

Return all applications and attachments to:

Motion Picture Production Tax Incentives Program  
Arizona Department of Commerce  
1700 W. Washington, Suite 600  
Phoenix, AZ 85007

Questions regarding Motion Picture Production  
Tax Incentives can be directed to  
[motionpicture@azcommerce.com](mailto:motionpicture@azcommerce.com)

**Arizona Department of Commerce  
Motion Picture Production Tax Incentives Program**

**INITIAL APPLICATION FOR PRE-APPROVAL FOR A  
MOTION PICTURE PRODUCTION COMPANY**

**2010 Calendar Year Cap**  
(For tax incentives under A.R.S. § 41-1517)

**Section A. Company Information**

Company Name	_____	FEI Number	_____
AZ Physical Address	_____	City, State & Zip	_____
Mailing Address	_____	City, State & Zip	_____
AZ Production Accountant	_____	Production Accountant Phone	_____
Contact Name	_____	Contact Phone	_____
Email Address	_____	Contact Fax	_____
Additional persons we may contact regarding this production	_____	Contact Phone	_____

**Section B. Motion Picture Production Tax Incentives**

Please indicate which of the following incentives the company intends to pursue.

- Transaction privilege tax exemption on tangible personal property?  Yes  No
- Transaction privilege tax exemption on job printing, engraving, embossing or copying?  Yes  No
- Transaction privilege tax exemption on the lease or rental of lodging space?  Yes  No
- Transaction privilege tax exemption on catered food, drink and condiments?  Yes  No
- Transaction privilege tax exemption on a construction contract?  Yes  No
- Use tax exemption on tangible personal property?  Yes  No
- Income tax credits? **If No**, please complete and attach Commerce form "Voluntary Relinquishment of Tax Credits, 2010 Calendar Year Cap."  Yes  No

**Section C. Production Name**

Production Name \_\_\_\_\_

Commerce Use Only	
Priority Placement #	_____
Effective Date	_____

**Section D. Production Information**

Company Name: \_\_\_\_\_

Name of the production: \_\_\_\_\_

Type of production: (Check only one.)

- Feature Film    Documentary    Pilot    Still Photography
- Commercial Advertisement    Music Video    Television Series
- Other: \_\_\_\_\_

**If the type of production is a Television Series, attach all of the following:**

- (a) A synopsis of the general nature of the series.
- (b) A description of the characters and the intended nature of their interaction with each other.
- (c) A description of the location(s) and set(s).
- (d) The intended distribution or broadcast medium with specific television channels, if known.

**For all other types of productions, attach a copy of the script and a synopsis.**

Name of the proposed director: \_\_\_\_\_

Name of the proposed producer: \_\_\_\_\_

Anticipated location of pre-production: \_\_\_\_\_

Anticipated location of principal-production: \_\_\_\_\_

Anticipated location of post-production: \_\_\_\_\_

What is the estimated pre-production total budget? \$ \_\_\_\_\_

What is the estimated principal-production total budget? \$ \_\_\_\_\_

What is the estimated post-production total budget? \$ \_\_\_\_\_

What is the estimated total budget of the production? \$ \_\_\_\_\_

**Total estimated Arizona qualifying production costs for the motion picture?** (Commerce will base the tax credit allocation and percentage on this figure.) \$ \_\_\_\_\_

What is the estimated total percentage of production expenditures taking place in Arizona? \_\_\_\_\_ %

Please state the number of full-time employees who will work on the production(s). \_\_\_\_\_

Please estimate the percentage of full-time employees who will work on the production that are Arizona residents. (Must be at least 50% to qualify for 2010 calendar year cap) \_\_\_\_\_ %

What is the projected start date in Arizona? Must start within 90-days of the effective date of the pre-approval letter. (Month, Day, Year) \_\_\_\_\_

What is the projected last production date in Arizona? (Month, Day, Year) \_\_\_\_\_

What is the projected release date? (Month, Day, Year) \_\_\_\_\_

Is the production intended for  commercial distribution or  licensing in the delivery medium used?

