

NORTH CAROLINA GENERAL ASSEMBLY
1971 SESSION

CHAPTER 405
SENATE BILL 29

AN ACT PROHIBITING THE DISSEMINATION OF OBSCENITY.

The General Assembly of North Carolina do enact:

Section 1. Chapter 14, Article 26, of the General Statutes is hereby amended to add the following new sections which shall read as follows:

"§ 14-190.1. Obscene literature and exhibitions. — (a) It shall be unlawful for any person, firm or corporation to intentionally disseminate obscenity in any public place. A person, firm or corporation disseminates obscenity within the meaning of this Article if he or it:

- (1) sells, delivers or provides or offers or agrees to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene; or
- (2) presents or directs an obscene play, dance or other performance or participates directly in that portion thereof which makes it obscene; or
- (3) publishes, exhibits or otherwise makes available anything obscene; or
- (4) exhibits, broadcasts, televises, presents, rents, sells, delivers, or provides; or offers or agrees to exhibit, broadcast, televise, present, rent or to provide; any obscene still or motion picture, film, filmstrip, or projection slide, or sound recording, sound tape, or sound track, or any matter or material of whatever form which is a representation, embodiment, performance, or publication of the obscene.

(b) For purposes of this Article any material is obscene if:

- (1) the dominant theme of the material taken as a whole appeals to the prurient interest in sex; and,
- (2) the material is patently offensive because it affronts contemporary national community standards relating to the description or representation of sexual matters; and,
- (3) the material is utterly without redeeming social value; and,
- (4) the material as used is not protected or privileged under the Constitution of the United States or the Constitution of North Carolina.

(c) Obscenity shall be judged with reference to ordinary adults except that it shall be judged with reference to children or other especially susceptible audiences if it appears from the character of the material or the circumstances of its dissemination to be especially designed for or directed to such children or audiences. In any prosecution for an offense involving dissemination of obscenity under this Article, evidence shall be admissible to show:

- (1) the character of the audience for which the material was designed or to which it was directed;
- (2) whether the material is published in such a manner that an unwilling adult could not escape it;
- (3) whether the material is exploited so as to amount to pandering;
- (4) what the predominant appeal of the material would be for ordinary adults or a special audience, and what effect, if any, it would probably have on the behavior of such people;

- (5) artistic, literary, scientific, educational or other social value, if any, of the material;
- (6) the degree of public acceptance of the material throughout the United States;
- (7) appeal to prurient interest, or absence thereof, in advertising or in the promotion of the material.

Expert testimony and testimony of the author, creator or publisher relating to factors entering into the determination of the issue of obscenity shall also be admissible.

(d) It shall be unlawful for any person, firm or corporation to knowingly and intentionally create, buy, procure or possess obscene material with the purpose and intent of disseminating it unlawfully.

(e) It shall be unlawful for a person, firm or corporation to advertise or otherwise promote the sale of material represented or held out by said person, firm or corporation as obscene.

(f) Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor and, unless a greater penalty is expressly provided for in this Article, shall be fined or imprisoned in the discretion of the court.

"§ 14-190.2. Adversary hearing prior to seizure. — (a) The purpose of this section is to provide an adversary determination of the question of whether books, magazines, motion pictures or other materials are obscene prior to their seizure.

(b) The public policy of this State requires that all proceedings prescribed in this section shall be examined, heard and disposed of with the maximum promptness and dispatch commensurate with the Constitution of the United States and the Constitution of North Carolina.

