

## Virginia

### Title 18, Chapter 8, Sections 2-372 to 2-379

#### **Va. Code Ann. § 18.2-372. "Obscene" defined.**

The word "obscene" where it appears in this article shall mean that which, considered as a whole, has as its dominant theme or purpose an appeal to the prurient interest in sex, that is, a shameful or morbid interest in nudity, sexual conduct, sexual excitement, excretory functions or products thereof or sadomasochistic abuse, and which goes substantially beyond customary limits of candor in description or representation of such matters and which, taken as a whole, does not have serious literary, artistic, political or scientific value.

(Code 1950, § 18.1-227; 1960, c. 233; 1975, cc. 14, 15.)

#### **§ 18.2-373. Obscene items enumerated.**

Obscene items shall include: (1) Any obscene book;

(2) Any obscene leaflet, pamphlet, magazine, booklet, picture, painting, bumper sticker, drawing, photograph, film, negative, slide, motion picture, videotape recording;

(3) Any obscene figure, object, article, instrument, novelty device, or recording or transcription used or intended to be used in disseminating any obscene song, ballad, words, or sounds; or

(4) Any obscene writing, picture or similar visual representation, or sound recording, stored in an electronic or other medium retrievable in a perceivable form.

(Code 1950, § 18.1-229; 1960, c. 233; 1975, cc. 14, 15; 1981, c. 293; 1989, c. 546; 2000, c. 1009.)

#### **§ 18.2-374. Production, publication, sale, possession, etc., of obscene items.**

It shall be unlawful for any person knowingly to: (1) Prepare any obscene item for the purposes of sale or distribution; or

(2) Print, copy, manufacture, produce, or reproduce any obscene item for purposes of sale or distribution; or

(3) Publish, sell, rent, lend, transport in intrastate commerce, or distribute or exhibit any obscene item, or offer to do any of these things; or

(4) Have in his possession with intent to sell, rent, lend, transport, or distribute any obscene item. Possession in public or in a public place of any obscene item as defined in this article shall be deemed prima facie evidence of a violation of this section. For the purposes of this section, "distribute" shall mean delivery in person, by mail, messenger or by any other means by which obscene items as defined in this article may pass from one person, firm or corporation to another.

(Code 1950, § 18.1-228; 1960, c. 233; 1962, c. 289; 1970, c. 204; 1975, cc. 14, 15.)

#### **§ 18.2-375. Obscene exhibitions and performances.**

It shall be unlawful for any person knowingly to:

(1) Produce, promote, prepare, present, manage, direct, carry on or participate in, any obscene exhibitions or performances, including the exhibition or performance of any obscene motion picture, play, drama, show, entertainment, exposition, tableau or scene; provided, that no employee of any person or legal entity operating a theatre, garden, building, structure, room or place which presents such obscene exhibition or performance shall be subject to prosecution under this section if the employee is not the manager of the theatre or an officer of such entity, and has no financial interest in such theatre other than receiving salary and wages; or

(2) Own, lease or manage any theatre, garden, building, structure, room or place and lease, let, lend or permit such theatre, garden, building, structure, room or place to be used for the purpose of presenting such obscene exhibition or performance or to fail to post prominently therein the name and address of a person resident in the locality who is the manager of such theatre, garden, building, structure, room or place.

(Code 1950, § 18.1-230; 1960, c. 233; 1971, Ex. Sess., c. 191; 1975, cc. 14, 15.)

**§ 18.2-376. Advertising, etc., obscene items, exhibitions or performances.**

It shall be unlawful for any person knowingly to prepare, print, publish, or circulate, or cause to be prepared, printed, published or circulated, any notice or advertisement of any obscene item proscribed in § 18.2-373, or of any obscene performance or exhibition proscribed in § 18.2-375, stating or indicating where such obscene item, exhibition, or performance may be purchased, obtained, seen or heard.

(Code 1950, § 18.1-231; 1960, c. 233; 1975, cc. 14, 15.)

