

Minnesota obscenity statute

617.241 Obscene materials and performances; distribution and exhibition prohibited; penalty.

Subdivision 1. **Definitions.**

For purposes of this section, the following terms have the meanings given them:

- (a) "Obscene" means that the work, taken as a whole, appeals to the prurient interest in sex and depicts or describes in a patently offensive manner sexual conduct and which, taken as a whole, does not have serious literary, artistic, political, or scientific value. In order to determine that a work is obscene, the trier of fact must find:
 - (i) that the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest in sex;
 - (ii) that the work depicts sexual conduct specifically defined by clause (b) in a patently offensive manner; and
 - (iii) that the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

- (b) "Sexual conduct" means any of the following:
 - (i) An act of sexual intercourse, normal or perverted, actual or simulated, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal.
 - (ii) Sadoomasochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a sexually revealing costume or the condition of being fettered, bound, or otherwise physically restricted on the part of one so clothed or who is nude.
 - (iii) Masturbation, excretory functions, or lewd exhibitions of the genitals including any explicit, close-up representation of a human genital organ.
 - (iv) Physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

- (c) "Community" means the political subdivision from which persons properly qualified to serve as jurors in a criminal proceeding are chosen.

- (d) "Work" means "material" or "performance."

- (e) "Material" means a book, magazine, pamphlet, paper, writing, card, advertisement, circular, print, picture, photograph, motion picture film, videotape, script, image, instrument, statue, drawing, or other article.

(f) "Performance" means a play, motion picture, dance, or other exhibition performed before an audience.

Subd. 2. Crime.

It is unlawful for a person, knowing or with reason to know its content and character, to:

- (a) exhibit, sell, print, offer to sell, give away, circulate, publish, distribute or attempt to distribute any obscene material; or
- (b) produce, present, participate in, or direct an obscene performance.

Subd. 3. Penalty.

A person violating subdivision 2 is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year, or to payment of a fine of not more than \$3,000, or both.

Subd. 4. Second or subsequent violations.

Whoever violates the provisions of subdivision 2 within five years of a previous conviction under that subdivision is guilty of a felony and may be sentenced to imprisonment for not more than two years, or to payment of a fine of not more than \$10,000, or both.

617.243 Indecent literature, distribution.

Subdivision 1. Prohibited activity.

No person, copartnership or corporation shall, as a condition to a sale or delivery for resale of any paper, magazine, book, comic, periodical or publication, require that the purchaser or consignee receive for resale any other article, book, comic or other publication reasonably believed by the purchaser or consignee to be obscene as defined in section 617.241.

Subd. 2. Penalty.

A violation of subdivision 1 is a gross misdemeanor.

617.25 Indecent articles and information.

Every person who shall sell, lend, or give away, or in any manner exhibit, or offer to sell, lend, or give away, or have in possession with intent to sell, lend, give away, or advertise or offer for sale, loan, or distribution, any instrument or article, or any drug or medicine for causing unlawful abortion; or shall write or print, or cause to be written or printed, a card, circular, pamphlet, advertisement, or notice of any kind, or

shall give oral information, stating when, where, how, or whom, or by what means such article or medicine can be obtained or who manufactures it, shall be guilty of a gross misdemeanor and punished by imprisonment in the county jail for not more than one year or by a fine of not more than \$3,000 or by both.

617.251 Sale of articles relating to prevention of conception or disease.

Instruments, articles, drugs or medicines for the prevention of conception or disease may be sold, offered for sale, distributed or dispensed only by persons or organizations recognized as dealing primarily with health or welfare. Anyone convicted of violation of this section shall be guilty of a gross misdemeanor and punished by imprisonment not to exceed one year or by a fine of not more than \$3,000 or both.

617.26 Mailing and carrying obscene matter.

Every person who shall deposit or cause to be deposited in any post office in the state, or place in charge of any express company or other common carrier or person for transportation, any of the articles or things specified in section 617.241 or 617.25, or any circular, book, pamphlet, advertisement or notice relating thereto, with the intent of having the same conveyed by mail, express, or in any other manner; or who shall knowingly or willfully receive the same with intent to carry or convey it, or shall knowingly carry or convey the same by express, or in any other manner except by United States mail, shall be guilty of a misdemeanor. The provisions of this section and section 617.25 shall not be construed to apply to an article or instrument used by physicians lawfully practicing, or by their direction or prescription, for the cure or prevention of disease.

617.27 Search warrant; destruction of property.

A district court, upon complaint under oath that any person has in possession or under control any of the obscene books, papers, or other matter specified in sections 617.241 to 617.26, shall issue a warrant directed to the sheriff or any constable of the county, directing the sheriff or constable to search for, seize, and take possession of the obscene matter. Upon conviction of the person in whose possession the obscene matter was found, the judge shall cause it to be destroyed, and the fact to be entered upon the records of the court.

617.28 Certain medical advertisements.

Subdivision 1. Placing advertisement; penalty.

Any person who shall advertise, in the person's own name or in the name of another person, firm or pretended firm, association, corporation or pretended corporation, in any newspaper, pamphlet, circular, or other written or printed paper, or the owner, publisher, or manager of any newspaper or periodical who shall permit to be inserted

or published in any newspaper or periodical owned or controlled by the owner, publisher, or manager, the treatment or curing of venereal diseases, the restoration of "lost virility" or "lost vitality," or shall advertise in any manner that the person is a specialist in diseases of the sexual organs, or diseases caused by sexual weakness, self-abuse, or excessive sexual indulgence, or in any disease of like causes, or who shall advertise in any manner any medicine, drug compound, appliance or any means whatever whereby it is claimed that sexual diseases of men and women may be cured or relieved, or miscarriage or abortion produced, shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than \$50 nor more than \$3,000 or by imprisonment in the county jail for not more than six months.