Does the applicant company have the lawful right to produce the motion picture? ("No" answer indicates ineligibility.)  Yes  No

**Attach documentation of the company's lawful right to produce the motion picture.**

(Acceptable documentation may include: a copy of the WGA/PGA contractual agreement, letter of agreement between the applicant and the author, writer, owner or agent for the intellectual property.)

Please describe the activities the applicant company will be responsible for on the motion picture production. (Use an attachment if more space is needed.)

---



---

Please provide a preliminary list of cast who will work on the motion picture production. (Use an attachment if more space is needed.)

	Cast Name	Role in production	Offer extended	Offer accepted
1.	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
2.	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
3.	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
4.	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
5.	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
6.	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
7.	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
8.	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
9.	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
10.	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>

**Section E. Supporting Information**

Does the applicant company have any partners, shareholders or is this a joint venture to produce the production? **If Yes**, please list the other entities.  Yes  No

Name	Address	FEIN
------	---------	------

Does the applicant company have any affiliates, subsidiaries, or is otherwise related to any other companies involved in any other capacity of the production?  Yes  No

**If Yes**, please list the other entities.

To your knowledge will any other company apply for tax credits for this production?  Yes  No

**If Yes**, please list the entities.

Is the applicant company primarily engaged in the business of producing motion pictures? ("No" answer indicates ineligibility.)  Yes  No

Please estimate the percentage of the total business activity devoted to producing motion pictures, measured by revenues or expenses. (Must be at least 50% to qualify.) \_\_\_\_\_ %

Name of Arizona banking institution: \_\_\_\_\_

Arizona bank account number: \_\_\_\_\_

**Attach a voided check to document the Arizona bank account.**



---

---

**Section F. Affidavit**

---

As a producer of the motion picture who will be credited on screen (excluding the executive producers, associate producers, assistant producers and line producers), I certify under penalty of perjury that the information contained herein is true and correct according to my best belief and knowledge after a reasonable investigation of the facts and that the company:

\_\_\_\_\_ Qualifies as a Motion Picture Production Company as described in A.R.S. §41-1517;

\_\_\_\_\_ Will begin production within 90 days of the date of pre-approval and demonstrate activity to Commerce as described in A.R.S. §41-1517(E) and (F);

\_\_\_\_\_ Agrees to acknowledge filming in Arizona by inserting "Filmed in whole or in part in the State of Arizona" in the credits of each production listed in the initial application, other than commercial advertisements, music videos or still photography;

\_\_\_\_\_ Understands that receipt of pre-approval does not guarantee receipt of tax incentives under this program;

\_\_\_\_\_ Assures the production is not and will not become obscene, does not depict sexual activity or sexually exploit a minor as established under A.R.S §41-1517(M);

\_\_\_\_\_ Shall allow inspections and audits by the Arizona Department of Commerce as are reasonably necessary to verify the accuracy of the submitted information;

\_\_\_\_\_ Authorizes Commerce and Revenue to adjust, terminate or recapture all or part of the tax incentives for noncompliance with program requirements;

\_\_\_\_\_ Agrees to furnish records of Arizona expenditures to Commerce and Revenue on request;

\_\_\_\_\_ Agrees to submit a Completion Report to Commerce, within 30 days of completion of the production, including Calculation of Arizona Residency Forms 1 & 2, the Expense Report Forms 1 & 2 and a viewable copy of the production or a letter of credit payable to the Arizona Department of Revenue;

\_\_\_\_\_ Must apply for and receive a Letter of Good Standing from the Arizona Department of Revenue to receive the tax incentives;

\_\_\_\_\_ Must apply for and receive an exemption certificate from the Arizona Department of Revenue to receive the transaction privilege tax or use tax exemptions;

\_\_\_\_\_ Shall directly use in motion picture production the personal property purchased free of transaction privilege tax or use tax;

\_\_\_\_\_ Attests that any contract for buildings and structures that receives an exemption of transaction privilege tax will be associated with motion picture production;

\_\_\_\_\_ Attests the applicant company has the lawful right to produce the production.

