shipment or transportation of which has been refused and rejected from the United States mails, or which literature or literature of like character the Government of the United States will not permit to be sold, shipped, or handled.

(b) Any violation of the provisions of this section shall constitute a misdemeanor and, upon conviction, shall subject the offender to a fine of any sum not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100), and each day that this section shall be violated shall constitute a separate offense.

History. Acts 1931, No. 155, §§ 1, 2; Pope's Dig., §§ 3381, 3382; A.S.A. 1947, §§ 41-3556, 41-3557.

5-68-203. Obscene films.

(a) It shall be unlawful for any person knowingly to exhibit, sell, offer to sell, give away, circulate, produce, distribute, attempt to distribute, or have in his possession any obscene film.

(b) As used in this section:

(1) "Person" means any individual, partnership, firm, association, club, corporation, or other legal entity;

(2) "Obscene" means that to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest;

(3) "Film" means motion picture film, still picture film, slides, and movie film of any type.

(c) Any person who knowingly exhibits, sells, offers to sell, gives away, circulates, produces, distributes, or attempts to distribute any obscene film shall be guilty of a felony and upon conviction shall be fined not more than two thousand dollars (\$2,000) or be imprisoned for a period not less than one (1) year nor more than five (5) years, or be both so fined and imprisoned. Any person who shall have in his possession obscene film shall be guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars (\$1,000) or be imprisoned in the county jail for a period not to exceed one (1) year, or both.

History. Acts 1967, No. 411, §§ 1-3; A.S.A. 1947, §§ 41-3578 - 41-3580.

5-68-205. Public display of obscenity.

(a)(1) As used in this subsection,
(A) "Obscene" has the same meaning as it is defined by § [5-68-302](#).

(B) "Obscenity" means an obscene sticker, painting, decal, emblem, or other device which is or contains an obscene writing, description, photograph, or depiction.

(2) A person commits the offense of publicly displaying an obscenity when the person knowingly causes an obscenity to be displayed in a manner which is readily visible to the public and its content or character is distinguishable by normal vision.

(3) Publicly displaying an obscenity is a Class B misdemeanor.

(b)(1) It is unlawful to publicly display obscene material as defined by § [5-68-302](#) on any motor vehicle or wearing apparel.

(2) Violations of this subsection shall be punishable as Class C misdemeanors.

History. Acts 1989, No. 200, § 1; 1989, No. 584, § 1.

5-68-302. Definitions.

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

(1) "Advertising purposes" means purpose of propagandizing in connection with the commercial sale of a product or type of product, the commercial offering of a service, or the commercial exhibition of an entertainment;

(2) "Hard-core sexual conduct" means patently offensive acts, exhibitions, representations, depictions, or descriptions of:

(A) Intrusions, however slight, actual or simulated, by any object, any part of an animal's body, or any part of a person's body into the genital or anal openings of any person's body; or

(B) Cunnilingus, fellatio, anilingus, bestiality, lewd exhibitions of genitals, or excretory functions, actual or simulated;

(3) "Live public show" means a public show in which human beings, animals, or both appear bodily before spectators or customers;

(4) "Obscene material" means that material which:

(A) Depicts or describes in a patently offensive manner sadomasochistic abuse, sexual conduct, or hard-core sexual conduct;

(B) Taken as a whole, appeals to the prurient interest of the average person, applying contemporary statewide standards; and

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

(5) "Obscene performance" means a play, motion picture, dance, show, or other presentation, whether pictured, animated, or live, performed before an audience and which in whole or in part depicts, or reveals, sexual conduct, hard-core sexual conduct, or sadomasochistic abuse, or which includes explicit verbal descriptions or narrative accounts of sexual conduct or hard-core sexual conduct, and which:

(A) Depicts or describes in a patently offensive manner, sadomasochistic abuse, sexual conduct, or hard-core sexual conduct;

(B) Taken as a whole, appeals to the prurient interest of the average person, applying contemporary statewide standards; and

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

(6) "Promote" means to produce, direct, perform in, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, or advertise, for consideration, or to offer or agree to do any of these things for consideration;

(7) "Public show" means any entertainment or exhibition advertised or in some other fashion held out to be accessible to the public or member of a club, regardless of whether an admission or other charge is levied or collected and regardless of whether minors are admitted or excluded;

(8) "Sadomasochistic abuse" means flagellation, mutilation, or torture by or upon a person who is nude or clad in undergarments or in revealing or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed, in a sexual context;

(9) "Sexual conduct" means human masturbation or sexual intercourse.

