

Pennsylvania

18 Pa.C.S. § 5903. Obscene and other sexual materials and performances.

- (a) *Offenses defined.* -- No person, knowing the obscene character of the materials or performances involved, shall:
 - (1) display or cause or permit the display of any explicit sexual materials as defined in subsection (c) in or on any window, showcase, newsstand, display rack, billboard, display board, viewing screen, motion picture screen, marquee or similar place in such manner that the display is visible from any public street, highway, sidewalk, transportation facility or other public thoroughfare, or in any business or commercial establishment where minors, as a part of the general public or otherwise, are or will probably be exposed to view all or any part of such materials;
 - (2) sell, lend, distribute, transmit, exhibit, give away or show any obscene materials to any person 18 years of age or older or offer to sell, lend, distribute, transmit, exhibit or give away or show, or have in his possession with intent to sell, lend, distribute, transmit, exhibit or give away or show any obscene materials to any person 18 years of age or older, or knowingly advertise any obscene materials in any manner;
 - (3)
 - (i) design, copy, draw, photograph, print, utter, publish or in any manner manufacture or prepare any obscene materials; or
 - (ii) design, copy, draw, photograph, print, utter, publish or in any manner manufacture or prepare any obscene materials in which a minor is depicted;
 - (4)
 - (i) write, print, publish, utter or cause to be written, printed, published or uttered any advertisement or notice of any kind giving information, directly or indirectly, stating or purporting to state where, how, from whom, or by what means any obscene materials can be purchased, obtained or had; or
 - (ii) write, print, publish, utter or cause to be written, printed, published or uttered any advertisement or notice of any kind giving information, directly or indirectly, stating or purporting to state where, how, from whom or by what means any obscene materials can be purchased, obtained or had in which a minor is included;
 - (5)
 - (i) produce, present or direct any obscene performance or participate in a portion thereof that is obscene or that contributes to its obscenity; or
 - (ii) produce, present or direct any obscene performance or participate in a portion thereof that is obscene or that contributes to its obscenity if a minor is included;
 - (6) hire, employ, use or permit any minor child to do or assist in doing any act or thing mentioned in this subsection;
 - (7) knowingly take or deliver in any manner any obscene material into a State correctional institution, county prison, regional prison facility or any other type of correctional facility;
 - (8) possess any obscene material while such person is an inmate of any State correctional institution, county prison, regional prison facility or any other type of correctional facility; or
 - (9) knowingly permit any obscene material to enter any State correctional

institution, county prison, regional prison facility or any other type of correctional facility if such person is a prison guard or other employee of any correctional facility described in this paragraph.

- (a.1) *Dissemination of explicit sexual material via an electronic communication.* -- No person, knowing the content of the advertisement to be explicit sexual materials as defined in subsection (c)(1) and (2), shall transmit or cause to be transmitted an unsolicited advertisement in an electronic communication as defined in section 5702 (relating to definitions) to one or more persons within this Commonwealth that contains explicit sexual materials as defined in subsection (c)(1) and (2) without including in the advertisement the term "ADV-ADULT" at the beginning of the subject line of the advertisement.
- (b) *Definitions.* -- As used in this section, the following words and phrases shall have the meanings given to them in this subsection:
 - "*Community.*" --For the purpose of applying the "contemporary community standards" in this section, community means the State.
 - "*Knowing.*" --As used in subsections (a) and (a.1), knowing means having general knowledge of, or reason to know or a belief or ground for belief which warrants further inspection or inquiry of, the character and content of any material or performance described therein which is reasonably susceptible of examination by the defendant.
 - "*Material.*" --Any literature, including any book, magazine, pamphlet, newspaper, storypaper, bumper sticker, comic book or writing; any figure, visual representation, or image, including any drawing, photograph, picture, videotape or motion picture.
 - "*Minor.*" --An individual under 18 years of age.
 - "*Nude.*" --Means showing the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or showing the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple.
 - "*Obscene.*" --Any material or performance, if:
 - (1) the average person applying contemporary community standards would find that the subject matter taken as a whole appeals to the prurient interest;
 - (2) the subject matter depicts or describes in a patently offensive way, sexual conduct of a type described in this section; and
 - (3) the subject matter, taken as a whole, lacks serious literary, artistic, political, educational or scientific value.
 - "*Performance.*" --Means any play, dance or other live exhibition performed before an audience.
 - "*Sadomasochistic abuse.*" --Means, in a sexual context, flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or in a bizarre costume or the condition of being fettered, bound or otherwise physically restrained on the part of one who is nude or so clothed.
 - "*Sexual conduct.*" --Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, anal or oral sodomy and sexual bestiality; and patently offensive representations or descriptions of masturbation, excretory functions, sadomasochistic abuse and lewd exhibition of the genitals.
 - "*Subject line.*" --The area of an electronic communication that contains a summary description of the content of the message.
 - "*Transportation facility.*" --Any conveyance, premises or place used for or in connection with public passenger transportation, whether by air, rail, motor vehicle or any other method, including aircraft, watercraft, railroad cars, buses, and air, boat, railroad and bus terminals and stations.
- (c) *Dissemination to minors.* -- No person shall knowingly disseminate by sale, loan or otherwise explicit sexual materials to a minor. "Explicit sexual materials," as used

