

NORTH CAROLINA GENERAL ASSEMBLY
1969 SESSION

CHAPTER 1215
SENATE BILL 242

1 AN ACT RELATING TO THE SALE OR DISTRIBUTION OF HARMFUL MATERIALS
2 TO MINORS.

3
4 WHEREAS, during the past several years the sale or distribution of harmful
5 materials to minors has become a matter of increasingly grave concern to the people of this
6 State, and the elimination of such sales and the consequent protection of minors from harmful
7 materials are in the best interests of the morals and general welfare of the citizens of this State,
8 in general, and of minors in this State, in particular; and

9 WHEREAS, it being the intention of the General Assembly that the accomplishment
10 of these ends can best be achieved by providing public prosecutors and solicitors with a speedy
11 civil remedy;

12 NOW, THEREFORE,

13
14 The General Assembly of North Carolina do enact:

15
16 **Section 1.** That Chapter 19 of the General Statutes of North Carolina be amended
17 by inserting a new Article to read as follows:

18 "Article 2

19 Civil Remedy for Sales of Harmful Materials to Minors

20 **G.S. 19-9. Title.** This Article shall be known and cited as the North Carolina Law on the
21 Protection of Minors from Harmful Materials.

22 **G.S. 19-10. Purposes.** The purposes of this Article are to provide public prosecutors or
23 solicitors:

24 (a) with a speedy civil remedy for obtaining a judicial determination of the character
25 and contents of publications, and (b) with an effective power to enjoin promptly the sale of
26 harmful materials to minors.

27 **G.S. 19-11. Public Policy.** The public policy of this State requires that all proceedings
28 prescribed in this Article shall be examined, heard and disposed of with the maximum
29 promptness and dispatch commensurate with constitutional requirements, including due
30 process, freedom of the press and freedom of speech.

31 **G.S. 19-12. Definitions.** As used within this Article, the following definitions shall apply:

32 (a) Minor - any person under the age of eighteen years.

33 (b) Nudity - the showing of the human male or female genitals, pubic area or
34 buttocks with less than a full opaque covering, or the showing of the female
35 breast with less than a full opaque covering of any portion thereof below the
36 top of the nipple, or the depiction of covered male genitals in a discernibly
37 turgid state.

38 (c) Sexual conduct - acts of masturbation, homosexuality, sexual intercourse, or
39 physical contact with a person's clothed or unclothed genitals, pubic area,
40 buttocks or, if such person be a female, breast.

41 (d) Sexual excitement - the condition of human male or female genitals when in
42 a state of sexual stimulation or arousal.

- 1 (e) Sado-Masochistic abuse - flagellation or torture by or upon a person clad in
2 undergarments, a mask or a bizarre costume, or the condition of being
3 fettered, bound or otherwise physically restrained on the part of one so
4 clothed.
- 5 (f) Harmful to minors - that quality of any description or representation, in
6 whatever form, of nudity, sexual conduct, sexual excitement, or sado-
7 masochistic abuse, when it:
8 (1) predominantly appeals to the prurient, shameful or morbid interest of
9 minors, and
10 (2) is patently offensive to prevailing standards in the adult community
11 as a whole with respect to what is suitable materials for minors, and
12 (3) is utterly without redeeming social importance for minors.
- 13 (g) Knowledge of the nature of the material -
14 (1) knowledge of the character and content of any material described
15 herein, or
16 (2) knowledge or information that the material described herein has been
17 adjudged to be harmful to minors in a proceeding instituted pursuant
18 to this Article. or is the subject of a pending proceeding instituted
19 pursuant to this Article.
- 20 (h) Knowledge of the minor's age -
21 (1) knowledge or information that the person is a minor, or
22 (2) reason to know, or a belief or ground for belief which warrants
23 further inspection or inquiry as to the age of the minor.
- 24 (i) Person - any individual, partnership, firm, association, corporation or other
25 legal entity.
- 26 (j) Harmful material -
27 (1) any picture, photograph, drawing, or similar visual representation or
28 image of a person or portion of the human body which depicts
29 nudity, sexual conduct or sadomasochistic abuse, and which is
30 harmful to minors, or
31 (2) any book, pamphlet, magazine, or printed matter however
32 reproduced which contains any matter enumerated in subparagraph
33 (1) of this Subsection or which contains explicit or detailed verbal
34 descriptions or accounts of sexual excitement, sexual conduct or
35 sado-masochistic abuse, and which, taken as a whole, is harmful to
36 minors.

37 **G.S. 19-13. Commencement of Civil Proceeding.** (a) Whenever the solicitor or prosecutor
38 for any judicial district has reasonable cause to believe that any person is engaged in selling,
39 distributing or disseminating in any manner harmful material to minors or may become
40 engaged in selling, distributing or disseminating in any manner harmful material to minors, the
41 solicitor or prosecutor for the judicial district in which such material so offered for sale shall
42 institute an action in the District Court for that district for adjudication of the question of
43 whether such material is harmful to minors.

44 (b) The provisions of the Rules of Civil Procedure and all existing and future
45 amendments of said Rules shall apply to all proceedings herein, except as otherwise provided
46 in this Article.

