

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2C:34-2 and 2C:34-3 (Obscene films and exhibitions--
prescribe sale of admission)

LAWS OF: 1989 **CHAPTER:** 54

BILL NO: S1067

SPONSOR(S): Di Francesco

Date Introduced: Pre-filed

Committee: **Assembly:** Judiciary
Senate: Judiciary

Amended during passage: Yes Amendments during passage denoted
by asterisks.

Date of Passage: **Assembly:** February 6, 1989
Senate: January 25, 1989

Date of Approval: April 14, 1989

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: **Assembly** Yes
Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

See newspaper clipping-- attached:

"Sex video bill stirs worries," 3-8-89 Asbury Park Press.

RDV

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Senator DiFRANCESCO

1 AN ACT concerning the promotion of obscene materials and
amending N.J.S.2C:34-2 and N.J.S.2C:34-3.

3

BE IT ENACTED *by the Senate and General Assembly of the*
5 *State of New Jersey:*

1. N.J.S.2C:34-2 is amended to read as follows:

7 2C:34-2. Obscenity for Persons 18 Years of Age or Older. a.
Definitions for purpose of this section:

9 (1) "Obscene material" means any description, narrative
account, display, or depiction of sexual activity or anatomical
11 area contained in, or consisting of, a picture or other
representation, publication, sound recording, live performance,
13 or film, which by means of posing, composition, format or
animated sensual details:

15 (a) Depicts or describes in a patently offensive way,
ultimate sexual acts, normal or perverted, actual or
17 simulated, masturbation, excretory functions, or lewd
exhibition of the genitals,

19 (b) Lacks serious literary, artistic, political, or scientific
value, when taken as a whole, and

21 (c) Is a part of a work, which to the average person
applying contemporary community standards, has a dominant
23 theme taken as a whole, which appeals to the prurient interest.

25 ²(2) "Exhibit" means the sale of admission to view obscene
material.²

27 b. A person who sells, distributes, rents or exhibits obscene
material to a person 18 years of age or older commits a crime of
the fourth degree. Sale of obscene material shall be deemed to
29 include any form of transaction which results in the admission to
a display or depiction of obscene material or temporary or
31 permanent access to any obscene material.

33 Nothing contained herein shall be construed to prohibit a
municipality from adopting as a part of its zoning

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SJU committee amendments adopted January 21, 1988.

² Assembly AJU committee amendments adopted November 21, 1988.

1 ordinances an ordinance permitting the sale ¹,distribution,
2 rental or exhibition¹ of obscene material in which event such
3 sale ¹,distribution, rental or exhibition¹ shall be deemed legal.

(cf: P.L.1982, c.211, s.1)

5 2. N.J.S.2C:34-3 is amended to read as follows:

6 2C:34-3. Obscenity For Persons Under 18. a. Definitions for
7 purposes of this section:

8 (1) "Obscene material" means any description, narrative
9 account, display, depiction of a specified anatomical area or
10 specified sexual activity contained in, or consisting of, a picture
11 or other representation, publication, sound recording, live
12 performance or film, which by means of posing, composition,
13 format or animated sensual details, emits sensuality with
14 sufficient impact to concentrate prurient interest on the area or
15 activity.

16 (2) "Obscene film" means any motion picture film or preview
17 or trailer to a film, not including newsreels portraying actual
18 current events or pictorial news of the day, in which a scene,
19 taken by itself:

20 (a) Depicts a specified anatomical area or specified sexual
21 activity, or the simulation of a specified sexual activity, or
22 verbalization concerning a specified sexual activity; and

23 (b) Emits sensuality sufficient, in terms of the duration
24 and impact of the depiction, to appeal to prurient interest.

25 (3) "Specified anatomical area" means:

26 (a) Less than completely and opaquely covered human
27 genitals, pubic region, buttock or female breasts below a point
28 immediately above the top of the areola; or

29 (b) Human male genitals in a discernibly turgid state, even
30 if covered.