\_\_\_\_\_ In order for an application to be considered complete, the applicant shall provide proof that it is registered with and is participating in the E-Verify program pursuant to ARS § 23-214(B) <http://www.uscis.gov/portal/site/uscis>

\_\_\_\_\_ In Accordance with ARS §35-397, the applicant hereby certifies that the applicant does not have scrutinized business operations in Iran.

\_\_\_\_\_ In Accordance with ARS §35-397, the applicant hereby certifies that the applicant does not have scrutinized business operations in Sudan.

\_\_\_\_\_ Print Name of Producer

\_\_\_\_\_ Print Name of Officer of the Company

\_\_\_\_\_ Signature/Date

\_\_\_\_\_ Signature/Date

Disclaimer: These portions of the Arizona Revised Statutes are provided for ease of reference. The complete statutes can be viewed at <http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp>

**41-1517. Motion picture production tax incentives; duties; definitions**

A. From and after December 31, 2005 through December 31, 2010, the department of commerce shall qualify motion picture production companies that produce one or more motion pictures in this state for motion picture production tax incentives, subject to the following requirements and conditions:

1. Except as provided in subsection K of this section, a motion picture production company must spend at least two hundred fifty thousand dollars toward production costs in this state producing each motion picture.
2. For the purpose of this section, production costs are limited to and subject to the following conditions:
  - (a) Salaries and other compensation for talent, management and labor paid to residents of this state, as defined by section 43-104.
  - (b) A story and scenario to be used for a motion picture.
  - (c) Set construction and operations, wardrobe, props, accessories and related services in this state. Expenses paid for construction contracts are limited to contractors who are licensed under title 32, chapter 10.
  - (d) Photography, sound synchronization, lighting and related costs incurred in this state.
  - (e) Editing and related services performed in this state.
  - (f) Rental of facilities and equipment in this state.
  - (g) Catered food, drink and condiment purchased in this state.
  - (h) Other direct in-state costs of producing the motion picture, pursuant to rules adopted by the department of revenue that follow generally accepted accounting standards for the motion picture industry.
  - (i) Payments for penalties and fines do not qualify as production costs.
  - (j) Expenses incurred before the date of notice of preapproval under subsection D of this section do not qualify as production costs.
3. A motion picture production company or its authorized payroll service company must employ residents of this state in its production activities as follows:

- (a) In 2006, at least twenty-five per cent of full-time employees working in this state must be residents of this state.
- (b) In 2007, at least thirty-five per cent of full-time employees working in this state must be residents of this state.
- (c) In 2008 and every subsequent taxable year, at least fifty per cent of full-time employees working in this state must be residents of this state.
4. A motion picture production company must submit a completed application pursuant to subsection C of this section. An application is complete on receipt of all requested information.
5. A motion picture production company must include in the credits for each motion picture, other than a commercial advertisement or music video, an acknowledgement that the production was filmed in Arizona.
- B. Only a motion picture production company that demonstrates that it has the lawful right to produce a particular production may apply for qualification under this section with respect to that production.
- C. A motion picture production company initially applying for qualification under this section must report the following to the department of commerce on a form and in a manner prescribed by the department, with the cooperation of the department of revenue:
  1. The name, address, telephone number and web site of the motion picture production company.
  2. The name and address of an individual who will maintain records of expenditures in this state.
  3. The projected first preproduction date and last production date in this state.
  4. The production office address and office telephone number in this state.
  5. The estimated total budget of the production.
  6. The estimated total expenditures in this state.
  7. The estimated total percentage of the production taking place in this state.
  8. The estimated level of employment of residents of this state in the cast and crew.
  9. A script, including a synopsis, the proposed director and a preliminary list of the cast and producer, except that, with respect to a television series, other than a pilot production, in lieu of a script the applicant must include:
    - (a) A synopsis of the general nature of the series.
    - (b) A description of the characters and the intended nature of their interaction with each other.
    - (c) A description of the locations.
    - (d) A description of the sets.
    - (e) The intended distribution or broadcast medium with specific television channels, if known.
  10. An affirmation signed by any person who will be credited on screen as the producer or producers of the motion picture, not including the executive producers, associate producers, assistant producers or line producers, that:
    - (a) The motion picture production company agrees to furnish records of expenditures in this state to the department of revenue on request.
    - (b) Any items purchased with a certification issued under section 42-5009, subsection H are intended for use by the applicant directly in motion picture production.

