

## OBSCENITY

**Chapter 68****OBSCENITY**

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**[HISTORY: Adopted by the Council of the Town of Middleburg as Ch. 2, Art. III, of the 1961 Code. Amendments noted where applicable.]**

**GENERAL REFERENCES**

Peace and good order - See Ch. 71.

**§ 68-1. Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

OBSCENE - That which, considered as a whole, has as its dominant theme or purpose an appeal to prurient interest, that is, a shameful or morbid interest in nudity, sex or excretion, and if it goes substantially beyond customary limits of candor in description or representation of such matters.

OBSCENE ITEM - includes:

- A. Any obscene book.
- B. Any obscene leaflet, pamphlet, magazine, booklet, picture, painting, drawing, photograph, film, negative, slide or motion picture.
- C. 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.

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**§ 68-2. Production, publication or distribution of obscene items.**

Every person who knowingly prepares any obscene item for the purposes of sale or commercial distribution; or prints, copies, manufactures, produces or reproduces any obscene item for the purposes of sale or commercial distribution; or publishes, sells, rents, lends, transports or commercially distributes or exhibits any obscene item, or offers to do any of these things; or has in his possession with intent to sell, rent, lend, transport or commercially distribute any obscene item, shall be guilty of a misdemeanor.

**§ 68-3. Exhibitions and performances.**

Every person who knowingly produces, promotes, prepares, presents, manages, directs, carries on or participates in any obscene exhibition or performance, including the exhibition or performance of any obscene motion picture, play, drama, show, entertainment, exposition, tableau or scene or owns, leases or manages any theater, garden, building, structure, room or place and leases, lets, lends or permits such theater, garden, building, structure, room or place to be used for the purposes of presenting such obscene exhibition or performance, shall be guilty of a misdemeanor.

**§ 68-4. Advertising of obscene items, exhibitions and performances.**

Every person who knowingly prepares, prints, publishes or circulates or causes to be prepared, printed, published or circulated any notice or advertisement of any obscene item proscribed in §§ 68-2 or of any obscene performance or exhibition proscribed in §§ 68-3 stating or indicating where such obscene item, exhibition or performance may be purchased, obtained, seen or heard shall be guilty of a misdemeanor.

**§ 68-5. Placards, posters and bills.**

Every person who knowingly exposes, places, displays, posts up, exhibits, paints, prints or marks or causes 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 §§ 68-2 or any obscene exhibition or performance proscribed in §§ 68-3 or who knowingly permits the same to be displayed on property belonging to or controlled by him, shall be guilty of a misdemeanor.

**§ 68-6. Coercing acceptance of obscene articles and publications.**

No person, firm, association or corporation shall, as a condition to any sale, allocation, consignment or delivery for resale of any paper, magazine, book, periodical or publication, 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

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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. A violation of this section shall be a misdemeanor.

**§ 68-7. Employing or permitting minor to assist in offense.**

Every person who intentionally, in any manner, hires, employs, uses or permits any minor under the age of eighteen (18) years to do or assist in doing any act or thing constituting an offense under this chapter shall be guilty of a misdemeanor.

**§ 68-8. Photographs, films and motion pictures.**

Every person who knowingly photographs himself or any other person, for purposes of preparing an obscene film, photograph, negative, slide or motion picture for purposes of sale or commercial distribution; or models, poses, acts or otherwise assists in the preparation of any obscene film, photograph, negative, slide or motion picture for purposes of sale or commercial distribution, shall be guilty of a misdemeanor.

**§ 68-9. Exceptions.**

Nothing contained in this chapter shall be construed to apply to:

- A. The exhibition of any motion picture approved for public exhibition by the Virginia Board of Motion Picture Censors.
- B. The purchase, distribution, exhibition or loan of any book, magazine or other printed manuscript material by any library, school or institution of higher learning, supported by public appropriation.
- C. The purchase of 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.
- D. The exhibition or performance of any play, drama, tableau or motion picture by any theater, museum of fine arts, school or institution of higher learning, supported by public appropriation.

**§ 68-10. Books.**

- A. 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 or any County or Town Attorney in which the sale or commercial distribution of such book occurs may institute a proceeding in any court of record in said town or county for adjudication of the obscenity of the book. **[Amended 3-8-1990]**

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- B. The proceeding shall be instituted by filing with the court a petition:
- (1) Directed against the book by name or description.
  - (2) Alleging the obscene nature of the book; and
  - (3) Listing the names and addresses, if known, of the author, publisher and all other persons interested in its sale or commercial distribution.
- C. Upon the filing of a petition pursuant to this chapter, the court in term or in vacation shall forthwith examine the book alleged to be obscene. If the court shall find no probable cause to believe the book obscene, the Judge thereof shall dismiss the petition; but if the court shall 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.
- D. The order to show cause shall be:
- (1) Directed against the book by name or description;
  - (2) Published once a week for two (2) successive weeks in a newspaper of general circulation within the county or town in which the proceeding is filed;
  - (3) 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
  - (4) Returnable twenty-one (21) days after its service by registered mail or the commencement of its publication, whichever is later.
- E. When an order to show cause is issued pursuant to this chapter, and upon four (4) 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.
- F. 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.
- G. 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

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obscene, shall order the clerk of the 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.

- H. 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 is offered, pertaining to:
- (1) The artistic, literary, medical, scientific, cultural and educational values, if any, of the book considered as a whole.
  - (2) The degree of public acceptance of the book or books of similar character within the county or town in which the proceeding is brought.
  - (3) The intent of the author and the publisher of the book.
  - (4) The reputation of the author and the publisher.
  - (5) The advertising, promotion and other circumstances relating to the sale of the book.
  - (6) The nature of the 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 G.
- I. In making a decision on the obscenity of the book, the court shall consider, among other things, the evidence offered pursuant to Subsection H, 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.
- J. If he finds the book not obscene, the courts 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.
- K. While a temporary restraining order made pursuant to Subsection E is in effect, or after the entry of a judgment pursuant to Subsection G or after the entry of judgment pursuant to Subsection J, any person who publishes, sells, rents, lends, transports in intrastate commerce or commercially distributes or exhibits or has the book in his possession with intent to

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publish, sell, rent, lend, transport or commercially distribute or exhibit the book, is presumed to have knowledge that the book is obscene.

- L. Any part to the proceeding, including the petitioner, may appeal from the judgment of the court to the Supreme Court of Appeals of Virginia as otherwise provided by law.
- M. It is expressly provided that the petition and proceeding authorized under this chapter 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 this section shall in nowise be construed to be a necessary prerequisite to the filing of criminal charges under this chapter.