31 (4) "Specified sexual activity" means:

32 (a) Human genitals in a state of sexual stimulation or
33 arousal; or

34 (b) Any act of human masturbation, sexual intercourse or
35 deviate sexual intercourse; or

36 (c) Fondling or other erotic touching of covered or
37 uncovered human genitals, pubic region, buttock or female
38 breast.

39 (5) "Knowingly" means:

1 (a) Having knowledge of the character and content of the
material or film described herein; or

3 (b) Having failed to exercise reasonable inspection which
would disclose its character and content.

5 ²(6) "Exhibit" means the sale of admission to view obscene
material.²

7 b. [Sale of] Promoting obscene material.

9 A person who knowingly sells, distributes, rents or exhibits to a
person under 18 years of age obscene material is guilty of a crime
of the fourth degree.

11 c. Admitting to exhibition of obscene film.

13 Any person who knowingly admits a person under 18 years of
age to a theatre then exhibiting an obscene film is guilty of a
crime of the fourth degree.

15 d. Presumption of knowledge and age.

17 The requisite knowledge with regard to the character and
content of the film or material and of the age of the person is
presumed in the case of an actor who sells, distributes, rents or
19 exhibits obscene material to a person under 18 years of age or
admits to a film obscene for a person under 18 years of age a
21 person who is under 18 years of age.

e. Defenses.

23 (1) It is an affirmative defense to a prosecution under
subsections b. and c. which the defendant must prove by a
25 preponderance of evidence that:

27 (a) The person under age 18 falsely represented in or by
writing that he was age 18 or over;

29 (b) The person's appearance was such that an individual of
ordinary prudence would believe him to be age 18 or over; and

31 (c) The sale, distribution, rental or exhibition to or
admission of the person was made in good faith relying upon
such written representation and appearance and in the
33 reasonable belief that he was actually age 18 or over.

35 (2) It is an affirmative defense to a prosecution under
subsection c. that the defendant is an employee in a motion
picture theatre who has no financial interest in that motion
37 picture theatre other than his wages and has no decision-making
authority or responsibility with respect to the selection of the
39 motion picture show which is exhibited.

(cf: N.J.S.2C:34-3)

1 3. This act shall take effect immediately.

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CRIMINAL JUSTICE
Prosecution and Defense

5

7 Proscribes the sale of admissions to view obscene films and
 exhibitions.

3. This act shall take effect immediately.

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STATEMENT

6 This bill clarifies that the distributing, renting or exhibiting of
obscene materials are prohibited by the present New Jersey
8 statutes dealing with the sale of obscene material to adults and
to minors. The bill also clarifies that the prohibition against the
10 sale of obscene materials to adults is intended to include any
form of transaction which results in the admission to a display
12 or depiction of obscene material or to temporary or permanent
access to any obscene material.

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16

CRIMINAL JUSTICE Prosecution and Defense

18

20 Proscribes the sale of admissions to view obscene films and
exhibitions.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 1067

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 21, 1988

The Assembly Judiciary Committee reports favorably and with amendments Senate Bill No. 1067 [1R]. Senate Bill No. 1067 [1R] amends the obscenity laws to prohibit the distribution, rental or exhibition of obscene materials. This bill is intended to clarify that the law covers any form of transaction which results in the admission to a display or depiction of obscene material or temporary or permanent access to any obscene material. The committee amendment adds a definition for "exhibit" which means the sale of admission to view obscene material.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1067

with committee amendments

STATE OF NEW JERSEY

DATED: January 21, 1988

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 1067.

In State v. Foglia, 182 N.J. Super 12 (App. Div, 1981), the court ruled that N.J.S. 2C:34-2 which prohibits the sale of obscene material to adults is not applicable to the exhibition of obscene film. This bill would add language to both 2C:34-2 and 2C:34-3 (sale of obscene materials to minors) indicating that these statutes prohibit the distributing, renting or exhibiting of obscene materials. By adding this language, this bill is intended to clarify that these statutes cover any form of transaction which results in the admission to a display or depiction of obscene material or in temporary or permanent access to obscene material.

The amendments adopted by the committee are technical and add the phrase "distribution, rental or exhibition" to the last paragraph of 2C:34-2.

This bill was pre-filed for introduction in the 1988 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.