in this subsection, means materials which are obscene or:

(1) any picture, photograph, drawing, sculpture, motion picture film, videotape or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct, or sadomasochistic 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 paragraph (1), or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to minors.

- (d) *Admitting minor to show.* -- It shall be unlawful for any person knowingly to exhibit for monetary consideration to a minor or knowingly to sell to a minor an admission ticket or pass or knowingly to admit a minor for a monetary consideration to premises whereon there is exhibited, a motion picture show or other presentation or performance which, in whole or in part, depicts nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors, except that the foregoing shall not apply to any minor accompanied by his parent.
- (e) *Definitions.* -- As used in subsections (c) and (d) of this section:
 - (1) (Deleted by amendment).
 - (2) "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.
 - (3) "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, sexual bestiality or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, breast.
 - (4) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.
 - (5) "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.
 - (6) "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:
 - (i) predominantly appeals to the prurient, shameful, or morbid interest of minors; and
 - (ii) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
 - (iii) taken as a whole, lacks serious literary, artistic, political, educational or scientific value for minors.
 - (7) "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:
 - (i) the character and content of any material or performance described herein which is reasonably susceptible of examination by the defendant; and
 - (ii) 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.
- (f) *Requiring sale as condition of business dealings.* -- No person shall knowingly require any distributor or retail seller as a condition to sale or delivery for resale or consignment of any literature, book, magazine, pamphlet, newspaper, storypaper,

paper, comic book, writing, drawing, photograph, videotape, figure or image, or any written or printed matter, or any article or instrument to purchase or take by consignment for purposes of sale, resale or distribution any obscene literature, book, magazine, pamphlet, newspaper, storypaper, paper, comic book, writing, drawing, photograph, videotape, figure or image, or any written or printed matter of an obscene nature or any article or instrument of an obscene nature.

- (g) *Injunction.* -- The attorney for the Commonwealth may institute proceedings in equity in the court of common pleas of the county in which any person violates or clearly is about to violate this section for the purpose of enjoining such violation. The court shall issue an injunction only after written notice and hearing and only against the defendant to the action. The court shall hold a hearing within three days after demand by the attorney for the Commonwealth, one of which days must be a business day for the court, and a final decree shall be filed in the office of the prothonotary within 24 hours after the close of the hearing. A written memorandum supporting the decree shall be filed within five days of the filing of the decree. The attorney for the Commonwealth shall prove the elements of the violation beyond a reasonable doubt. The defendant shall have the right to trial by jury at the said hearing.
- (h) *Criminal prosecution.*
 - (1) Any person who violates subsection (a), (a.1) or (f) is guilty of a misdemeanor of the first degree. Violation of subsection (a) is a felony of the third degree if the offender has previously been convicted of a violation of subsection (a) or if the material was sold, distributed, prepared or published for the purpose of resale.
 - (2) Any person who violates subsection (c) or (d) is guilty of a felony of the third degree. Violation of subsection (c) or (d) is a felony of the second degree if the offender has previously been convicted of a violation of subsection (c) or (d).
 - (3) Findings made in an equity action shall not be binding in the criminal proceedings.
- (i) *Right to jury trial.* -- The right to trial by jury shall be preserved in all proceedings under this section.
- (j) *Exemptions.* -- Nothing in this section shall apply to any recognized historical society or museum accorded charitable status by the Federal Government, any county, city, borough, township or town library, any public library, any library of any school, college or university or any archive or library under the supervision and control of the Commonwealth or a political subdivision.
- (k) *Ordinances or resolutions.* -- Nothing in this chapter shall be construed to invalidate, supersede, repeal or preempt any ordinance or resolution of any political subdivision insofar as it is consistent with this chapter, and political subdivisions further retain the right to regulate any activities, displays, exhibitions or materials not specifically regulated by this chapter.
- (l) *Penalty for attempt to evade prosecution.* -- Any person who violates subsection (a.1) and attempts to avoid prosecution by knowingly including false or misleading information in the return address portion of the electronic communications such that the recipient would be unable to send a reply message to the original, authentic sender shall, in addition to any other penalty imposed, upon conviction, be sentenced to pay a fine of not less than \$ 100 nor more than \$ 500 per message or to imprisonment for not more than 90 days, or both, for a first offense and a fine of not less than \$ 500 nor more than \$ 1,000 or to imprisonment for not more than one year, or both, for a second or subsequent offense.
- (m) *Concurrent jurisdiction to prosecute.* -- The Attorney General shall have the concurrent prosecutorial jurisdiction with the district attorney for cases arising under

