

Article 2.

Civil Remedy for Sales of Harmful Materials to Minors.

§ 19-9. Title.

This Article shall be known and cited as the North Carolina Law on the Protection of Minors from Harmful Materials. (1969, c. 1215, s. 1.)

§ 19-10. Purposes.

The purposes of this Article are to provide district attorneys with a speedy civil remedy for obtaining a judicial determination of the character and contents of publications, and with an effective power to enjoin promptly the sale of harmful materials to minors. (1969, c. 1215, s. 1; 1971, c. 528, s. 7; 1973, c. 47, s. 2.)

§ 19-11. Public policy.

The public policy of this State requires that all proceedings prescribed in this Article shall be examined, heard and disposed of with the maximum promptness and dispatch commensurate with constitutional requirements, including due process, freedom of the press and freedom of speech. (1969, c. 1215, s. 1.)

§ 19-12. Definitions.

As used within this Article, the following definitions shall apply:

- (1) "Harmful Material".—
 - a. Any picture, photograph, drawing, 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
 - b. Any book, pamphlet, magazine, or printed matter however reproduced which contains any matter enumerated in subparagraph a of this subdivision or which contains explicit or detailed verbal descriptions or accounts of sexual excitement, sexual conduct or sadomasochistic abuse, and which, taken as a whole, is harmful to minors.
- (2) "Harmful to minors". – That quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:
 - a. Predominantly appeals to the prurient, shameful or morbid interest of minors, and
 - b. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable materials for minors, and
 - c. Is utterly without redeeming social importance for minors.
- (3) "Knowledge of the Minor's Age".—
 - a. Knowledge or information that the person is a minor, or
 - b. Reason to know, or a belief or ground for belief which warrants further inspection or inquiry as to, the age of the minor.
- (4) "Knowledge of the Nature of the Material".—
 - a. Knowledge of the character and content of any material described herein, or

- b. Knowledge or information that the material described herein has been adjudged to be harmful to minors in a proceeding instituted pursuant to this Article, or is the subject of a pending proceeding instituted pursuant to this Article.
- (5) "Minor".—Any person under the age of 18 years.
 - (6) "Nudity".—The showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.
 - (7) "Person".—Any individual, partnership, firm, association, corporation or other legal entity.
 - (8) "Sodomasochistic abuse".—Flagellation or torture by or upon a person clad in undergarments, a mask or a bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.
 - (9) "Sexual conduct".—Acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, breast.
 - (10) "Sexual excitement".—The condition of human male or female genitals when in a state of sexual stimulation or arousal. (1969, c. 1215, s. 1.)

§ 19-13. Commencement of civil proceeding.

(a) Whenever the district attorney for any prosecutorial district has reasonable cause to believe that any person is engaged in selling, distributing or disseminating in any manner harmful material to minors or may become engaged in selling, distributing or disseminating in any manner harmful material to minors, the district attorney for the prosecutorial district in which such material is so offered for sale shall institute an action in the district court for that district for adjudication of the question of whether such material is harmful to minors.

(b) The provisions of the Rules of Civil Procedure and all existing and future amendments of said Rules shall apply to all proceedings herein, except as otherwise provided in this Article. (1969, c. 1215, s. 1; 1971, c. 528, s. 8; 1973, c. 47, s. 2; 1987 (Reg. Sess., 1988), c. 1037, s. 73.)

§ 19-14. Filing and form of complaint.

The action authorized by this Article shall be commenced by the filing of a complaint to which shall be attached, as an exhibit, a true copy of the allegedly harmful material. The complaint shall:

- (1) Be directed against such material by name, description, volume, and issue, as appropriate;
- (2) Allege that such material is harmful to minors;
- (3) Designate as respondents, and list the names and all known addresses of any person in this State preparing, selling, offering, commercially distributing or disseminating in any manner such material to minors, or possessing such material with the apparent intent to offer to sell or commercially distribute or disseminate in any manner such material to minors;
- (4) Seek an adjudication that such material is harmful to minors; and

- (5) Seek a permanent injunction against any respondent prohibiting him from selling, commercially distributing, or disseminating in any manner such material to minors or from permitting minors to inspect such material. (1969, c. 1215, s. 1.)

§ 19-15. Examination by the court; probable cause; service of summons.

(a) Upon the filing of a complaint pursuant to this Article, the district attorney shall present the same, together with attached exhibits, as soon as practicable to the court for its examination and reading.

(b) If, after such examination and reading, the court finds no probable cause to believe such material to be harmful to minors, the court shall cause an endorsement to that effect to be placed and dated upon the complaint and shall thereupon dismiss the action.

(c) If, after such examination and reading, the court finds probable cause to believe such material to be harmful to minors, the court shall enter an order to that effect whereupon it shall be the responsibility of the district attorney promptly to cause the clerk of the superior court to issue summonses together with copies of said order and said complaint as are needed for the service of the same upon respondents. Service of such summons, order and complaint shall be made upon each respondent thereto in any manner provided by law for the service of civil process. (1969, c. 1215, s. 1; 1971, c. 528, s. 8; 1973, c. 47, s. 2.)

§ 19-16. Appearance and answer; default judgment.