History. Acts 1981 (Ex. Sess.), No. 28, § 2; A.S.A. 1947, § 41-3585.1.

5-68-303. Promoting obscene materials.

(a) Except as otherwise provided in § [5-68-308](#), a person commits promoting obscene materials if he knowingly promotes, or has in his possession with intent to promote, any obscene material.

(b) As used in this section, "material" means any writing, picture, motion picture, films, slides, drawings, or other visual reproductions.

(c) Promoting obscene materials is a Class D felony.

History. Acts 1981 (Ex. Sess.), No. 28, § 3; A.S.A. 1947, § 41-3585.2.

5-68-304. Promoting obscene performance.

(a) A person commits promoting an obscene performance if he knowingly:
(1) Directs, manages, finances, or presents an obscene performance; or

(2) Promotes any obscene performance, as owner, producer, director, manager, or performer.

(b) Promoting an obscene performance is a Class D felony.

History. Acts 1981 (Ex. Sess.), No. 28, § 4; A.S.A. 1947, § 41-3585.3.

5-68-305. Obscene performance at a live public show.

(a) A person commits an obscene performance at a live public show if he knowingly:

(1) Engages in an obscene performance of sadomasochistic abuse, hard-core sexual conduct, or sexual conduct in a live public show; or

(2) Directs, manages, finances, or presents an obscene performance at a live public show in which the participants engage in sadomasochistic abuse, hard-core sexual conduct, or sexual conduct.

(b) Committing an obscene performance at a live public show is a Class C felony.

History. Acts 1981 (Ex. Sess.), No. 28, § 5; A.S.A. 1947, § 41-3585.4.

5-68-307. Public display of hard-core sexual conduct.

(a) A person commits a public display of hard-core sexual conduct if he knowingly engages in hard-core sexual conduct in an open public place.

(b) Engaging in hard-core sexual conduct in an open public place is a Class D felony.

History. Acts 1981 (Ex. Sess.), No. 28, § 7; A.S.A. 1947, § 41-3585.6.

5-68-403. Definitions.

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

(1) "Mailable matter" means:

(A) Printed or written matter or material having second-class mailing privileges under the laws of the United States; or

(B) Any other printed or written matter or material which has not been determined to be nonmailable under the laws of the United States;

(2) "Obscene" means that to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest;

(3) "Person" means any individual, partnership, firm, association, corporation, or other legal entity;

(4) "Printed or written matter or material" means any book, pamphlet, magazine, periodical, newspaper, picture magazine, comic book, story paper, or other printed or written matter. It does not include written or printed matter or material used by or in any recognized religious, scientific, or educational institution.

History. Acts 1961, No. 261, § 3; A.S.A. 1947, § 41-3564.

5-68-404. Mailable matter subject to provisions of subchapter.

Any mailable matter which is sent or caused to be sent, brought, or caused to be brought into this state for sale or commercial distribution or which in this state is sold, exhibited or commercially distributed, given away, or offered to be given away, by any person with knowledge of the judgment, or is in the possession of any such person with intent to sell or commercially distribute or exhibit or give away or offer to give away, is subject to the provisions of § [5-68-405](#).

History. Acts 1961, No. 261, § 12; A.S.A. 1947, § 41-3573.

5-68-405. Possession, sale, or distribution.