subsection (a.1) and may refer to the district attorney, with the district attorney's consent, any violation or alleged violation of subsection (a.1) which may come to the Attorney General's attention.

18 Pa.C.S. § 6301. Corruption of minors.

- (a) *Offense defined.*
 - (1)
 - (i) Except as provided in subparagraph (ii), whoever, being of the age of 18 years and upwards, by any act corrupts or tends to corrupt the morals of any minor less than 18 years of age, or who aids, abets, entices or encourages any such minor in the commission of any crime, or who knowingly assists or encourages such minor in violating his or her parole or any order of court, commits a misdemeanor of the first degree.
 - (ii) Whoever, being of the age of 18 years and upwards, by any course of conduct in violation of Chapter 31 (relating to sexual offenses) corrupts or tends to corrupt the morals of any minor less than 18 years of age, or who aids, abets, entices or encourages any such minor in the commission of an offense under Chapter 31 commits a felony of the third degree.
 - (2) Any person who knowingly aids, abets, entices or encourages a minor younger than 18 years of age to commit truancy commits a summary offense. Any person who violates this paragraph within one year of the date of a first conviction under this section commits a misdemeanor of the third degree. A conviction under this paragraph shall not, however, constitute a prohibition under section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms).
- (b) *Adjudication of delinquency unnecessary.* -- A conviction under the provisions of this section may be had whether or not the jurisdiction of any juvenile court has attached or shall thereafter attach to such minor or whether or not such minor has been adjudicated a delinquent or shall thereafter be adjudicated a delinquent.
- (c) *Presumptions.* -- In trials and hearings upon charges of violating the provisions of this section, knowledge of the minor's age and of the court's orders and decrees concerning such minor shall be presumed in the absence of proof to the contrary.
- (d) *Mistake as to age.*
 - (1) Whenever in this section the criminality of conduct depends upon the corruption of a minor whose actual age is under 16 years, it is no defense that the actor did not know the age of the minor or reasonably believed the minor to be older than 18 years.
 - (2) Whenever in this section the criminality of conduct depends upon the corruption of a minor whose actual age is 16 years or more but less than 18 years, it is a defense for the actor to prove by a preponderance of the evidence that he reasonably believed the minor to be 18 years or older.

18 Pa.C.S. § 6318 Unlawful contact with minor

(a) OFFENSE DEFINED.-- A person commits an offense if he is intentionally in contact with a minor, or a law enforcement officer acting in the performance of his duties who has assumed the identity of a minor, for the purpose of engaging in an activity prohibited under any of the

following, and either the person initiating the contact or the person being contacted is within this Commonwealth:

- (1) Any of the offenses enumerated in Chapter 31 (relating to sexual offenses).
- (2) Open lewdness as defined in section 5901 (relating to open lewdness).
- (3) Prostitution as defined in section 5902 (relating to prostitution and related offenses).
- (4) Obscene and other sexual materials and performances as defined in section 5903 (relating to obscene and other sexual materials and performances).
- (5) Sexual abuse of children as defined in section 6312 (relating to sexual abuse of children).
- (6) Sexual exploitation of children as defined in section 6320 (relating to sexual exploitation of children).

(b) GRADING.-- A violation of subsection (a) is:

- (1) an offense of the same grade and degree as the most serious underlying offense in subsection (a) for which the defendant contacted the minor; or
- (2) a felony of the third degree; whichever is greater.