**§ 18.2-377. Placards, posters, bills, etc.**

It shall be unlawful for any person knowingly to expose, place, display, post up, exhibit, paint, print, or mark, or cause to be exposed, placed, displayed, posted, exhibited, painted, printed or marked, in or on any building, structure, billboard, wall or fence, or on any street, or in or upon any public place, any placard, poster, banner, bill, writing, or picture which is obscene, or which advertises or promotes any obscene item proscribed in § 18.2-373 or any obscene exhibition or performance proscribed in § 18.2-375, or knowingly to permit the same to be displayed on property belonging to or controlled by him.

(Code 1950, § 18.1-232; 1960, c. 233; 1975, cc. 14, 15.)

**§ 18.2-378. Coercing acceptance of obscene articles or publications.**

It shall be unlawful for any person, firm, association or corporation, as a condition to any sale, allocation, consignment or delivery for resale of any paper, magazine, book, periodical or publication to require that the purchaser or consignee receive for resale any other article, book, or other publication which is obscene; nor shall any person, firm, association 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.

(Code 1950, § 18.1-233; 1960, c. 233; 1975, cc. 14, 15.)

**§ 18.2-379. Employing or permitting minor to assist in offense under article.**

It shall be unlawful for any person knowingly to hire, employ, use or permit any minor to do or assist in doing any act or thing constituting an offense under this article.

(Code 1950, § 18.1-234; 1960, c. 233; 1975, cc. 14, 15.)

**§ 18.2-380. Punishment for first offense**

Any person, firm, association or corporation convicted for the first time of an offense under §§ 18.2-374, 18.2-375, 18.2-376, 18.2-377, 18.2-378 or § 18.2-379, shall be guilty of a Class 1 misdemeanor.

**§ 18.2-381. Punishment for subsequent offenses; additional penalty for owner**

Any person, firm, association or corporation convicted of a second or other subsequent offense under §§ 18.2-374 through 18.2-379 shall be guilty of a Class 6 felony. However, if the person, firm, association or corporation convicted of such subsequent offense is the owner of the business establishment where each of the offenses occurred, a fine of not more than \$ 10,000 shall be imposed in addition to the penalties otherwise prescribed by this section.

**§ 18.2-382. 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 purposes of sale or distribution; or
  - (2) Models, poses, acts, or otherwise assists in the preparation of any obscene film, photograph, negative, slide or motion picture for purposes of sale or distribution;
- shall be guilty of a Class 3 misdemeanor.

**§ 18.2-383. Exceptions to application of article**

- Nothing contained in this article shall be construed to apply to:
  - (1) The purchase, distribution, exhibition, or loan of any book, magazine, or other printed or manuscript material by any library, school, or institution of higher learning, supported by public appropriation;
  - (2) The purchase, distribution, exhibition, or loan of any work of art by any museum of fine arts, school, or institution of higher learning, supported by public appropriation;
  - (3) The exhibition or performance of any play, drama, tableau, or motion picture by any theatre, museum of fine arts, school or institution of higher learning, supported by public appropriation.

**§ 18.2-384. Proceeding against book alleged to be obscene**

- (1) Whenever he has reasonable cause to believe that any person is engaged in the sale or commercial distribution of any obscene book, any citizen or the attorney for the Commonwealth of any county or city, or city attorney, in which the sale or commercial distribution of such book occurs may institute a proceeding in the circuit court in said city or county for adjudication of the obscenity of the book.
- (2) The proceeding shall be instituted by filing with the court a petition:
  - (a) Directed against the book by name or description;
  - (b) Alleging the obscene nature of the book; and
  - (c) Listing the names and addresses, if known, of the author, publisher, and all other persons interested in its sale or commercial distribution.
- (3) Upon the filing of a petition pursuant to this article, the court in term or in vacation shall forthwith examine the book alleged to be obscene. If the court find no probable cause to believe the book obscene, the judge thereof shall dismiss the petition; but if the court find probable cause to believe the book obscene, the judge thereof shall issue an order to show cause why the book should not be adjudicated obscene.
- (4) The order to show cause shall be:
  - (a) Directed against the book by name or description;
  - (b) Published once a week for two successive weeks in a newspaper of general circulation within the county or city in which the proceeding is filed;
  - (c) If their names and addresses are known, served by registered mail upon the author, publisher, and all other persons interested in the sale or commercial distribution of the book; and
  - (d) Returnable twenty-one days after its service by registered mail or the commencement of its publication, whichever is later.
- (5) When an order to show cause is issued pursuant to this article, and upon four days' notice to be given to the persons and in the manner prescribed by the court,

