

## Maryland

### Title 11 -- Indecency and Obscenity

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#### § 11-101.

(a) In this subtitle the following words have the meanings indicated.

(b) "Advertising purposes" means the purpose of propagandizing in connection with the commercial:

- (1) sale of a product;
- (2) offering of a service; or
- (3) exhibition of entertainment.

(c) "Sadomasochistic abuse" means:

- (1) flagellation or torture committed by or inflicted on an individual who is:
  - (i) nude;
  - (ii) wearing only undergarments; or
  - (iii) wearing a revealing or bizarre costume; or
- (2) binding, fettering, or otherwise physically restraining an individual who is:
  - (i) nude;
  - (ii) wearing only undergarments; or
  - (iii) wearing a revealing or bizarre costume.

(d) "Sexual conduct" means:

- (1) human masturbation;
  - (2) sexual intercourse; or
  - (3) whether alone or with another individual or animal, any touching of or contact with:
    - (i) the genitals, buttocks, or pubic areas of an individual; or
    - (ii) breasts of a female individual.
- (e) "Sexual excitement" means:
- (1) the condition of the human genitals when in a state of sexual stimulation;
  - (2) the condition of the human female breasts when in a state of sexual stimulation; or
  - (3) the sensual experiences of individuals engaging in or witnessing sexual conduct or nudity.

**§ 11-201.**

- (a) In this subtitle the following words have the meanings indicated.
- (b) "Distribute" means to transfer possession.
- (c) "Knowingly" means having knowledge of the character and content of the matter.
- (d) "Matter" means:
  - (1) a book, magazine, newspaper, or other printed or written material;
  - (2) a picture, drawing, photograph, motion picture, or other pictorial representation;
  - (3) a statue or other figure;
  - (4) a recording, transcription, or mechanical, chemical, or electrical reproduction; or
  - (5) any other article, equipment, machine, or material.

- (e) "Sadomasochistic abuse" has the meaning stated in § 11-101 of this title.
- (f) "Sexual conduct" has the meaning stated in § 11-101 of this title.
- (g) "Sexual excitement" has the meaning stated in § 11-101 of this title.

**§ 11-202.**

(a) A person may not:

(1) knowingly send or cause to be sent any obscene matter into the State for sale or distribution;

(2) knowingly bring or cause to be brought any obscene matter into the State for sale or distribution;

(3) in the State prepare, publish, print, exhibit, distribute, or offer to distribute any obscene matter; or

(4) possess any obscene matter in the State with the intent to distribute, offer to distribute, or exhibit.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to:

(1) for a first violation, imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both; and

(2) for each subsequent violation, imprisonment not exceeding 3 years or a fine not exceeding \$5,000 or both.

(c) (1) The State's Attorney may maintain an action for an injunction in the circuit court against a person to prevent the sale, further sale, distribution, further distribution, acquisition, publication, or possession within the State of any book, magazine, pamphlet, newspaper, story paper, writing paper, picture, card, drawing, photograph, motion picture film or showing, or any article, item, or instrument the use of which is obscene.

(2) The circuit court may enjoin the sale or distribution of a book, magazine, motion picture film or showing, or other publication or item that is prohibited under this section from sale or distribution.

(3) After being served a summons and complaint in an action by the State's Attorney under this section, a person who sells, distributes, or acquires the enjoined

material is chargeable with knowledge of the contents of the materials described in this section.

(4) The defendant is entitled to a trial of the issues within 1 day after joinder of issue.

(5) The court shall render a decision within 2 days after the conclusion of the trial.

(6) If an order or judgment is entered in favor of the State's Attorney, the final order or judgment shall contain provisions:

- (i) directing the person to surrender the obscene matter to the peace officer designated by the court or the county sheriff; and
- (ii) directing the peace officer or county sheriff to seize and destroy the obscene matter.

(7) In an action brought under this section, the State's Attorney is not:

- (i) required to file a bond before an injunction order is issued;
- (ii) liable for costs; or
- (iii) liable for damages sustained because of the injunction order if judgment is rendered in favor of the defendant.

### **§ 11-203.**

(a) (1) In this section the following words have the meanings indicated.