(B.1) CONCURRENT JURISDICTION TO PROSECUTE.-- The Attorney General shall have concurrent prosecutorial jurisdiction with the district attorney for violations under this section and any crime arising out of the activity prohibited by this section when the person charged with a violation of this section contacts a minor through the use of a computer, computer system or computer network. No person charged with a violation of this section by the Attorney General shall have standing to challenge the authority of the Attorney General to prosecute the case, and, if any such challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of this Commonwealth to the person making the challenge.

(c) DEFINITIONS.-- As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Computer." An electronic, magnetic, optical, hydraulic, organic or other high-speed data processing device or system which performs logic, arithmetic or memory functions and includes all input, output, processing, storage, software or communication facilities which are connected or related to the device in a computer system or computer network.

"Computer network." The interconnection of two or more computers through the usage of satellite, microwave, line or other communication medium.

"Computer system." A set of related, connected or unconnected computer equipment, devices

and software.

"Contacts." Direct or indirect contact or communication by any means, method or device, including contact or communication in person or through an agent or agency, through any print medium, the mails, a common carrier or communication common carrier, any electronic communication system and any telecommunications, wire, computer or radio communications device or system.

"Minor." An individual under 18 years of age.

18 Pa.C.S. § 5901. Open lewdness

A person commits a misdemeanor of the third degree if he does any lewd act which he knows is likely to be observed by others who would be affronted or alarmed.

68 Pa.C.S. § 5501. Legislative findings and intent

(a) FINDINGS.-- The General Assembly finds as follows:

(1) There are within this Commonwealth a number of adult-oriented establishments which require special regulation by law and supervision by public safety agencies in order to protect and preserve the health, safety and welfare of patrons of these establishments, as well as the health, safety and welfare of the citizens of this Commonwealth.

(2) Statistics and studies performed in a substantial number of communities in this Commonwealth, in the United States and by the State of Delaware indicate that:

(i) large numbers of persons, primarily male, frequent adult-oriented establishments, especially those which provide closed booths, cubicles, studios and rooms for the private viewing of so-called adult motion pictures, videotapes or live entertainment or a combination of motion pictures, videotapes and live entertainment;

(ii) the closed booths, cubicles, studios and rooms and holes in partitions between booths, cubicles, studios and rooms have been used by patrons, clients or customers of adult-oriented establishments for the purpose of engaging in sexual acts;

(iii) male and female prostitutes have been known to frequent the establishments in order to provide sex for hire to the patrons, clients or customers within the booths, cubicles and rooms;

(iv) doors, curtains, blinds and/or other closures installed in or on the entrances or exits, or both, of the booths, cubicles, studios and rooms which are closed while the booths, cubicles, studios and rooms are in use encourage patrons using the booths, cubicles, studios and rooms to engage in sexual acts in the closures and through holes in partitions between the closures with prostitutes, patrons, clients or customers, thereby promoting and encouraging prostitution and the

commission of sexual acts which result in the direct exchange of bodily fluids which put the participants at high risk for contracting communicable diseases, including AIDS, and which cause blood, semen and urine to be deposited on the floors or walls, or both, of the booths, cubicles, studios and rooms, which deposits could prove detrimental to the health and safety of other persons who may come in contact with such deposits; and

(v) the reasonable regulation and supervision of such adult-oriented establishments tend to discourage sexual acts and prostitution and thereby promote the health, safety and welfare of the patrons, clients and customers of these establishments.

(3) The continued unregulated operation of such adult-oriented establishments, including, without limitation, those specifically cited in paragraph (1), is and would be detrimental to the general health, safety and welfare of the citizens of this Commonwealth.

(4) The Constitution of Pennsylvania grants to the General Assembly power, especially police power, to enact reasonable legislation to regulate and supervise adult-oriented establishments in order to protect the public health, safety and welfare.

(b) INTENT.-- It is not the intent of the General Assembly in enacting this legislation to deny to any person rights of speech protected by the Constitution of the United States or the Constitution of Pennsylvania, or both, nor is it the intent of the General Assembly to impose by this chapter any additional limitations or restrictions on the contents of any communicative materials, including sexually oriented films, videotapes, books and other materials. Further, by enacting this legislation, the General Assembly does not intend to deny or restrict the rights of any adult to obtain or view, or both, any sexually oriented materials protected by the Constitution of the United States or the Constitution of Pennsylvania, or both, nor does it intend to restrict or deny any constitutionally protected rights that distributors or exhibitors of sexually oriented materials may have to sell, distribute or exhibit these materials.