D. The department of commerce shall review all applications within thirty days after submission of a complete application pursuant to subsection C of this section to determine whether the motion picture production company satisfies all of the criteria provided in subsection A of this section and shall establish the process by which the department qualifies and preapproves a company for motion picture production tax incentives. This process shall preapprove a company for motion picture production tax incentives based on priority placement established by the date that such motion picture production company filed its initial application for qualification with the department.

E. The department of commerce may conduct a site visit to verify that production has begun. Within ninety days after the department preapproves the company's initial application, the company must submit notice to the department that production has begun and provide at least one of the following:

1. A copy of a contract, loan out agreement or deal memo with a cameraman and crew.
2. A copy of the crew call sheet for the first day of production.
3. Evidence that residents of this state have been paid a total of at least five thousand dollars for work on the preapproved motion picture.
4. A copy of a contract or agreement directly attributable to the preapproved motion picture.

F. Preapproval by the department of commerce under subsection D of this section lapses, the application is void and the amount of the preapproved incentives does not apply against the dollar limit prescribed by subsection J of this section if, within ninety days after the department preapproves the company, the company fails to provide documentation of either:

1. Its expenditure in this state of the lesser of:
  - (a) Ten per cent of the estimated total state budget of the production.
  - (b) Two hundred fifty thousand dollars.
2. A completion bond, equal to the estimated total budget of the production, for the production of the motion picture for which the company was preapproved. For the purposes of this paragraph, "completion bond" means an executed written contract, issued by an insurance company with an insurance industry rating of B+ or better by A.M. Best company guarantying to the financiers of the project that it will be completed according to the terms of the preapproved application submitted by the production company in its application.
- G. The preapproved amount applies against the dollar limit prescribed by subsection J of this section for the year in which the application was submitted regardless of whether the initial preapproval period extends into the following year or years. Before the expiration of the initial preapproval or requalification period, a company may voluntarily relinquish unused credit amounts.
- H. The department of commerce shall reallocate the amount of credits that is voluntarily relinquished under subsection G of this section, that lapse under subsection F of this section or that lapse under subsection O of this section. The reallocation shall be to other motion picture production

companies that applied in the original credit year based on priority placement. The amount of the reallocated credits shall continue to apply against the dollar limit of the original credit year regardless of the year in which the reallocation occurs. If for any year an unused balance occurs in the income tax credits authorized under the dollar limit prescribed by subsection J of this section:

1. The balance shall be allocated to motion picture production companies that successfully appeal the denial of approval under this section or section 41-1517.01. Any amount of income tax credits due to successful appeals that are not paid from an unused balance in any year shall be paid against the dollar limit allowed by subsection J of this section in the following year.
2. Any remaining unused balance shall be reallocated for the purposes of this section in the following year.
- I. Beginning with the tax credits allocated for 2006 pursuant to subsection J of this section, an approved credit offsets tax liability for the taxable year for which the credit was originally allocated or any subsequent taxable year within the applicable carryforward period pursuant to section 43-1075, subsection G or section 43-1163, subsection G. The credits must be claimed on a timely filed original income tax return, including extensions.
- J. Subject to the requirements of section 41-1517.01 and subsections K and U of this section, the department of commerce shall not preapprove income tax credits exceeding a total of:
  1. Thirty million dollars for 2006.
  2. Forty million dollars for 2007.
  3. Fifty million dollars for 2008.
  4. Sixty million dollars for 2009.
  5. From and after December 31, 2009, seventy million dollars for a single year.
  6. Five million dollars for an individual motion picture application in 2007.
  7. Seven million dollars for an individual motion picture application in 2008.
  8. Eight million dollars for an individual motion picture application in 2009.
  9. From and after December 31, 2009, nine million dollars for an individual motion picture application.
- K. Beginning in 2008, the following provisions apply with respect to commercial advertisement and music video production:
  1. Five per cent of the maximum dollar amount of income tax credits prescribed for any year by subsection J of this section is reserved for use with respect to commercial advertisement and music video production.
  2. A commercial advertisement or music video production company may apply for qualification under subsection C of this section before the company reaches the minimum expenditure threshold requirements of subsection A, paragraph 1 of this section.
  3. In lieu of a script under subsection C, paragraph 9 of this section, the applicant must submit a synopsis or storyboard that:
    - (a) Identifies the product, service, person or event for a commercial advertisement or the artist and song for a music video.
    - (b) Describes the general content or message to be conveyed.
    - (c) Describes the location or locations.
    - (d) Describes the sets.
    - (e) Describes the intended distribution or medium and specific channels, if known.
  4. The department must review the completed application within fifteen business days.
  5. Expenses incurred before the date of submission of a completed application under subsection C of this section do not qualify as production costs.
  6. The department shall allocate the income tax credit incentives based on priority placement established by the date that the company files its application and based on the percentage of estimated total expenditures in this state allowed as a credit under section 43-1075 or 43-1163.
  7. Within sixty days after applying with the department under subsection C of this section, a company that is preapproved for a specific production must notify and provide documentation of expenditures to the department of the total amount of eligible production costs associated with the production.
  8. The company is not eligible for income tax credit incentives until the company's eligible production expenditures reach two hundred fifty thousand dollars in a period of twelve consecutive months. When the company reaches that threshold, the company may apply to the department for approval of the income tax credit incentives pursuant to subsection P of this section. Applications for approval of income tax credit incentives may not be submitted by the same company more frequently than once a calendar month.
  9. Notwithstanding any other provision of this section, the department of commerce shall adopt rules and prescribe forms and procedures as necessary for the purposes of this subsection.
- L. Except for applications with respect to commercial advertisement and music video production under subsection K of this section, after October 31 of each year, if the department has preapproved the maximum calendar year tax credit amount pursuant to subsection J of this section, the department may accept initial applications for the next calendar year. The preapproval of any application pursuant to this subsection shall not be effective prior to the first business day of the following calendar year. The department may accept initial applications with respect to commercial advertisement and music video production under subsection K of this section only during the calendar year in which the credits would be allotted.
- M. Subject to the provisions of subsection O of this section, the department of commerce shall deny an application submitted on completion of the production pursuant to subsection O of this section if it determines that:
  1. The motion picture production company does not meet all of the established criteria provided in subsection A of this section.
  2. The production would constitute an obscene motion picture film or obscene pictorial publication under title 12, chapter 7, article 1.1.
  3. The production depicts sexual activity as defined in title 13, chapter 35.
  4. The production would constitute sexual exploitation of a minor or commercial sexual exploitation of a minor under title 13, chapter 35.1.
- N. On a determination by the department of commerce that a motion picture production company qualifies for motion picture production tax incentives, the department shall issue the company a written letter of qualification and transmit a copy of the letter to the department of revenue. Beginning from and after December 31, 2007, a letter of qualification is effective for twenty-four consecutive months as stated in the letter.
- O. Upon completion of the motion picture production, a motion picture production company that qualifies for the motion picture tax incentives shall apply to the department in writing for approval of income tax credits, submit a viewable copy of the motion picture and certify the total amount of eligible production costs associated with the project incurred from and after December 31, 2005. From and after June 30, 2006, the department shall provide approval to a motion picture production company that it has met the eligibility requirements of this section and shall notify the department of revenue that the motion picture production company may claim the tax credits pursuant to sections 43-1075 and 43-1163. If the eligible production costs actually spent are less than the amount preapproved for income tax credits, the preapproved amount not incurred lapses and does not apply against the dollar limit prescribed by subsection J of this section for that year.
- P. A motion picture production company may apply for postapproval of the production before a viewable copy of the production is available. To do so, the company must submit with its application a letter of credit, payable to the department of revenue, providing that within two business days after the issuer receives a written determination from the department of commerce that the production fails to qualify for the tax credits the issuer will pay to the department of revenue the full face value of the income tax credits in the application. If the department of revenue draws on the letter of credit, the monies shall be transferred to and held in an interest bearing account pending the final outcome of an appeal, if any. The letter of credit may be released on the determination by the department of commerce that the completed production qualifies for the tax credits.
- Q. If a preapproved motion picture production company fails to undertake production, as described in subsection F of this section, and also fails to voluntarily relinquish the unused credit amounts for reallocation by the department as provided by subsection G of this section within the ninety-day period, the company and all persons signing the application for preapproval are disqualified from receiving, or participating in any motion picture production company that applies for or receives, tax incentives pursuant to this section for three years after the original application.
- R. The department of commerce, with the cooperation of the department of revenue, shall adopt rules and publish and prescribe forms and procedures as necessary to effectuate the purposes of this section.
- S. Any information gathered from motion picture production companies for the purposes of this section shall be considered confidential taxpayer information and shall be disclosed only as provided in section 42-2003, subsection B, paragraph 12, except that the department shall publish the following information in its annual report:

1. The name of each motion picture production company and infrastructure applicant and the amount of income tax credits preapproved for each production and infrastructure project.
  2. The amount of credits approved with respect to each production.
- T. The department of commerce shall:
1. Keep annual records of the information provided on applications for motion picture production tax incentives. These records shall reflect a percentage comparison of the annual amount of monies exempted or credited to qualifying motion picture production companies to the estimated amount of monies spent on in-state production costs by motion picture production companies.
  2. Maintain annual data on growth in Arizona-based motion picture industry companies and motion picture industry employment and wages.
  3. Not later than April 30 of each year, prepare and publish a report summarizing the information collected pursuant to this subsection. The department shall make copies of the annual report available to the public on request.
- U. Subject to annual legislative authorization, the amount of one hundred eighty thousand dollars from the dollar amount of income tax credits under subsection J of this section is allocated each year to the department of commerce for up to two full-time equivalent positions dedicated solely for the purposes of this section and section 41-1517.01. If the income tax credits terminate pursuant to subsection A of this section and section 41-1517.01, subsection A, the authorization under this subsection and any positions dedicated for those purposes also terminate.
- V. For the purposes of this section:
1. "Commercial advertisement" means an advertising message designed for delivery through either:
    - (a) A motion picture film or video medium to attract the attention of consumers or influence consumers' feelings toward a particular product, service, event or cause.
    - (b) Still photography that is used in national or international print media to attract the attention of consumers or influence consumers' feelings toward a particular product, service event or cause.
  2. "Motion picture" means a single medium or multimedia program, including a commercial advertisement, music video or television series, that:
    - (a) Is created by production activities conducted in whole or in part in this state.
    - (b) Can be viewed or reproduced.
    - (c) Is intended for commercial distribution or licensing in the delivery medium used.