(c) Whenever any law enforcement officer has reasonable cause to believe that any person, firm or corporation is engaged in the sale, display, distribution or dissemination in a public place of any books, magazines, motion pictures or other materials which are obscene within the meaning of G.S. 14-190.1, he shall, without seizing such material, notify the solicitor for the judicial district in which such material is so believed to be offered. Upon receiving such notification the solicitor for said judicial district shall submit a written complaint to any resident judge of the superior court division of the General Court of Justice or any judge of the district court division of the General Court of Justice, to which shall be attached, if available without purchase or seizure, a true copy of the allegedly obscene material. The complaint shall:

- (1) be directed against the person, firm or corporation believed to be engaged in the sale, display, distribution or dissemination in a public place of the material alleged to be obscene and against such material by name, description, volume and issue as appropriate;
- (2) allege that such material is obscene within the meaning of G.S. 14-190.1;
- (3) designate as respondent the person, firm or corporation believed to be engaged in the sale, display, distribution or dissemination in a public place of the material alleged to be obscene within the said judicial district;
- (4) seek an adjudication that said material is obscene;
- (5) seek a temporary restraining order prohibiting the respondent from removing, causing, or permitting to be removed the material alleged to be obscene within the meaning of G.S. 14-190.1; and,
- (6) seek a warrant to search for and seize said material as obscene within the meaning of G.S. 14-190.1.

(d) Upon receipt of such complaint from the solicitor, the judge shall:

- (1) issue a summons to be served upon the respondent which shall be in the same form prescribed for warrants in G.S. 15-20, except that it shall summon the respondent to appear before the said judge at a stated time not less than two days, including the day of service, and not more than four

- days, including the day of service, after service of the summons, and to show cause why the said material should not be declared obscene and a warrant issued authorizing a search for and seizure of said material;
- (2) issue a subpoena as provided for under G.S. 1A-1, Rule 45 of the Rules of Civil Procedure commanding the respondent to produce copies of all items of said material not attached to the complaint in order that a complete adversary hearing may be held on the question of whether said material should be declared obscene and a warrant issued authorizing a search for and seizure of said material;
 - (3) issue a temporary restraining order prohibiting the respondent from removing, causing, or permitting to be removed the material which is alleged to be obscene within the meaning of G.S. 14-190.1; provided, however, that such temporary restraining order shall not be construed as prohibiting the respondent from conducting sales in the normal course of business only, so long as at least one copy of each item alleged in the complaint to be obscene is retained for evidentiary purposes at the said hearing;
 - (4) insure that any and all hearings held pursuant to this section are designed to focus searchingly upon the issue of whether the said material is obscene within the meaning of G.S. 14-190.1, and that the rights of the respondent to counsel, to confrontation and cross-examination of witnesses for the State, to present witnesses including expert witnesses in his own behalf, and all other rights granted the respondent by the Constitution of the United States or the Constitution of North Carolina are protected, and;
 - (5) render a decision on the issue of whether said material is obscene within the meaning of G.S. 14-190.1 within two days, excluding the final day of said hearing, after the conclusion of any hearing held under the authority of this section.

(e) In the event that the judge fails to find the material involved is obscene within the meaning of G.S. 14-190.1, he shall enter judgment accordingly and dismiss the complaint. Should the respondent fail to appear or the judge find that said material is obscene within the meaning of G.S. 14-190.1, the judge involved shall enter judgment accordingly and issue a warrant to search for and seize said material. The warrant shall describe with reasonable certainty the person, premises or other place to be searched and the material for which the search is to be made and which is to be seized. The warrant must be signed by the issuing judge and bear the date and hour of its issuance above his signature.

(f) No judgment or subsequent order of enforcement thereof, entered pursuant to the provisions of this section, shall be of any force and effect outside the judicial district in which entered; and no such order or judgment shall be res judicata in any proceeding in any other judicial district. Further, evidence of any hearing held pursuant to this section shall not be competent or admissible in any criminal action for the violation of any other section of this Article; provided, however, that where a violation involving the dissemination of obscenity under other sections of this Article is charged as having occurred subsequent to such hearing, having involved the same materials declared obscene under the provisions of this section, and the same party who was respondent in such hearing, then evidence of such hearing shall be competent and admissible as bearing on the issue of scienter only.

(g) Any respondent described in this section who shall violate any provision of this section or any order issued under any provision of this section shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court.