(a) Every person who, with knowledge of its contents, sends or causes to be sent, or brings or causes to be brought, into this state for sale or commercial distribution, or in this state prepares, publishes, sells, exhibits, or commercially distributes, or gives away or offers to give away or has in his possession with intent to sell or commercially distribute or to exhibit or to give away, any obscene printed or written matter or material, other than mailable matter, or any mailable matter known by such person to have been judicially found to be obscene under this subchapter, or who knowingly informs another of when, where, how, or from whom or by what means any of these things can be purchased or obtained, shall be guilty of a felony and upon conviction shall be fined not more than two thousand dollars (\$2,000) or be imprisoned for a period not less than one (1) year nor more than five (5) years, or be both so fined and imprisoned.

(b) Every person who, with knowledge of its contents, has in his possession any obscene printed or written matter or materials, other than mailable matter, or any mailable matter known by that person to have been judicially found to be obscene under this subchapter, shall be guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars (\$1,000) or be imprisoned in the county jail for a period not to exceed one (1) year, or both.

History. Acts 1961, No. 261, § 4; A.S.A. 1947, § 41-3565.

5-68-501. Definitions.

As used in this subchapter, unless the context otherwise requires:
(1) "CD-ROM" means a compact disk which:

(A) Has the capacity to store graphic, audio, video, and written materials; and

(B) May be used by a computer or other device to play or display materials harmful to minors;

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

(A) The average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest in sex to minors;

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

(C) The material or performance lacks serious literary, scientific, medical, artistic, or political value for minors;

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

(A) The character and content of any material described in this section which is reasonably susceptible to examination by the defendant; and

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

(4) "Magnetic disk memory" means a memory system that stores and retrieves binary data on record-like metal or plastic disks coated with a magnetic material, including, but not limited to, hard disk drives and floppy diskettes;

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

(6) "Material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture, film, record, recording tape, CD-ROM disk, magnetic disk memory, magnetic tape memory, video tape, or other media, but does

not include matters displayed, transmitted, retrieved, or stored on the internet or other network for the electronic dissemination of information;

(7) "Minor" means any person under the age of eighteen (18) years;

(8) "Nudity" means the:

(A) Showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering;

(B) Showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or

(C) Depiction of covered male genitals in a discernibly turgid state;

(9) "Performance" means any motion picture, film, video tape, played record, phonograph or tape, preview, trailer, play, show, skit, dance, or other exhibition performed or presented to or before an audience of one (1) or more, with or without consideration, but does not include matters displayed, transmitted, retrieved, or stored on the internet or other network for electronic dissemination of information;

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

(11) "Reasonable bona fide attempt" means an attempt to ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate, or other governmental or educational identification card or paper and not relying solely on the oral allegations or apparent age of the minor;

(12) "Sadomasochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask, or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed;

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

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

History. Acts 1969, No. 133, § 1; A.S.A. 1947, § 41-3581; Acts 1999, No. 1263, § 1.

5-68-502. Unlawful acts.

It shall be unlawful for any person, including, but not limited to, any persons having custody, control, or supervision of any commercial establishment, to knowingly:

(1)(A) Display material which is harmful to minors in such a way that minors, as a part of the invited general public, will be exposed to view such material.

(B) Provided, however, a person shall be deemed not to have displayed material harmful to minors if the lower two-thirds (2/3) of the material is not exposed to view and segregated in a manner that physically prohibits access to the material by minors; or

(2)(A) Sell, furnish, present, distribute, allow to view, or otherwise disseminate to a minor, with or without consideration, any material which is harmful to minors.

(B) Provided, this prohibition shall not apply to:

(i) Any dissemination by a parent, guardian, or relative within the third degree or consanguinity of the minor; or

(ii) Any dissemination with the consent of a parent or guardian of the minor; or

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

(B) Provided, this prohibition shall not apply to:

(i) Any dissemination by a parent, guardian, or relative within the third degree or consanguinity of the minor; or

(ii) Any dissemination with the consent of a parent or guardian of the minor.

History. Acts 1969, No. 133, § 2; A.S.A. 1947, § 41-3582; Acts 1999, No. 1263, § 2; 2003, No. 858, § 1.

5-68-503. Penalties.

Any person violating any provision of this subchapter shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisonment of not less than three (3) months nor more than six (6) months, or both fine and imprisonment.

History. Acts 1969, No. 133, § 3; A.S.A. 1947, § 41-3583.