§ 5502. Definitions

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"ADULT BOOKSTORE." An establishment having a substantial or significant portion of its stock and trade in, or an establishment which as one of its principal business purposes, offers for sale, books, films, video cassettes or magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas and, in conjunction therewith, has facilities for the presentation of adult entertainment for observation by patrons.

"ADULT ENTERTAINMENT."

(1) An exhibition of any adult-oriented motion pictures, meaning those distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified

anatomical areas.

(2) A live performance, display or dance of any type which has as a significant or substantial portion of the performance any actual or simulated performance of specified sexual activities or exhibition and viewing of specified anatomical areas, removal of articles of clothing or appearing unclothed, pantomiming, modeling or any other personal services offered customers.

"ADULT MINI-MOTION PICTURE THEATER." An enclosed building with a capacity of less than 50 persons which has a principal business purpose of exhibiting, presenting or selling material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.

"ADULT MOTION PICTURE THEATER." An enclosed building with a capacity of 50 or more persons which has a principal business purpose of exhibiting, presenting or selling material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.

"ADULT-ORIENTED ESTABLISHMENT." The term includes, without limitation, the following establishments when operated for profit, whether direct or indirect:

- (1) Adult bookstores.
- (2) Adult motion picture theaters.
- (3) Adult mini-motion picture theaters.
- (4) Any premises to which the public, patrons or members are invited or admitted and which are so physically arranged as to provide booths, cubicles, rooms, studios, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures or where an entertainer provides adult entertainment to a member of the public, a patron or a member.
- (5) An adult entertainment studio or any premises that are physically arranged and used as such, whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio or any other term of like import.

The term "BOOTHES, CUBICLES, ROOMS, STUDIOS, COMPARTMENTS OR STALLS" for purposes of defining adult-oriented establishments does not mean enclosures which are private offices used by the owner, manager or persons employed on the premises for attending to the tasks of their employment, and which are not held out to the public for the purpose of viewing motion pictures or other entertainment for a fee, and which are not open to any persons other than employees.

"EMPLOYEE." Any and all persons, including independent contractors, who work in or at or render any service directly related to the operation of an adult-oriented establishment.

"ENTERTAINER." A person who provides entertainment within an adult-oriented establishment, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided as an employee or an independent contractor.

"INSPECTOR." An employee of a municipality's public health department authorized and designated by the director of the department, an employee of a municipality's department of inspections and permits authorized and designated by the director of the department, an employee of a municipality's police department authorized by the commanding officer of the police department or other persons designated by the governing body of a municipality to inspect premises regulated under this chapter to cooperate in taking the required actions authorized by this chapter where violations are found on a premises and to request correction of unsatisfactory conditions found on a premise.

"MINOR." A person under 18 years of age.

"OPERATOR." A person, partnership or corporation operating, conducting or maintaining an adult-oriented establishment.

"SEXUAL ACTIVITIES." The term does not include any of the following:

(1) Medical publications or films or bona fide educational publications or films.

(2) Any art or photography publications which devote at least 25% of the lineage of each issue to articles and advertisements dealing with subjects of art or photography.

(3) Any news periodical which reports or describes current events and which from time to time publishes photographs of nude or seminude persons in connection with the dissemination of the news.

(4) Any publications or films which describe and report different cultures and which from time to time publish or show photographs or depictions of nude or seminude persons when describing cultures in which nudity or seminudity is indigenous to the populations.

"SPECIFIED ANATOMICAL AREAS."

(1) Less than completely and opaquely covered:

(i) human genitals or pubic region;

(ii) buttocks; or

(iii) female breasts below a point immediately above the top of the areola.

(2) Human male genitals in a discernible turgid state, even if completely opaquely covered.

"SPECIFIED SEXUAL ACTIVITIES." The term includes any of the following:

- (1) Human genitals in a state of sexual stimulation or arousal.
- (2) Acts of human masturbation, sexual intercourse or sodomy.
- (3) Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts.

§ 5503. Requirements for adult-oriented establishments

(a) LOITERING BY MINORS PROHIBITED.-- No operator or employee of an adult-oriented establishment shall permit any minor to loiter in any part of the establishment, including parking lots immediately adjacent to the establishment used by patrons of an adult-oriented establishment.