the court may issue a temporary restraining order against the sale or distribution of the book alleged to be obscene.

- (6) On or before the return date specified in the order to show cause, the author, publisher, and any person interested in the sale or commercial distribution of the book may appear and file an answer. The court may by order permit any other person to appear and file an answer amicus curiae.
- (7) If no one appears and files an answer on or before the return date specified in the order to show cause, the court, upon being satisfied that the book is obscene, shall order the clerk of court to enter judgment that the book is obscene, but the court in its discretion may except from its judgment a restricted category of persons to whom the book is not obscene.
- (8) If an appearance is entered and an answer filed, the court shall order the proceeding set on the calendar for a prompt hearing. The court shall conduct the hearing in accordance with the rules of civil procedure applicable to the trial of cases by the court without a jury. At the hearing, the court shall receive evidence, including the testimony of experts, if such evidence be offered, pertaining to:
  - (a) The artistic, literary, medical, scientific, cultural and educational values, if any, of the book considered as a whole;
  - (b) The degree of public acceptance of the book, or books of similar character, within the county or city in which the proceeding is brought;
  - (c) The intent of the author and publisher of the book;
  - (d) The reputation of the author and publisher;
  - (e) The advertising, promotion, and other circumstances relating to the sale of the book;
  - (f) The nature of classes of persons, including scholars, scientists, and physicians, for whom the book may not have prurient appeal, and who may be subject to exception pursuant to subsection (7).
- (9) In making a decision on the obscenity of the book, the court shall consider, among other things, the evidence offered pursuant to subsection (8), if any, and shall make a written determination upon every such consideration relied upon in the proceeding in his findings of fact and conclusions of law or in a memorandum accompanying them.
- (10) If he finds the book not obscene, the court shall order the clerk of court to enter judgment accordingly. If he finds the book obscene, the court shall order the clerk of court to enter judgment that the book is obscene, but the court, in its discretion, may except from its judgment a restricted category of persons to whom the book is not obscene.
- (11) While a temporary restraining order made pursuant to subsection (5) is in effect, or after the entry of a judgment pursuant to subsection (7), or after the entry of judgment pursuant to subsection (10), any person who publishes, sells, rents, lends, transports in intrastate commerce, or commercially distributes or exhibits the book, or has the book in his possession with intent to publish, sell, rent, lend, transport in intrastate commerce, or commercially distribute or exhibit the book, is presumed to have knowledge that the book is obscene under §§ 18.2-372 through 18.2-378 of this article.
- (12) Any party to the proceeding, including the petitioner, may appeal from the judgment of the court to the Supreme Court of Virginia, as otherwise provided by law.
- (13) It is expressly provided that the petition and proceeding authorized under this article, relating to books alleged to be obscene, shall be intended only to establish scienter in cases where the establishment of such scienter is thought to be useful or desirable by the petitioner; and the provisions of § 18.2-384 shall in no wise be construed to be a necessary prerequisite to the filing of criminal charges under this

article.

### **§ 18.2-385. Section 18.2-384 applicable to motion picture films**

The provisions of § 18.2-384 shall apply mutatis mutandis in the case of motion picture film.

