

## Tennessee

The Tennessee obscenity law can be found through the state's [java-based searchable database](#). Click on Title 39 (Criminal offenses), then Chapter 17 (Offenses against public health), and Part 9 (Obscenity).

### **Title 39, Criminal Offenses Chapter 17, Offenses against public health 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": a person is deemed to have constructive knowledge of the contents of material who has knowledge of facts which 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 and/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 §§ [39-17-901](#) - 39-17-917;

(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 thereof 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 which 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.

[Acts 1989, ch. 591, § 1; 1990, ch. 1092, §§ 1-3.]

**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 such 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 such person is a minor under eighteen (18) years of age, or while in possession of such facts that the person should reasonably know that such person is a minor under eighteen (18) years of age. However, this section shall not apply to those acts which are prohibited by §§ [39-17-1003](#) - [39-17-1005](#).

(c) (1) A violation of subsection (a) is a Class A misdemeanor, and, in addition thereto, any corporation or business entity which violates the provisions of 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 such second or subsequent violation occurs after a conviction has been obtained for the previous such 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 such corporation or entity.

(d) A violation of subsection (b) is a Class E felony, and, in addition thereto, 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.

[Acts 1989, ch. 591, § 1; 1990, ch. 1092, § 4; 1991, ch. 469, § 1; 1996, ch. 1070, § 1.]

**39-17-903. Seizure of obscene materials - Warrant - Disposition of seized materials.**

(a) Upon a showing of probable cause that the obscenity laws of this state are being violated, any judge or magistrate shall be empowered to issue a search warrant in accordance with the general law pertaining to searches and seizures in this state. The warrant shall authorize or designate a law enforcement officer to enter upon the premises where alleged violations of the obscenity laws are being carried on and take into custody one (1) example of each piece of matter which is obscene. Return on the search shall be in the manner prescribed generally for searches and seizures in the state of Tennessee, except that matter that is seized shall be retained by the district attorney general to be used as evidence in any legal proceeding in which the matter is in issue or involved.

(b) When a search and seizure takes place in accordance with this section, any person aggrieved by such search and seizure, or claiming ownership of the matter seized, may file a motion in writing with the court of record in the jurisdiction in which the search and seizure took place, contesting the legality of the search and seizure or the fact of the obscenity of the matter seized. The court shall set a hearing within one (1) day after the request therefor, or at such time as the requesting party might agree. In the event the court finds that the search and seizure was illegal or if the court or any other court of competent jurisdiction shall determine that the matter is not obscene, the matter shall be forthwith returned to the person and to the place from which it was taken.

[Acts 1989, ch. 591, § 1.]

**39-17-904. Destruction of material upon conviction.**

Upon the conviction of the accused, the court may, when the conviction becomes final, order any matter of advertisement, in respect whereof the accused stands convicted, and which remains in the possession or under the control of the district attorney general or any law enforcement agency to be destroyed, and the court may cause to be destroyed any such material in its possession or under its control.

[Acts 1989, ch. 591, § 1.]

### **39-17-905. Temporary restraining orders and injunctions - Trial - Judgment - Review.**

(a) The circuit, chancery, or criminal courts of this state and the chancellors and judges thereof shall have full power, authority, and jurisdiction, upon application by sworn detailed petition filed by the district attorney general within their respective jurisdictions, to issue any and all proper temporary restraining orders, temporary and permanent injunctions, and any other writs and processes appropriate to carry out and enforce the provisions of §§ [39-17-901](#) - [39-17-908](#). However, this section shall not be construed to authorize the issue of ex parte temporary injunctions preventing further regularly scheduled exhibition of motion picture films by commercial theaters, such injunction to issue only upon at least one (1) day's notice, but the court may immediately forbid the removing, destroying, deleting, splicing, amending or otherwise altering the matter alleged to be obscene.

(b) The person to be enjoined shall be entitled to trial of the issues within two (2) days after joinder of issue, and a decision shall be rendered by the court within two (2) days of the conclusion of the trial. In order to facilitate the introduction of evidence at any hearing as provided in this section, the court is hereby empowered to order defendants named in any proceeding set out in this section to produce one (1) copy of the matter alleged to be obscene, along with necessary viewing equipment, in open court at the time of the hearing or at any other time agreed upon by the parties and the court. In proceedings under this section, there shall be no right to trial by jury. If the defendant in any suit for injunction filed under the terms of this section shall fail to answer or otherwise join issue within twenty (20) days after the filing of a petition for injunction, the court, on motion of the district attorney general, shall enter a general denial for the defendant, and set a date for hearing on the questions raised in the petition for injunction within ten (10) days following the entry of the denial entered by the court, and the court shall render its decision within two (2) days after the conclusion of that hearing.