(b) INTERIOR PLAN.-- Every adult-oriented establishment doing business in this Commonwealth shall be well lighted at all times and be physically arranged in such a manner that the entire interior portion of the booths, cubicles, rooms or stalls where adult entertainment is provided shall be clearly visible from the common areas of the premises. Visibility into such booths, cubicles, rooms or stalls shall not be blocked or obscured by doors, curtains, partitions, drapes or any other obstruction whatsoever. It shall be unlawful to install enclosed booths, cubicles, rooms or stalls within adult-oriented establishments for whatever purpose, but especially for the purpose of providing for the secluded viewing of adult-oriented motion pictures or other types of adult-oriented entertainment.

(c) CERTAIN APERTURES PROHIBITED.-- No adult-oriented establishment shall contain partitions between subdivisions of a room or portions or parts of a building, structure or premises with an aperture which is designed or constructed to facilitate sexual activity between persons on either side of the partitions.

(d) ILLUMINATION AND VISIBILITY.-- The operator of each adult-oriented establishment shall be responsible for and shall provide that any room or other area used for the purpose of viewing adult-oriented motion pictures or other types of live adult entertainment shall be well lighted and readily accessible at all times and shall be continuously open to view in its entirety. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one footcandle as measured at the floor level. It shall be the duty of the operator and the operator's agents to ensure that the illumination required by this subsection is maintained at all times that a patron is present in the premises.

§ 5504. Liability of operator

Every act or omission by an employee constituting a violation of this chapter shall be deemed the act or omission of the operator if the act or omission occurs either with the authorization, knowledge or approval of the operator or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for the act or omission in the same manner as if the operator committed the act or caused the omission.

§ 5505. Establishments open for inspection

All adult-oriented establishments shall be open to inspection at all reasonable times by inspectors.

§ 5506. Civil action to enjoin or abate violations

(a) ACTION AUTHORIZED.-- An action to enjoin or abate a violation of this chapter may be brought in the name of the Commonwealth of Pennsylvania by the Attorney General, the district attorney of the county concerned or the solicitor of the municipality in which the adult-oriented establishment is located. The action shall be brought and tried as an action in equity in the court of common pleas of the county in which the adult-oriented establishment is located.

(b) PROCEDURE.--

(1) If it is made to appear, by affidavits or otherwise, to the satisfaction of the court that a violation exists, a temporary writ of injunction shall forthwith issue, directed to the operator of the adult entertainment establishment or the owner of the premises, or both, restraining the operator or owner from continuing or permitting the continuation of any violation or violations of this chapter until the conclusion of the hearing and a decision by the court. No bond shall be required in instituting such proceedings. This chapter, insofar as it provides for methods of service and bond, shall not be deemed to be suspended or affected by the Pennsylvania Rules of Civil Procedure governing the action in equity.

(2) It shall not be necessary for the court to find the property involved was being unlawfully used at the time of the hearing, but, on finding that the material allegations of the petition are true, the court shall order that neither the premises nor any part of the premises be used in violation of this chapter. Upon judgment of the court ordering the violations to be abated, the court may order that neither the premises nor any part of the premises shall be occupied or used for any purpose for up to one year following the date of the court's order, but the court may, in its discretion, permit the premises to be occupied or used by the operator or owner if the operator or owner, or both, posts a bond or a joint bond in the discretion of the court with sufficient surety to be approved by the court in the penal and liquidated sum of not less than \$ 1,000 nor more than \$ 2,500, payable to the Commonwealth of Pennsylvania and conditioned that neither the building nor a part of the building be used in violation of this chapter and that the operator will pay all fines, costs and damages that may be assessed for any violation of this chapter upon the premises.

(3) Service of any preliminary or permanent injunction shall be made personally upon the operator and owner of the premises if such persons can be found in the county. If the operator or owner cannot be found, a copy of the order shall be delivered to any employee of the operator on the establishment premises or, in the case of the owner, upon an agent, if any. If no employee or agent can be found or service cannot be made on an employee or agent of the owner, then service shall be

made as the court may direct. Any person other than the operator or owner who shall be served with any notice of an injunction shall within 24 hours thereafter deliver the notice to the operator or owner, as the case may be, or mail it to the operator or owner by registered mail if the address of the operator or owner, as the case may be, is known to the person served.

§ 5507. Violation of abatement order or injunction

An operator or owner of an adult entertainment establishment or any agent of the operator or owner who after any injunction has been granted uses the premises or any part of the premises, or knowingly permits the premises or any part of the premises to be used in violation of an order of abatement or injunction, shall be subject to summary punishment as for contempt of court, in the manner now provided by law.