### **§ 18.2-386. Showing previews of certain motion pictures**

It shall be unlawful for any person to exhibit any trailer or preview of any motion picture which has a motion picture industry rating which would not permit persons in the audience viewing the feature motion picture to see the complete motion picture from which the trailer or preview is taken. Persons violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

#### **§ 18.2-386.1. Unlawful filming, videotaping or photographing of another; penalty**

- A. It shall be unlawful for any person to knowingly and intentionally videotape, photograph, or film any nonconsenting person or create any videographic or still image record by any means whatsoever of the nonconsenting person if (i) that person is totally nude, clad in undergarments, or in a state of undress so as to expose the genitals, pubic area, buttocks or female breast in a restroom, dressing room, locker room, hotel room, motel room, tanning bed, tanning booth, bedroom or other location; or (ii) the videotape, photograph, film or videographic or still image record is created by placing the lens or image-gathering component of the recording device in a position directly beneath or between a person's legs for the purpose of capturing an image of the person's intimate parts or undergarments covering those intimate parts when the intimate parts or undergarments would not otherwise be visible to the general public; and when the circumstances set forth in clause (i) or (ii) are otherwise such that the person being videotaped, photographed, filmed or otherwise recorded would have a reasonable expectation of privacy.
- B. The provisions of this section shall not apply to filming, videotaping or photographing or other still image or videographic recording by (i) law-enforcement officers pursuant to a criminal investigation which is otherwise lawful or (ii) correctional officials and local or regional jail officials for security purposes or for investigations of alleged misconduct involving a person committed to the Department of Corrections or to a local or regional jail, or to any sound recording of an oral conversation made as a result of any videotaping or filming pursuant to Chapter 6 (§ 19.2-61 et seq.) of Title 19.2.
- C. A violation of subsection A shall be punishable as a Class 1 misdemeanor.
- D. A violation of subsection A involving a nonconsenting person under the age of 18 shall be punishable as a Class 6 felony.
- E. Where it is alleged in the warrant, information, or indictment on which the person is convicted and found by the court or jury trying the case that the person has previously been convicted within the 10-year period immediately preceding the offense charged of two or more of the offenses specified in this section, each such offense occurring on a different date, and when such offenses were not part of a common act, transaction, or scheme, and such person has been at liberty as defined

in § 53.1-151 between each conviction, he shall be guilty of a Class 6 felony.

### **§ 18.2-387. Indecent exposure**

Every person who intentionally makes an obscene display or exposure of his person, or the private parts thereof, in any public place, or in any place where others are present, or procures another to so expose himself, shall be guilty of a Class 1 misdemeanor. No person shall be deemed to be in violation of this section for breastfeeding a child in any public place or any place where others are present.

#### **§ 18.2-387.1. Obscene sexual display; penalty**

Any person who, while in any public place where others are present, intending that he be seen by others, intentionally and obscenely as defined in § 18.2-372, engages in actual or explicitly simulated acts of masturbation, is guilty of a Class 1 misdemeanor.

#### **§ 15.2-926.2. Adoption of ordinances prohibiting obscenity**

The locality may adopt ordinances to prohibit **obscenity** or conduct paralleling the provisions of Article 5 (§ 18.2-372 et seq.) and Article 6 (§ 18.2-390 et seq.) of Chapter 8 of Title 18.2 and prohibiting the dissemination to juveniles of, and their access to, materials deemed harmful to juveniles as defined in subsection (6) of § 18.2-390 in public at places frequented by juveniles or where juveniles are or may be invited as part of the general public. Exceptions as provided in § 18.2-391.1 shall apply thereto. The penalty for violating the provisions of such ordinance shall not be greater than the penalty imposed for a Class 1 misdemeanor.

#### **§ 19.2-270.1:1. Computer and electronic data in obscenity, etc. cases; access to defendant**

When computer data or electronic data, stored in any form, the possession of which is otherwise unlawful, are seized as evidence in a criminal prosecution of any offense involving **obscenity** or child pornography, neither the original data nor a copy thereof shall be released to the defendant or his counsel, nor shall a court order the release of such evidence to the defendant or his counsel except as provided herein. The defendant and his counsel shall be allowed the reasonable opportunity to review such evidence in accordance with the rules of discovery. Upon a finding that the production of the original data or a copy thereof to counsel or his designee is necessary and material to the defense of the accused, the court may order such production only under terms that restrict access to specifically identified recipients, prohibit any duplication of the data beyond what is reasonably necessary for the purpose of the production, and require the return of the data to the law-enforcement agency maintaining custody or control of the seized data for appropriate disposition.