(c) In the event that a final order or judgment of injunction is entered against the person sought to be enjoined, such final order or judgment shall contain a provision directing the person to surrender to the clerk of the court of the county in which the proceedings were brought any of the obscene matter in the person's possession, and the clerk shall be directed to hold the matter in the clerk's possession to be used as evidence in any criminal proceedings in which the matter is in issue, but if no indictment is returned concerning the matter within six (6) months of the entry of final order, the clerk shall destroy the matter.

(d) Any party, including the district attorney general, shall be entitled to an appeal from an adverse decision of the court. The granting of an appeal shall have the effect of staying or suspending any order to destroy but not an order to seize such matter, nor shall the granting of an appeal suspend any permanent injunction granted by the trial court.

[Acts 1989, ch. 591, § 1.]

### **39-17-906. Remedies supplementary.**

(a) The remedies and procedures set out in §§ [39-17-901](#) - [39-17-908](#) are supplementary to each other and no remedy shall be construed as excluding or prohibiting the use of any other remedy.

(b) Except as expressly provided in this part, the provisions of §§ [39-17-901](#) - [39-17-908](#) shall not be construed as repealing any provisions of any other statute, but shall be supplementary thereto and cumulative thereto.

[Acts 1989, ch. 591, § 1.]

### **39-17-907. Restrictions on showings.**

(a) It is unlawful for any person to exhibit for public consumption, whether or not such exhibition is for compensation, any motion picture, film, movie, or videotape which depicts sexual conduct as defined in § [39-17-901](#), unless such exhibition is within a theater auditorium or other enclosed area which effectively removes such exhibition from the view of members of the public who are not voluntarily engaged in viewing such motion picture, film, movie, or videotape.

(b) Each theater at which two (2) or more motion pictures are shown in the same building shall maintain adequate supervision of the customers to prevent minors from purchasing a ticket or admission pass to a motion picture designated by the rating board of the Motion Picture Association of America by the letter "G" for general audiences or "PG" for all ages, parental guidance advised, and then viewing a motion picture designated "R" for restricted audiences, persons under eighteen (18) years of age not admitted unless accompanied by parent or adult guardian, or "X," persons under eighteen (18) years of age not admitted.

(c) A violation of this statute is a Class A misdemeanor.

[Acts 1989, ch. 591, § 1.]

**39-17-908. Enforcement - Initiation of criminal actions - Civil proceedings.**

(a) Criminal action shall commence only on criminal indictment or the issuance of a warrant by a judge of any court of record; provided, that such commencement of any criminal action shall be made only with the prior knowledge and written approval of the district attorney general or any assistant district attorney general.

(b) The provisions of §§ [39-17-901](#) - [39-17-908](#) may be enforced by either criminal actions or by actions for injunctive relief, or both, and such actions may be commenced simultaneously and proceed independently of each other.

[Acts 1989, ch. 591, § 1.]

**39-17-911. Sale, loan or exhibition of material to minors.**

(a) It is unlawful for any person to knowingly sell or loan for monetary consideration or otherwise exhibit or make available to a minor:

(1) Any picture, photograph, drawing, sculpture, motion picture film, video game, computer software game, or similar visual representation or image of a person or portion of the human body, which depicts nudity, sexual conduct, excess violence, or sado-masochistic abuse, and which is harmful to minors; or

(2) Any book, pamphlet, magazine, printed matter, however reproduced, or sound recording, which contains any matter enumerated in subdivision (a)(1), or which contains explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, excess violence, or sado-masochistic abuse, and which is harmful to minors.

(b) It is unlawful for any person to knowingly exhibit to a minor for monetary consideration, or to knowingly sell to a minor an admission ticket or pass or otherwise admit a minor to premises whereon there is exhibited a motion picture, show or other presentation which, in whole or in part, depicts nudity, sexual conduct, excess violence, or sado-masochistic abuse, and which is harmful to minors.

(c) A violation of this section is a Class A misdemeanor.

(d) It is an affirmative defense to prosecution under this section that the minor to whom the material or show was made available or exhibited was, at the time, accompanied by the person's parent or legal guardian, or by an adult with the written permission of the parent or legal guardian.

[Acts 1989, ch. 591, § 1; 2000, ch. 763, § 1.]