§ 5508. Penalty

A person violating any provision of this chapter commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not more than \$ 300 or to imprisonment for not more than 90 days, or both.

§ 5509. Existing remedies preserved

This chapter shall not be deemed to affect any remedy available against an adult entertainment establishment or adult book store.

FILTERING LAWS:

24 P.S. § 4601-4612

24 P.S. § 4601. Short title

This act shall be known and may be cited as the Child Internet Protection Act.

§ 4602. Declaration of policy

- The General Assembly finds and declares as follows:
 - (1) The Commonwealth has a compelling interest and duty to protect children from exposure to obscenity, child pornography and other material that is harmful to minors.
 - (2) The Commonwealth has a compelling interest in preventing any user from accessing obscene material and child pornography within a public school or public library setting.
 - (3) There is a need to balance the goal of providing free access to educationally suitable information sources on the Internet against the

compelling need and duty to protect children from contact with sexual predators and from access to obscene material, child pornography and material harmful to children.

(4) It is not the intent of this act to create or impose liability on

- software program or Internet service providers that make available
- information created by third parties by treating the software or
- service provider as the publisher or speaker of such information. Nor
- should this act be construed as imposing any liability on software
- program or Internet service providers for creating and making available
- to users monitoring and screening functions that serve to restrict
- access to offensive material. Indeed, it is the intent of the General
- Assembly to minimize such liability on software program and Internet
- service providers in order to encourage the development and deployment
- of blocking and screening technologies and in order to promote the
- widest possible dissemination of such technologies to libraries,
- schools and end users.

§ 4603. Definitions

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Acceptable-use policy." A policy for Internet usage that meets the requirements of this act which is acceptable to and adopted by a school board or a governing body of a public library.

"Child pornography." As described in 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

"Department." The Department of Education of the Commonwealth.

"Harmful to minors." As defined in 18 Pa.C.S. § 5903 (relating to obscene and other sexual materials and performances).

"Internet." The international network of computer systems.

"Obscene." As defined for purposes of "obscene materials" in 18 Pa.C.S. § 5903 (relating to obscene and other sexual materials and performances).

"Public library." A county or local library that receives State aid pursuant to Article III of the act of June 14, 1961 (P.L. 324, No. 188), known as The Library Code.

"School board." The board of directors of a school entity.

"School entity." A public school district, charter school, cyber charter school, intermediate unit or area vocational-technical school.

"Secretary." The Secretary of Education of the Commonwealth.

§ 4604. School entity Internet policies

- (a) ACCEPTABLE-USE POLICY.-- Within 180 days after the effective date of this act, each school board shall adopt an acceptable-use policy for the Internet. At a minimum, the policy shall contain provisions which are reasonably designed to:
 - (1) Prevent students and employees of the school entity from using any computer equipment and communications services owned or leased by the school entity for sending, receiving, viewing or downloading visual depictions of obscenity, child pornography or material that is harmful to minors.
 - (2) Establish appropriate measures to be taken against students and

school employees who willfully violate the school entity's acceptable-use policy.

- (3) Provide for expedited review and resolution of a claim that the policy is denying a student or school employee access to material that is not within the prohibition of the acceptable-use policy.
- (b) IMPLEMENTATION AND ENFORCEMENT.-- The school board shall take such steps as it deems appropriate to implement and enforce the school entity's policy, which shall include, but need not be limited to:
 - (1) use of software programs reasonably designed to block access to visual depictions of obscenity, child pornography or material that is harmful to minors; or
 - (2) selection of online servers that block access to visual depictions of obscenity, child pornography or material that is harmful to minors.
 - (c) COPY OF POLICY FOR PARENTS OR GUARDIANS.-- A school entity shall provide, upon written request of a parent or guardian, a copy of the acceptable-use policy it has adopted under this act.