(h) Nothing in this section shall be construed as preventing any law enforcement officer from arresting any person when that person is charged under a proper warrant or indictment with a criminal violation of this Article, or when that person has committed a crime in the

presence of the officer, or when the officer has reasonable grounds to believe that that person has committed a crime in his presence. Neither shall anything in this section be construed as prohibiting any law enforcement officer from seizing for evidentiary purposes single copies of any books, magazines, or other printed material, which he reasonably believes to be obscene within the meaning of G.S. 14-190.1, when such seizure is made pursuant to a lawful arrest.

"§ 14-190.3. Exhibition of obscene pictures; posting of advertisements. — If any person, firm or corporation shall intentionally disseminate in any public place any motion picture which he or it knows or reasonably should know to be obscene within the meaning of G.S. 14-190.1; or, if any person, firm or corporation shall intentionally post any placard, writings, pictures, or drawings, which he or it knows or reasonably should know to be obscene within the meaning of G.S. 14-190.1, on walls, fences, billboards, or other public places; or, if any person, firm or corporation shall intentionally permit any exhibition or show, which he or it knows or reasonably should know to be obscene within the meaning of G.S. 14-190.1, to be conducted in any public place owned or controlled by said person, firm or corporation; the person, firm or corporation performing either one or all of the said acts shall be guilty of a misdemeanor and unless a greater penalty is expressly provided for in this Article, shall be punishable in the discretion of the court.

"§ 14-190.4. Coercing acceptance of obscene articles or publications. — No person, firm or corporation shall, as a condition to any sale, allocation, consignment or delivery for resale of any paper, magazine, book, periodical or publication require that the purchaser or consignee receive for resale any other article, book, or publication which is obscene within the meaning of G.S. 14-190.1; nor shall any person, firm or corporation deny or threaten to deny any franchise or impose or threaten to impose any penalty, financial or otherwise, by reason of the failure or refusal of any person to accept such articles, books, or publications, or by reason of the return thereof. Any violation of this section shall be a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00), imprisonment for not more than six months, or both.

"§ 14-190.5. Preparation of obscene photographs, slides and motion pictures. — Every person who knowingly:

- (1) photographs himself or any other person, for purposes of preparing an obscene film, photograph, negative, slide or motion picture for the purpose of dissemination in a public place; or
- (2) models, poses, acts, or otherwise assists in the preparation of any obscene film, photograph, negative, slide or motion picture for the purpose of dissemination in a public place, shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00), imprisonment for not more than six months, or both.

"§ 14-190.6. Employing or permitting minor to assist in offense under Article. — Every person 18 years of age or older who intentionally, in any manner, hires, employs, uses or permits any minor under the age of 16 years to do or assist in doing any act or thing constituting an offense under this Article and involving any material, act or thing he knows or reasonably should know to be obscene within the meaning of G.S. 14-190.1, shall be guilty of a misdemeanor, and unless a greater penalty is expressly provided for in this Article, shall be punishable in the discretion of the court.

"§ 14-190.7. Dissemination to minors under the age of 16 years. — Every person 18 years of age or older who knowingly disseminates to any minor under the age of 16 years any material which he knows or reasonably should know to be obscene within the meaning of G.S. 14-190.1 shall be guilty of a misdemeanor and unless a greater penalty is expressly provided for in this Article, shall be punishable in the discretion of the court.

"§ 14-190.8. Dissemination to minors 12 years of age or younger. — Every person 18 years of age or older who knowingly disseminates to any minor 12 years of age or younger any material which he knows or reasonably should know to be obscene within the meaning of G.S.

14-190.1 shall be guilty of a felony and upon conviction shall be imprisoned in the State's prison for not more than five years and shall be fined at the discretion of the court."

Sec. 2. Every word, clause, sentence, paragraph, section, or other part of this act shall be interpreted in such manner as to be as expansive as the Constitution of the United States and the Constitution of North Carolina permit.

Sec. 3. If any word, clause, sentence, paragraph, section, or other part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof.

Sec. 4. General Statutes 14-189, 14-189.1, 14-192, and 14-193 are hereby repealed.

Sec. 5. This act shall become effective on July 1, 1971.

In the General Assembly read three times and ratified, this the 19th day of May, 1971.