Subd. 2. Publication; penalty.

Any person publishing, distributing, or causing to be distributed or circulated, any of the advertising matter hereinabove prohibited, shall be guilty of a misdemeanor and punished as prescribed in subdivision 1.

617.29 Evidence.

The production of any advertisement or advertising matter published or distributed contrary to the provisions of this section and section 617.28 shall be of itself prima facie evidence of the guilt of the person advertising to cure any such disease hereinabove mentioned, or of the publishers who publish any matter such as is herein prohibited.

617.291 Sexually explicit material and exhibitions; purpose and policy of the legislature.

Subdivision 1. Finding.

The legislature finds that sexually explicit materials and exhibitions presented before an audience are harmful to minors.

Subd. 2. Best interest.

It is in the best interest of the health, welfare, and safety of the citizens of this state, and especially of minors within the state, that commercial dissemination, and dissemination without monetary consideration in a place of public accommodation, of sexually explicit written, photographic, printed, sound or published materials, and of plays, dances, or other exhibitions presented before an audience, that are deemed harmful to minors, be restricted to persons over the age of 17 years; or, if available to minors under the age of 18 years, that the availability of the materials be restricted to sources within established and recognized schools, churches, museums, medical clinics and physicians, hospitals, public libraries, or government sponsored organizations.

617.292 Definitions.

Subdivision 1. Scope.

As used in sections 617.291 to 617.297 the terms defined in this section have the meanings given them.

Subd. 2. Minor.

"Minor" means any person under the age of 18 years.

Subd. 3. Nudity.

"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 thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

Subd. 4. Sexual conduct.

"Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's unclothed genitals, pubic area, buttocks or, if such a person be a female, her breast.

Subd. 5. Sexual excitement.

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

Subd. 6. Sadomasochistic abuse.

"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.

Subd. 7. Harmful to minors.

"Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:

- (1) predominantly appeals to the prurient, shameful or morbid interest of minors, and
- (2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and
- (3) is utterly without redeeming social importance for minors.

Subd. 8. **Knowingly.**

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

- (1) the character and content of any material which is reasonably susceptible of examination by the defendant, and
- (2) the age of the minor, provided however that an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.

617.295 Exemptions.

The following are exempt from criminal or other action hereunder:

- (a) Recognized and established schools, churches, museums, medical clinics and physicians, hospitals, public libraries, governmental agencies or quasi governmental sponsored organizations, and persons acting in their capacity as employees or agents of such organization.

For the purpose of this section "recognized and established" shall mean an organization or agency having a full time faculty and diversified curriculum in the case of a school; a church affiliated with a national or regional denomination; a licensed physician or psychiatrist or clinic of licensed physicians or psychiatrists; and in all other exempt organizations shall refer only to income tax exempted organizations which are supported in whole or in part by tax funds or which receive at least one-third of their support from publicly donated funds.

617.296 Penalties; injunctive remedies.

Subdivision 1. **Gross misdemeanor.**

Except as otherwise provided in subdivision 1a, a violation of any provision of sections 617.291 to 617.297 is a gross misdemeanor.

Subd. 1a. **Penalty for display of harmful materials.**

A violation of section 617.293, subdivision 2, is a misdemeanor.

Subd. 2. **Temporary restraining order or temporary injunction.**

Whenever any county attorney, or the attorney general of this state, has reasonable cause to believe that any person within this state is violating sections 617.291 to 617.297, the prosecuting attorney may by verified petition seek a temporary restraining order or temporary injunction in the district court in the county in which

the alleged violation occurred. No temporary restraining order or preliminary injunction shall be issued without a prior show cause notice of hearing to the respondents named in the petition, and an opportunity for the respondents to be heard. Personal service of the show cause order and of the petition made as in civil actions on the named respondents, or upon any of their employees or agents found within the state, shall constitute sufficient notice. Such show cause order for hearing may be returnable on the third day from the date of service as to a respondent who is present in this state, and on the fifth day as to a person not a resident or not found within this state.

617.297 Evidence of adherence to motion picture rating system.

In any proceeding or prosecution involving the exhibitor or owner of any motion picture theatre, evidence of compliance or noncompliance with and adherence to a rating system recognized in the motion picture industry is admissible.

617.298 Obscene motion pictures at drive-in theaters; definitions.

Subdivision 1. **Definitions.**

For the purposes of this section and section 617.299, the terms defined in this section have the meanings given them.

Subd. 2. **Obscene.**

"Obscene" has the meaning given to it in section 617.241.

Subd. 3. **Nudity.**

"Nudity" means the showing of the human male or female genitals, pubic areas, or buttocks with less than a fully opaque covering, or the showing of an uncovered, or less than opaquely covered, female breast below a point immediately above the top of the nipple, or the breast with the nipple and immediately adjacent area only covered.

617.299 Obscene motion pictures; prohibiting exhibition at drive-in theaters.

Subdivision 1. **Misdemeanor.**

Subject to the exemptions of section 617.295, a person who exhibits an obscene motion picture at a drive-in theatre is guilty of a misdemeanor.

Subd. 2. **Penalty enhancement.**

Whoever violates the provisions of subdivision 1 within two years of a previous conviction shall be sentenced to imprisonment for not less than 20 days nor more than one year and to payment of a fine of not more than \$3,000.