47 **G.S. 19-14. Filing and Form of Complaint.** The action authorized by this Article shall be
48 commenced by the filing of a complaint to which shall be attached, as an exhibit, a true copy of
49 the allegedly harmful material. The complaint shall:

- 50 (a) be directed against such material by name, description, volume, and issue, as
51 appropriate;

- 1 (b) allege that such material is harmful to minors;
2 (c) designate as respondents, and list the names and all known addresses of any
3 person in this State preparing, selling, offering commercially distributing or
4 disseminating in any manner such material to minors, or possessing such
5 material with the apparent intent to offer to sell or commercially distribute or
6 disseminate in any manner such material to minors;
7 (d) seek an adjudication that such material is harmful to minors; and
8 (e) seek a permanent injunction against any respondent prohibiting him from
9 selling, commercially distributing, or disseminating in any manner such
10 material to minors or from permitting minors to inspect such material.

11 **G.S. 19-15. Examination by the Court; Probable Cause; Service of Summons.** (a) Upon
12 the filing of a complaint pursuant to this Article, the solicitor or prosecutor shall present the
13 same together with attached exhibits, as soon as practicable to the court for its examination and
14 reading.

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

18 (c) If, after such examination and reading, the court finds probable cause to believe
19 such material to be harmful to minors, the court shall enter an order to that effect whereupon it
20 shall be the responsibility of the solicitor or prosecutor promptly to cause the clerk of the
21 superior court to issue summonses together with copies of said order and said complaint as are
22 needed for the service of the same upon respondents. Service of such summons, order and
23 complaint shall be made upon each respondent thereto in any manner provided by law for the
24 service of civil process.

25 **G.S. 19-16. Appearance and Answer; Default Judgment.**

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

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

39 **G.S. 19-17. Trial.** (a) Upon the expiration of the time for filing answers by all respondents, but
40 not later than the return date specified in the summons, the court shall, upon its own motion, or
41 upon the application of any party who has appeared and filed an answer, set a date for the trial
42 of the issues joined.

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

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

1 **G.S. 19-18. Judgment; Limitation to District.** (a) In the event that the court or jury, as the
2 case may be, fails to find the material attached as an exhibit to the complaint to be harmful to
3 minors, the court shall enter judgment accordingly and shall dismiss the complaint.

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

10 (c) No interlocutory order, judgment, or subsequent order of enforcement thereof,
11 entered pursuant to the provisions of this Article, shall be of any force and effect outside the
12 judicial district in which entered; and no such order or judgment shall be res judicata in any
13 proceeding in any other judicial district.

14 **G.S. 19-19. Injunctions.** (a) If the court finds probable cause to believe the exhibited material
15 to be harmful to minors, and so enters an order, the court may, upon the motion of the solicitor
16 or prosecutor, issue a temporary restraining order against any respondent prohibiting him from
17 offering, selling, commercially distributing or disseminating in any manner such material to
18 minors or from permitting minors to inspect such material. No temporary restraining order shall
19 be granted without notice to the respondents unless it clearly appears from specific facts shown
20 by affidavit or by the verified complaint that one or more of the respondents are engaged in the
21 sale, distribution or dissemination of harmful material to minors and that immediate and
22 irreparable injury to the morals and general welfare of minors in this State will result before
23 notice can be served and a hearing had thereon.

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

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

36 (d) No preliminary injunction shall be issued without at least two days notice to the
37 respondents.

38 **G.S. 19-20. Contempt; Defenses; Extradition.** (a) any respondent, or any officer, agent,
39 servant, employee or attorney of such respondent, or any person in active concert or
40 participation by contract or arrangement with such respondent, who receives actual notice by
41 personal service or otherwise of any restraining order or injunction entered pursuant to this
42 Article, and who shall disobey any of the provisions thereof, shall be guilty of contempt of
43 court and upon conviction after notice and hearing shall be sentenced as provided by law.

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

45 (1) for any sale, distribution or dissemination to a minor where such person had
46 reasonable cause to believe that the minor involved was eighteen years old
47 or more, and such minor exhibited to such person a draft card, driver's
48 license, birth certificate or other official or apparently official document
49 purporting to establish that such minor was eighteen years old or more;

50 (2) for any sale, distribution or dissemination where a minor is accompanied by
51 a parent or guardian, or accompanied by an adult and such person has no

1 reason to suspect that the adult accompanying the minor is not the minor's
2 parent or guardian;

3 (3) where such person is a bona fide school, museum or public library or is
4 acting in his capacity as an employee of such organization or as a retail
5 outlet affiliated with and serving the educational purposes of such
6 organization.

7 (c) In the event that any person found guilty of contempt pursuant to this Section cannot
8 be found within this State, the executive authority of this State shall, unless such person shall
9 have appealed from the judgment of contempt and such appeal has not been finally determined,
10 demand his extradition from the executive authority of the State in which such person may be
11 found, pursuant to the law of this State."

12 **Sec. 2.** G.S. 19-21. Districts without a District Court, (a) Prior to the establishment
13 of a district court in any judicial district, any action instituted pursuant to this Article shall be
14 instituted in the Superior Court of such district.

15 (b) When a district court is established in a district, any cases pending in the
16 Superior Court shall be transferred to the district court in accordance with the provisions of
17 Chapter 7A of the General Statutes of North Carolina.

18 **Sec. 3.** Severability. If any provision of this Act, or the application thereof to any
19 person or circumstances, is held to be invalid, that invalidity shall not affect any other provision
20 of this Act which can be given effect without the invalid provision. To this end the provisions,
21 clauses, sentences, paragraphs, sections, phrases and parts of this Act are declared to be
22 severable.

23 **Sec. 4.** Savings Clause. All laws and clauses of laws in conflict with this Act are
24 hereby repealed.

25 **Sec. 5.** Effective Date. This Act shall be in full force and effect on and after July 1,
26 1969.

27 In the General Assembly read three times and ratified, this the 2nd day of July,
28 1969.