HOUSE . . . . . No. 4509

By Mr. Doyle of Boston, petition of Charles Robert Doyle for legislation to provide for the regulation of obscenity. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Two.

AN ACT PROVIDING FOR THE REGULATION OF OBSCENITY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 272 of the General Laws is hereby amended by striking out section 28, as most recently amended by section 1 of chapter 430 of the acts of 1974, and inserting in place thereof the following section: —

Section 28. Whoever disseminates to a minor matter harmful to minors, knowing it to be harmful to minors, or has in his or her possession such matter with the intent to disseminate the same to minors, shall be punished by imprisonment in the state prison for not more than five years or in a jail or house of correction for not more than two and one half years, or by a fine of not less than one thousand dollars or more than twenty thousand dollars for the first such offense, or not less than five thousand dollars nor more than thirty-five thousand dollars for the second such offense, or not less than ten thousand dollars nor more than fifty thousand dollars for the third or more such offense, or by both such fine and imprisonment in a jail or house of correction. The minimum fines to be imposed for the first, second, or third or more offenses shall not be reduced, nor suspended. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file. It shall be an affirmative defense in any prosectuion under this section that the defendant was in a parental or guardianship rela-

tion with the minor. It shall be an affirmative defense under this section, that the defendant was a bona fide school, museum, or library, or was acting in the course of his or her employment as an employee of such organization or of a retail outlet affiliated with and serving the educational purpose of such organization.

SECTION 2. Section 28C of said Chapter 272, as amended by section 3 of said chapter 430, is hereby further amended by striking out the first sentence and inserting in place thereof the following sentence: — Whenever there is a reasonable cause to believe that a book which is being disseminated or is in the possession of any person who intends to disseminate the same, is obscene, the attorney general, or any district attorney within his district, may bring an information or petition in equity in the superior court directed against said book by name.

SECTION 3. Said chapter 272 is hereby further amended by striking out section 28I, inserted by section 8 of said chapter 430, and inserting in place thereof the following section: —

Section 28I. The procedures set forth in sections twenty-eight C, twenty-eight D, twenty-eight E, twenty eight G, and twenty-eight H, are in addition to criminal proceedings under any provision of the General Laws, and not a condition precedent thereto.

SECTION 4. Said Chapter 272 is hereby further amended by striking out Section 29, as amended by section 9 of said chapter 430, and inserting in place thereof the following section: —

Section 29. Whoever disseminates matter which is obscene, knowing it to be obscene, or whoever has in his or her possession matter which is obscene, knowing it to be obscene, with the intent to disseminate the same, shall be punished by imprisonment in the state prison for not more than five years or in a jail or house of correction for not more than two and one half years, or by a fine of not less than one thousand dollars nor more than twenty thousand dollars for the first such offense, or not less than five thousand dollars nor more than thirty-five thousand dollars for the second such offense, or not less then ten thousand dollars nor more than fifty thousand dollars for the third or more such offense, or by both

15 such fine and imprisonment in a jail or house of correction. The
16 minimum fines to be imposed for the first, second, or third or more
17 offenses shall not be reduced, nor suspended. Prosecutions com-
18 menced under this section shall neither be continued without a
19 finding nor placed on file. It shall be an affirmative defense under
20 this section if the evidence proves that the defendant was a bona
21 fide school, museum, or library, or was acting in the course of his or
22 her employment as an employee of such organization or of a retail
23 outlet affiliated with and serving the educational purpose of such
24 organization.

1 SECTION 5. Section 31 of said chapter 272 is hereby amended
2 by striking out the definition of "Harmful to minors", as appearing
3 in section 12 of said chapter 430, and inserting in place thereof the
4 following definition: —
5 "Harmful to minors", matter is harmful to minors if it is obscene
6 or, if taken as a whole, it (1) describes or represents nudity, sexual
7 conduct or sexual excitement, so as to appeal predominantly to the
8 prurient interest of minors; (2) is patently contrary to prevailing
9 standards of adults in the judicial district of the district court
10 department within which the offense allegedly occurred, as to
11 suitable material for such minors; and (3) lacks serious literary,
12 artistic, political or scientific value for minors.

1 SECTION 6. Said section 31 of said chapter 272 is hereby
2 further amended by striking out the definition of "Obscene", as so
3 appearing, and inserting in place thereof the following defini-
4 tions: —
5 "Obscene", matter is obscene if taken as a whole, it (1) appeals to
6 prurient interest of the average person, applying the contemporary
7 standards of the judicial district of the district court department
8 within which the offense allegedly occurred; (2) depicts or describes
9 sexual conduct in a patently offensive way; and (3) lacks serious
10 literary, artistic, political or scientific value.