#### **§ 4.1-225. Grounds for which Board may suspend or revoke licenses**

- The Board may suspend or revoke any license other than a brewery license, in which case the Board may impose penalties as provided in § 4.1-227, if it has reasonable cause to believe that:
  1. The licensee, or if the licensee is a partnership, any general partner thereof, or if the licensee is an association, any member thereof, or a limited partner of 10 percent or more with voting rights, or if the licensee is a corporation, any officer, director, or shareholder owning 10 percent or more of its capital stock, or if the licensee is a limited liability company, any member-manager or any member owning 10 percent or more of the membership interest of the limited liability company:

n. Has allowed any obscene literature, pictures or materials upon the licensed premises;

#### **§ 4.1-226. Grounds for which Board shall suspend or revoke licenses**

- The Board shall suspend or revoke any license, other than a brewery license, in which case the Board may impose penalties as provided in § 4.1-227, if it finds that:
  1. A licensee has violated or permitted the violation of § 18.2-331, relating to the illegal possession of a gambling device, upon the premises for which the Board has granted a license for the sale of alcoholic beverages to the public.
  2. In the licensed establishment of a mixed beverage licensee there (i) is entertainment of an obscene nature, entertainment commonly called stripteasing, topless entertaining, or entertainment that has employees who are not clad both above and below the waist or (ii) are employees who solicit the sale of alcoholic beverages. The provisions of clause (i) shall not apply to persons operating theaters, concert halls, art centers, museums, or similar establishments that are devoted primarily to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value.

#### **§ 40.1-100.2. Employment involving sexually explicit visual material prohibited**

A person under eighteen years of age shall not perform in or be a subject of sexually explicit visual material. As used in this section, "*sexually explicit visual material*" means a picture, photograph, drawing, sculpture, motion picture film or similar visual representation which is **obscene** for children, as defined in § 18.2-374.1, and which depicts nudity, sexual excitement, sexual conduct, sexual intercourse or sadomasochistic abuse, as defined in § 18.2-390, or a book, magazine or pamphlet which contains such a visual representation. An undeveloped photograph or similar visual material may be sexually explicit material notwithstanding that processing or other action is necessary to make its sexually explicit content apparent. A person who employs, permits or suffers a person to be employed or work in violation of this section is guilty of a Class 6 felony.

#### **§ 46.2-1077.01. Display of certain visual material in motor vehicles prohibited; penalty**

It shall be unlawful for the operator of any motor vehicle on a public highway to display or permit the display within the vehicle of any image, motion picture, or video display that is **obscene** as defined in § 18.2-372 if such image, motion picture, or video display can be seen by persons outside the vehicle. Violation of this section shall constitute a Class 4 misdemeanor.

### **§ 18.2-356. Receiving money for procuring person**

Any person who receives any money or other valuable thing for or on account of (i) procuring for or placing in a house of prostitution or elsewhere any person for the purpose of causing such person to engage in unlawful sexual intercourse or any act in violation of § 18.2-361 or (ii) causing any person to engage in forced labor or services, concubinage, prostitution, or the manufacture of any **obscene** material or child pornography shall be guilty of a Class 4 felony.