(2) "Distribute" includes to rent.

(3) "Illicit sex" means:

- (i) human genitals in a state of sexual stimulation or arousal;
- (ii) acts of human masturbation, sexual intercourse, or sodomy; or
- (iii) fondling or other erotic touching of human genitals.

(4) "Item" means a:

- (i) still picture or photograph;

- (ii) book, pocket book, pamphlet, or magazine;
- (iii) videodisc, videotape, film, or computer disc; or
- (iv) recorded telephone message.

(5) "Obscene" means:

- (i) that the average adult applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest;
- (ii) that the work depicts sexual conduct specified in subsection (b) of this section in a way that is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material; and
- (iii) that the work, taken as a whole, lacks serious artistic, educational, literary, political, or scientific value.

(6) "Partially nude figure" means a figure with:

- (i) less than completely and opaquely covered human genitals, pubic region, buttocks, or female breast below a point immediately above the top of the areola; or
- (ii) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(b) (1) A person may not willfully or knowingly display or exhibit to a minor an item:

- (i) the cover or content of which is principally made up of an obscene description or depiction of illicit sex; or
- (ii) that consists of an obscene picture of a nude or partially nude figure.

(2) A person may not willfully or knowingly engage in the business of displaying, exhibiting, selling, showing, advertising for sale, or distributing to a minor an item:

- (i) the cover or content of which is principally made up of an obscene description or depiction of illicit sex; or
- (ii) that consists of an obscene picture of a nude or partially nude figure.

(3) If a newsstand or other place of business is frequented by minors, the owner, operator, franchisee, manager, or an employee with managerial responsibility may

not openly and knowingly display at the place of business an item whose sale, display, exhibition, showing, or advertising is prohibited by paragraph (2) of this subsection.

(c) The provision of services or facilities by a telephone company under a tariff approved by the Public Service Commission is not a violation of subsection (b) of this section relating to recorded telephone messages.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is subject to:

(1) for a first violation, imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both; and

(2) for each subsequent violation, imprisonment not exceeding 3 years or a fine not exceeding \$5,000 or both.

#### **§ 11-204.**

(a) This section applies only in Allegany, Anne Arundel, Charles, Howard, Somerset, Wicomico, and Worcester counties.

(b) (1) A person may not prepare, give, direct, present, perform or participate in an obscene performance, exhibition, drama, play, show, dancing exhibition, tableau, or other entertainment in which individuals perform or participate live in an obscene manner in the presence of individuals who have paid any kind of consideration to observe the exhibition or performance.

(2) An owner, lessee, or manager of a building, garden, place, room, structure, or theater may not knowingly allow or assent to the use of the premises for the types of exhibitions prohibited by paragraph (1) of this subsection.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is subject to:

(1) for a first violation, imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both; and

(2) for each subsequent violation, imprisonment not exceeding 3 years or a fine not exceeding \$5,000 or both.

#### **§ 11-205.**

(a) A person may not knowingly:

(1) write or create advertising or otherwise promote the sale or distribution of matter the person represents or holds out to be obscene; or

(2) solicit the publication of advertising that promotes the sale or distribution of matter the person represents or holds out to be obscene.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to:

(1) for a first violation, imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both; and

(2) for each subsequent violation, imprisonment not exceeding 3 years or a fine not exceeding \$5,000 or both.

**§ 11-206.**

(a) (1) A person may not knowingly require a purchaser or consignee to receive obscene matter as a condition to a sale, allocation, consignment, or delivery for resale of a paper, magazine, book, periodical, publication, or other merchandise.

(2) In response to a person's return of or failure to accept obscene matter, a person may not knowingly:

(i) deny or revoke a franchise;

(ii) threaten to deny or revoke a franchise; or

(iii) impose a financial or other penalty.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to:

(1) for a first violation, imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both; and

(2) for each subsequent violation, imprisonment not exceeding 3 years or a fine not exceeding \$5,000 or both.

**§ 11-211.**

When the conviction of a person for a violation of this subtitle becomes final, the court may order the destruction of any matter or advertisement that was the basis of the person's conviction and that remains in the possession or under the control of the court, the State, or a law enforcement unit.