§ 4605. Public library Internet policies

- (a) ACCEPTABLE-USE POLICY.-- Within 180 days after the effective date of this act, the governing body of each public library shall adopt an acceptable-use policy for the Internet. At a minimum, the policy shall contain provisions which are reasonably designed to:
 - (1) Prevent library patrons, including those patrons under 18 years of age and library employees, from using the library's computer equipment and communications services for sending, receiving, viewing or downloading visual depictions of obscenity, child pornography or material that is harmful to minors.
 - (2) Establish appropriate measures to be taken against library patrons and employees who willfully violate the policy.
- (b) IMPLEMENTATION AND ENFORCEMENT OF POLICY.-- The governing body of the public library shall take such steps as it deems appropriate to implement and enforce the requirements of subsection (a). These steps shall include, but need not be limited to, the following:
 - (1) the use of software programs designed to block access by library patrons and employees to visual depictions of obscenity, child pornography or material that is harmful to minors; or
 - (2) the selection of online servers that block access by library patrons and employees to visual depictions of obscenity, child pornography or material that is harmful to minors.
- (c) IMMUNITY.-- A public library shall not be subject to civil liability for damages to any person as a result of the failure of any approved software program or approved online server to block access to visual depictions of obscenity, child pornography or material that is harmful to minors. Nothing in this section shall be deemed to abrogate or lessen any immunity or other protection against liability accorded to public libraries under existing law or court decision.

§ 4606. Consultation on acceptable-use policies

The Attorney General and the secretary shall consult with and assist any public library or school entity that requests such assistance in the development and implementation of an acceptable-use policy under this act.

§ 4607. Reports

- (a) COPY OF POLICY TO BE FILED.-- Within 200 days after the effective date of this act, each school entity and public library shall file with the secretary a copy of the acceptable-use policy of the school entity and public library which has been adopted under this act. Each revision to the acceptable-use policy shall be transmitted to the secretary in accordance with section 8
- (b) IDENTIFICATION OF SOFTWARE PROGRAM AND ONLINE SERVERS.-- Each acceptable-use policy filed with the department shall identify any software program or online server that is being utilized to block access to material in accordance with sections 4(b) and 5(b)

§ 4608. Enforcement of acceptable-use policies

- (a) REVIEW OF ACCEPTABLE-USE POLICIES.-- The secretary shall review each acceptable-use policy filed by a public library and school entity under this act and each revision thereof. If the secretary determines after review that a policy or revision is not designed to achieve the requirements of section 4 or 5, the secretary shall provide written notice to the school entity or public library explaining the nature of such noncompliance and shall afford the school entity or public library a 30-day period for correcting any failure to comply with this act. The secretary may provide a reasonable extension of time for submission of a revised acceptable-use policy on a showing of good cause.
- (b) REVISION OF POLICIES.-- No revision of an acceptable-use policy which has been approved by the secretary under subsection (a) shall be implemented until such revision is approved by the secretary. If the secretary fails to disapprove the revision within 60 days after submission to the secretary, the school entity or public library may proceed with the implementation of the revision of its acceptable-use policy.
- (c) WITHHOLDING OF FUNDING FROM SCHOOL ENTITIES AND PUBLIC LIBRARIES.-
- The secretary shall withhold a portion of State funding to a school entity or public library if the school entity or public library:
 - (1) fails to submit an acceptable-use policy within the time prescribed in this act;
 - (2) submits an acceptable-use policy that is not reasonably designed to achieve the requirements of section 4 or 5; or
 - (3) is not enforcing or is substantially disregarding its acceptable-use policy.
- (d) APPEAL.-- If the secretary disapproves an acceptable-use policy or any revision thereof under this section or notifies the school entity or public library that it is subject to the withholding of funding pursuant to subsection (c), the aggrieved school entity or public library may appeal the decision to the Commonwealth Court.

§ 4609. Duties of the secretary

- (a) PROCEDURE.--
 - (1) The secretary shall be responsible for conducting investigations and making written determinations as to whether or not a public library or school entity has violated the requirements of this act.
 - (2) If the secretary determines that a school entity or public library

is in violation, the secretary shall direct the school entity or public library to acknowledge and correct the violation within a 30-day period and to develop a corrective plan for preventing future recurrences.

- (b) CONSTRUCTION.-- Nothing in this section shall limit the authority of the secretary to withhold funds pursuant to section 8(c) in an appropriate case.

§ 4610. Disabling blocking technology for use by certain persons

- (a) GENERAL RULE.-- Notwithstanding any other section of this act to the contrary, an administrator, supervisor or their designee may disable the software program or online server for an adult or a minor who provides written consent from a parent or guardian to enable access for bona fide research or other lawful purpose.
- (b) CONSTRUCTION.-- Nothing in this section shall be construed to permit any person to have access to material the character of which is illegal under Federal or State law.

§ 4612. Applicability

School entities and public libraries fulfilling the requirements of the Children's Internet Protection Act (Public Law 106-554, 114 Stat. 2763A-335) are not required to fulfill the requirements of this act.