(a) On or before the return date specified in the summons issued pursuant to this Article, or within 15 days after the service of such summons, or within 15 days after receiving actual notice of the issuance of such summons, the author, publisher or any person interested in sending or causing to be sent, bringing or causing to be brought, into this State for sale or distribution or disseminating in any manner, or any person in this State preparing, selling, offering, exhibiting or commercially distributing, or disseminating in any manner or possessing with intent to sell, offer or commercially distribute or exhibit or disseminate in any manner the material attached as an exhibit to the endorsed complaint, may appear and may intervene as a respondent and file an answer.

(b) If, after service of summons has been effected upon all respondents, no person appears and files an answer on or before the return date specified in the summons, the court may forthwith adjudge whether the material so exhibited to the endorsed complaint is harmful to minors and enter an appropriate final judgment. (1969, c. 1215, s. 1.)

§ 19-17. Trial.

(a) Upon the expiration of the time for filing answers by all respondents, but not later than the return date specified in the summons, the court shall, upon its own motion, or upon the application of any party who has appeared and filed an answer, set a date for the trial of the issues joined.

(b) Any respondent named in the complaint, or any person who becomes a respondent by virtue of intervention pursuant to this Article, shall be entitled to a trial of the issues within one day after joinder of issue. A decision shall be rendered by the court or jury, as the case may be, within two days of the conclusion of the trial.

(c) Every person appearing and answering as a respondent shall be entitled, upon request, to a trial of any issue by a jury. If a jury is not requested by any such respondent, the issues shall be tried by the court without a jury. (1969, c. 1215, s. 1.)

§ 19-18. Judgment; limitation to district.

(a) In the event that the court or jury, as the case may be, fails to find the material attached as an exhibit to the complaint to be harmful to minors, the court shall enter judgment accordingly and shall dismiss the complaint.

(b) In the event that the court or jury, as the case may be, finds the material attached as an exhibit to the complaint to be harmful to minors, the court shall enter judgment to such effect and may, in such judgment or in subsequent orders of enforcement thereof, enter a permanent injunction against any respondent prohibiting him from selling, commercially distributing, or giving away such material to minors or from permitting minors to inspect such material.

(c) No interlocutory order, judgment, or subsequent order of enforcement thereof, entered pursuant to the provisions of this Article, shall be of any force and effect outside the district court district in which entered; and no such order or judgment shall be res judicata in any proceeding in any other district court district. (1969, c. 1215, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 74.)

§ 19-19. Injunctions.

(a) If the court finds probable cause to believe the exhibited material to be harmful to minors, and so enters an order, the court may, upon the motion of the district attorney, issue a temporary restraining order against any respondent prohibiting him from offering, selling, commercially distributing or disseminating in any manner such material to minors or from permitting minors to inspect such material. No temporary restraining order shall be granted without notice to the respondents unless it clearly appears from specific facts shown by affidavit or by the verified complaint that one or more of the respondents are engaged in the sale, distribution or dissemination of harmful material to minors and that immediate and irreparable injury to the morals and general welfare of minors in this State will result before notice can be served and a hearing had thereon.

(b) Every temporary restraining order shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its own terms within such time after entry, not to exceed three days, as the court fixes unless within the time so fixed the respondent against whom the order is directed consents that it may be extended for a longer period.

(c) In the event that a temporary restraining order is granted without notice, a motion for a preliminary injunction shall be set down for hearing within two days after the granting of such order and shall take precedence over all matters except older matters of the same character; and when the motion comes on for hearing, the district attorney shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the restraining order.

(d) No preliminary injunction shall be issued without at least two days' notice to the respondents. (1969, c. 1215, s. 1; 1971, c. 528, s. 8; 1973, c. 47, s. 2.)

§ 19-20. Contempt; defenses; extradition.

(a) Any respondent, or any officer, agent, servant, employee or attorney of such respondent, or any person in active concert or participation by contract or arrangement with such respondent, who receives actual notice by personal service or otherwise of any restraining order or injunction entered pursuant to this Article, and who shall disobey any of the provisions thereof,

shall be guilty of contempt of court and upon conviction after notice and hearing shall be sentenced as provided by law.

(b) No person shall be guilty of contempt pursuant to this section:

- (1) For any sale, distribution or dissemination to a minor where such person had reasonable cause to believe that the minor involved was 18 years old or more, and such minor exhibited to such person a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was 18 years old or more;
- (2) For any sale, distribution or dissemination where a minor is accompanied by a parent or guardian, or accompanied by an adult and such person has no reason to suspect that the adult accompanying the minor is not the minor's parent or guardian;
- (3) Where such person is a bona fide school, museum or public library or is acting in his capacity as an employee of such organization or as a retail outlet affiliated with and serving the educational purposes of such organization.

(c) In the event that any person found guilty of contempt pursuant to this section cannot be found within this State, the executive authority of this State shall, unless such person shall have appealed from the judgment of contempt and such appeal has not been finally determined, demand his extradition from the executive authority of the state in which such person may be found, pursuant to the law of this State. (1969, c. 1215, s. 1.)

§ 19-21. Repealed by Session Laws 1971, c. 528, s. 9.