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FILTERING LAWS:

### **§ 42.1-36.1. Power and duty of library boards and certain governing bodies regarding acceptable Internet use policies**

- A. Every (i) **library** board established pursuant to § 42.1-35 or (ii) governing body of any county, city, or town that, pursuant to § 42.1-36, has not established a **library** board pursuant to § 42.1-35, shall establish an acceptable use **policy** for the **Internet** designed to (a) prohibit use by **library** employees and patrons of the **library's** computer equipment and communications services for sending, receiving, viewing, or downloading illegal material via the **Internet**, (b) prevent access by **library** patrons under the age of 18 to material that is harmful to juveniles, and (c) establish appropriate measures to be taken against persons who violate the **policy**. For libraries established under § 42.1-33, the **policy** shall also require the selection, installation and activation of, on those computers that are accessible to the public and have **Internet** access, a technology protection measure to **filter** or block **Internet** access through such computers to child pornography as defined in § 18.2-374.1:1, obscenity as defined in § 18.2-372, and, with respect to minors, materials deemed harmful to juveniles as defined in § 18.2-390. Such **policy** shall provide that a person authorized by the **library** board shall disable or otherwise bypass the technology protection measure required by this section at the request of a patron to enable access for bona fide research or other lawful purposes. The **policy** required by this section shall be posted online; however, if the **library** does not have a website, the **policy** shall be available to the public upon request.
- The **library** board or the governing body may include such other terms, conditions, and requirements in the **library's policy** as it deems appropriate, such as requiring written parental authorization for **Internet** use by juveniles or differentiating acceptable uses between elementary, middle, and high school students.
- B. The **library** board or the governing body shall take such steps as it deems appropriate to implement and enforce the **library's policy** which may include, but are not limited to, (i) the use of software programs designed to block access by (a) **library** employees and patrons to illegal material or (b) **library** patrons under the age of 18 to material that is harmful to juveniles or (c) both; (ii) charging **library** employees to casually monitor patrons' **Internet** use; or (iii) installing privacy screens on computers that access the **Internet**. For libraries established under § 42.1-33, the **library** board or governing body shall direct such libraries to select and



install on those computers that are accessible to the public and have **Internet** access a technology protection measure as required by the **policy** established pursuant to subsection A. No state funding shall be withheld and no other adverse action taken against a **library** by the Librarian of Virginia or any other official of state government when the technology protection measure fails, provided that such **library** promptly has taken reasonable steps to rectify and prevent such failures in the future.

#### **§ 22.1-70.2. Acceptable Internet use policies for public and private schools**

- A. Every two years, each local **school** board shall review, amend if necessary, and approve the **school** division's acceptable use **policy** for the **Internet**. At a minimum, the **policy** shall contain provisions that (i) are designed to prohibit use by division employees and students of the division's computer equipment and communications services for sending, receiving, viewing, or downloading illegal material via the **Internet**; (ii) seek to prevent access by students to material that the **school** division deems to be harmful to juveniles as defined in § 18.2-390; (iii) select a technology for the division's computers having **Internet** access to **filter** or block **Internet** access through such computers to child pornography as set out in § 18.2-374.1:1 and obscenity as defined in § 18.2-372; (iv) establish appropriate measures to be taken against persons who violate the **policy**; and (v) include a component on **Internet** safety for students that is integrated in a division's instructional program. The **policy** may include such other terms, conditions, and requirements as deemed appropriate, such as requiring written parental authorization for **Internet** use by juveniles or differentiating acceptable uses among elementary, middle, and high **school** students.
- Each **school** division's **policy** shall be posted on its website in accordance with § 22.1-253.13:7. Additionally, each local **school** division shall certify compliance with these requirements annually to the Department of Education.
- B. The superintendent shall take such steps as he deems appropriate to implement and enforce the division's **policy**.
- C. In addition to the foregoing requirements regarding public **school Internet** use **policies**, the principal or other chief administrator of any private **school** that satisfies the compulsory **school** attendance law pursuant to § 22.1-254 and accepts federal funds for **Internet** access shall select a technology for its computers having **Internet** access to **filter** or block **Internet** access through such computers to child pornography as set out in § 18.2-374.1:1 and obscenity as defined in § 18.2-372.
- D. The Superintendent of Public Instruction shall issue guidelines to **school** divisions regarding instructional programs related to **Internet** safety.