

**Alabama Code 1975, §13A-12-200.2(a)(2)**  
**Distribution/Possession with Intent to Distribute Obscene Material by**  
**Wholesaler**

The defendant is charged with distribution/possession with the intent to distribute obscene material by a wholesaler.

A person commits the crime of distribution/possession with the intent to distribute obscene material by a wholesaler if he/she is a wholesaler and knowingly distributes, possesses with intent to distribute, or offers or agrees to distribute for the purpose of resale or commercial distribution at retail, any obscene material or any device designed or marketed as useful primarily for the stimulation of human genital organs for any thing of pecuniary value.

To convict, the State must prove beyond a reasonable doubt each of the following elements:

- (1) The defendant was a wholesaler;
- (2) The defendant distributed, possessed with the intent to distribute, or offered or agreed to distribute for the purpose of resale or commercial distribution at retail, any obscene material or any device designed or marketed as useful primarily for the stimulation of human genital organs;
- (3) The defendant did so for any thing of pecuniary value; **(AND)**
- (4) The defendant acted knowingly.

[Read as appropriate]: (AND)

- (5) The defendant previously has been convicted for a violation of this statute.

A *Wholesaler* is a person who distributes material for the purpose of resale or commercial distribution at retail. [13A-12-200.1(24)]

*Distribute* means to import, export, sell, rent, lend, transfer possession of or title to, display, exhibit, show, present, provide, broadcast, transmit, retransmit,

communicate by telephone, play, orally communicate or perform.  
[13A-12-200.1(7)]

*Import* means to bring or cause to be brought into the State of Alabama from outside of the state. [13A-12-200.1(12)]

*Export* means to send or cause to be sent outside of the State of Alabama from inside the state. [13A-12-200.1(8)]

*Material* is any book, magazine, newspaper, printed or written matter, writing, description, picture, drawing, animation, photograph, motion picture, film, video tape, pictorial representation, depiction, image, electrical or electronic reproduction, broadcast, transmission, telephone communication, sound recording, article, device, equipment, matter, oral communication, live performance or dance. [13A-12-200.1(15)]

*Obscene* means that:

- a. The average person, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest; and
- b. The material depicts or describes, in a patently offensive way, sexual conduct, actual or simulated, normal or perverted; and
- c. A reasonable person would find that the material, taken as a whole, lacks serious literary, artistic, political, or scientific value. [13A-12-200.1(17)]

*Sexual Conduct* means:

- a. Any act of sexual intercourse, masturbation, urination, defecation, lewd exhibition of the genitals, sado-masochistic abuse, bestiality, or the fondling of the sex organs of animals; or
- b. Any other physical contact with a person's unclothed genitals, pubic area, buttocks, or the breast or breasts of a female, whether alone or between members of the same or opposite sex or between a human and an animal, in an act of sexual stimulation, gratification or perversion.  
[13A-12-200.1(22)]

*Sexual Intercourse* means intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal, and whether between persons of the same or opposite sex or between a human and an animal [13A-12-200.1(23)]

*Sado-Masochistic Abuse* means:

- a. Flagellation or torture, in an act of sexual stimulation, by or upon a person who is nude or clad in undergarments or in a revealing or bizarre costume; or
- b. The binding or physical restraining of a person who is nude or clad in undergarments or in a revealing or bizarre costume in an act of sexual stimulation.

[13A-12-200.1(21)]

Material not otherwise obscene may be obscene if the distribution of the material, the offer to do so, or the possession with the intent to do so is a commercial exploitation of erotica solely for the sake of prurient appeal.

[13A-12-200.2(1)]

*For Any Thing of Pecuniary Value* means in exchange for, in return for, or for consideration consisting of, whether wholly or partly:

- a. Any money, negotiable instrument, debt, credit, chose in action, interest in wealth, or any other property whether real or personal, tangible or intangible; or
- b. Any offer or agreement to pay, furnish or provide any money, negotiable instrument, debt, credit, chose in action, interest in wealth, or any other property whether real or personal, tangible or intangible.

[13A-12-200.1(9)]

**[Read as appropriate]:** The Defendant has been previously convicted for a violation of this statute.

A person acts *intentionally* with respect to a result or to conduct described by a statute defining an offense, when his/her purpose is to cause that result or to engage in that conduct. [13A-2-2(1)]

A person acts *knowingly* with respect to conduct or to a circumstance described by statute defining an offense when he/she is aware that his/her conduct

is of that nature or that the circumstance exists. [13A-2-2(2)]. The term means doing an act involving a material when the person knows the nature of the material. [13A-12-200.1(13)]

A person *knows the nature of the material* when any one of the following exists:

- a. The person knows the nature of the material;
- b. The person has reason to know the nature of the material;
- c. The person has a belief or reasonable ground for belief as to the nature of the material which warrants further inspection or inquiry of the character and content of the material.

[13A-12-200.1(14)]

**[Read as appropriate]:** It is an affirmative defense that the act was done for a bona fide medical, scientific, educational, legislative, judicial or law enforcement purpose. (13A-12-200.4)

If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of distribution/possession with the intent to distribute obscene material by a wholesaler, then you shall find the defendant guilty of distribution/possession with the intent to distribute obscene material by a wholesaler.

If you find from the evidence that the State has failed to prove any one or more of the elements of distribution/possession with the intent to distribute obscene material by a wholesaler, then you cannot find the defendant guilty of distribution/possession with the intent to distribute obscene material by a wholesaler.

#### Use Note

A second or subsequent violation of this subdivision is a Class C felony if the second or subsequent violation occurs after a conviction has been obtained for a previous violation. [13A-12-200.2(a)(2)]

This section does not apply to public libraries, or public school or college or university libraries, or their employees or agents acting on behalf of the legitimate

educational purposes of such public libraries, or public school or college or university libraries. [13A-12-200.10]

[Approved 11-01-24]