**39-17-914. Display for sale or rental of material harmful to minors.**

(a) It is unlawful for a person to display for sale or rental a visual depiction, including a videocassette tape or film, video game, computer software game, or a written representation, including a book, magazine or pamphlet, which contains material harmful to minors anywhere minors are lawfully admitted.

(b) The state has the burden of proving that the material is displayed. Material is not considered displayed under this section if:

(1) The material is:

(A) Placed in "binder racks" that cover the lower two thirds ( $\frac{2}{3}$ ) of the material and the viewable one third ( $\frac{1}{3}$ ) is not harmful to minors;

(B) Located at a height of not less than five and one half feet ( $5\frac{1}{2}'$ ) from the floor; and

(C) Reasonable steps are taken to prevent minors from perusing the material;



(2) The material is sealed, and, if it contains material on its cover which is harmful to minors, it must also be opaquely wrapped;

(3) The material is placed out of sight underneath the counter; or

(4) The material is located so that the material is not open to view by minors and is located in an area restricted to adults;

(5) Unless its cover contains material which is harmful to minors, a video cassette tape or film is not considered displayed if it is in a form that cannot be viewed without electrical or mechanical equipment and such equipment is not being used to produce a visual depiction; or

(6) In a situation if the minor is accompanied by the minor's parent or guardian, unless the area is restricted to adults as provided for in subdivision (b)(4).

(c) A violation of this section is a Class C misdemeanor for each day the person is in violation of this section.

[Acts 1989, ch. 591, § 1; 1990, ch. 1092, § 5; 2000, ch. 763, § 2.]

**39-17-918. Massage or exposure of erogenous areas.**

(a) As used in this section, unless the context otherwise requires:

(1) "Compensation" means payment, loan, advance, contribution, deposit, or gift of money or anything of value;

(2) "Erogenous area" means the pubic area, penis, scrotum, vulva, vagina, perineum, anus or breast;

(3) "Massage" means the art of body massage, by hand or with a mechanical or vibratory device, for the purpose of massaging, reducing, or contouring the body, and may include the use of oil rubs, heat lamps, hot and cold packs, tub, shower or cabinet baths. The procedures involved include, but are not limited to, touching, stroking, kneading, friction, vibration, percussion and medical gymnastics; and

(4) "Masseur" or "masseuse" means a person engaged in the activities set forth in subdivision (a)(3).

(b) It is unlawful for a masseur or masseuse to expose such masseur's or masseuse's erogenous area for compensation or to touch with any part of such masseur's or masseuse's body, or fondle in any manner or massage an erogenous area for compensation. The provisions of this section shall not apply to any person authorized by the laws of this state to practice any branch of medicine, surgery, osteopathy, chiropractic or chiropody, any person holding a drugless practitioner's certificate or any person licensed as a physical therapist, while such person is acting within the scope of the license.

(c) A violation of this section is a Class A misdemeanor.

[Acts 1989, ch. 591, § 1.]

### **39-17-919. Injunctions.**

(a) If the district attorney general is of the opinion that § [39-17-911](#) or § [39-17-914](#) is being violated, the district attorney general may file a petition in a circuit, chancery or criminal court of that district relating the opinion, and request the court to issue a temporary restraining order or a temporary injunction enjoining the person named in the petition from removing the material in question from the jurisdiction of the court pending an adversary hearing on the petition.

(b) If a temporary restraining order or, after notice, a temporary injunction is so issued, the person enjoined shall answer within the time set by the court, which time shall be set by the court at not more than sixty (60) days.

(c) The adversary hearing on the petition shall be held within two (2) days after the joinder of issues.

(d) At the conclusion of the hearing, or within two (2) days thereafter, the court will determine whether or not the material in question is in violation of § [39-17-911](#) or § [39-17-914](#).

(e) (1) On a finding of a violation, the court shall grant a temporary injunction or continue its injunction in full force and effect for a period not to exceed forty-five (45) days or until an indictment on the matter has been submitted to the grand jury.

(2) If forty-five (45) days elapse and the grand jury has taken no action, the injunction terminates.

(3) The injunction also terminates on the grand jury returning a no true bill.

(f) On the return of a true bill of indictment, the court shall order the material in question delivered into the hands of the court clerk or district attorney general, there to be held as evidence in the case.

**39-17-920. Issuance of process.**

No process, except as otherwise provided, shall be issued for the violation of § [39-17-911](#) or § [39-17-914](#) unless it is issued upon the application of the district attorney general of the district.

[Acts 1990, ch. 1092, § 10.]