

# SOUTHEAST LAW INSTITUTE™

1200 Corporate Drive, Suite 107  
Highway 280 - Meadow Brook Corporate Park  
Birmingham, Alabama 35242

Telephone: (205) 408-8893  
Facsimile: (205) 408-8894

E-mail: [eric@aericjohnston.com](mailto:eric@aericjohnston.com)  
[www.southeastlawinstitute.org](http://www.southeastlawinstitute.org)

## MEMORANDUM

**TO:** Interested Persons

**FROM:** A. Eric Johnston

**DATE:** April 2024

**RE:** HB 385 - Amendment to the Alabama Anti-Obscenity Enforcement Act  
What Librarians Should Know

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The primary purpose of this bill is to amend the Alabama Anti-Obscenity Enforcement Act (“AAOEA”) to include in the definition of “sexual conduct” public demonstrations that expose minors to lewd or lascivious activities. Some of these activities have taken place in public libraries. There is an exception in the AAOEA for libraries for educational purposes. Obviously, sexually oriented activities and materials that violate community standards are not educational activity.

The AAOEA already prohibits activities and materials that are “harmful to minors” from being in public places. Even with the educational exemption for libraries, these activities and materials are not educational and are not protected speech. However, to remove any question for the local District Attorneys’ enforcement of the law, the bill removes the exemption.

The catalyst for this has been abuse of the law in some libraries and other public places. Either through ignorance, misunderstanding or perversion, libraries have begun to include in the children’s sections books, as well as the aforementioned activities, that are harmful to minors. If parental consent is given for exposure, then the law is not violated. However, many minors visit the children’s section of the library unaccompanied by their parents.

Librarians have taken the lead opposing the amendment. House Committee testimony by four librarians suggested they are uninformed about the harmful minor’s violations that are taking place. They spoke of book burning and encroaching on their honest ability to provide educational and informative materials through the library system.

Some librarians have expressed concern they may be prosecuted for having anatomy or art books that show naked persons. These materials, whether educational or not, and certainly ones that appeal to prurient interests, are not normally found in children’s sections. Obviously,

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proper grade level educational materials, even with these depictions, would not be “harmful to minors.” The AAOEA and its constitutional basis expect and require persons to know the law. As one Supreme Court Justice said, you know obscenity when you see it. Ignorance is not an excuse. The “harmful to minors” test is a standard determined by one’s community. As a member of the community, librarians should know that standard.

The position of the librarians begs the question of whether they are sincere about protecting minors and providing true education to them. Unfortunately, the American Library Association has always been an opponent of anti-obscenity laws, including Alabama’s.

It is unlikely a local District Attorney will prosecute a librarian who honestly is doing his or her job. On the other hand, if they are clearly providing these harmful to minors materials and activities, they would be subject to the law.

Librarians who are properly doing their job have nothing to fear. They are familiar with the books in their library. If they have one for which they have questions, they can easily ask their local District Attorney for an informal opinion.

The AAOEA was originally passed to stop purveyors of pornography and obscenity through convenience stores and art theaters. In recent years, these prohibited activities and materials have found their way into libraries and other public places. Those responsible for that content must remain vigilant to protect minors. Librarians are responsible. They are not the target of the law if they exercise simple good judgment. If they encourage and seek to protect materials and activities that violate their own community standards, then they are the target.