Motion picture does not include any production featuring actual news, current events, weather, locally produced and locally broadcast television productions, financial market reports, concerts, Internet broadcasts, talk shows and interviews, game shows, sporting events, award or other gala events, a production whose sole purpose is fund-raising, a production used for corporate or organizational training or in-house corporate advertising or other similar production activities.
  3. "Motion picture production company" or "production company" means any person primarily engaged in the business of producing motion pictures and that has a physical business office and bank account in this state.
  4. "Motion picture production tax incentives" means the tax deductions for transaction privilege and use taxes listed in section 42-5009, subsection H and the credit against income taxes provided under section 43-1075 or 43-1163.
  5. "Music video" means a filmed or videotaped rendition of a song or songs, portraying musicians performing the song or other visual images set to the lyrics of the song.
  6. "Television series" means a group of productions created or adapted for television broadcast with a common series title, related to each other in subject or theme, which is produced seasonally for appearing at scheduled intervals, but subject to discretionary programming and scheduling decisions, and with or without a predetermined number of episodes. Television series includes a pilot production for the promotion or introduction of a television series.

#### **12-811. Definitions**

In this article, unless the context otherwise requires:

1. "Motion picture film" means any film or plate negative, film or plate positive, film or tape designed to be projected on a screen for exhibition, or films, glass slides or transparencies, either in negative or positive form, designed for exhibition by projection on a screen.
2. "Nuisance" means any place for the sale or exhibition of obscene motion picture films or pictorial publications.
3. "Obscene motion picture film or obscene pictorial publication" means any motion picture, film, video reproduction or pictorial publication which would constitute an obscene item as defined in section 13-3501.
4. "Person" means any individual, association, partnership, corporation, trustee, lessee, agent or assignee.
5. "Pictorial publication" means any book, magazine or pamphlet containing one or more drawings, pictures, photographs or illustrations.
6. "Place" means any building, enclosure or any separate part or portion thereof whether permanent or not or the ground itself.

#### **13-3501. Definitions**

In this chapter, unless the context otherwise requires:

1. "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual activity, sexual conduct, sexual excitement, or sadomasochistic abuse, when both:
  - (a) To the average adult applying contemporary state standards with respect to what is suitable for minors, it both:
    - (i) Appeals to the prurient interest, when taken as a whole. In order for an item as a whole to be found or intended to have an appeal to the prurient interest, it is not necessary that the item be successful in arousing or exciting any particular form of prurient interest either in the hypothetical average person, in a member of its intended and probable recipient group or in the trier of fact.
    - (ii) Portrays the description or representation in a patently offensive way.
  - (b) Taken as a whole does not have serious literary, artistic, political, or scientific value for minors.
2. "Item" means any material or performance which depicts or describes sexual activity and includes any book, leaflet, pamphlet, magazine, booklet, picture, drawing, photograph, film, negative, slide, motion picture, figure, object, article, novelty device, recording, transcription, live or recorded telephone message or other similar items whether tangible or intangible and including any performance, exhibition, transmission or dissemination of any of the above. An item also includes a live performance or exhibition which depicts sexual activity to the public or an audience of one or more persons. An item is obscene within the meaning of this chapter when all of the following apply:
  - (a) The average person, applying contemporary state standards, would find that the item, taken as a whole, appeals to the prurient interest. In order for an item as a whole to be found or intended to have an appeal to the prurient interest, it is not necessary that the item be successful in arousing or exciting any particular form of prurient interest either in the hypothetical average person, in a member of its intended and probable recipient group or in the trier of fact.
  - (b) The average person, applying contemporary state standards, would find that the item depicts or describes, in a patently offensive way, sexual activity as that term is described in this section.
  - (c) The item, taken as a whole, lacks serious literary, artistic, political or scientific value.
3. "Knowledge of the character" means having general knowledge or awareness, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of that which is reasonably susceptible to examination by the defendant both:
  - (a) That the item contains, depicts or describes nudity, sexual activity, sexual conduct, sexual excitement or sadomasochistic abuse, whichever is applicable, whether or not there is actual knowledge of the specific contents thereof. This knowledge can be proven by direct or circumstantial evidence, or both.

(b) If relevant to a prosecution for violating section 13-3506, 13-3506.01 or 13-3507, the age of the minor, provided that an honest mistake shall constitute an excuse from liability under this chapter if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.

4. "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

5. "Sadomasochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed, for the purpose or in the context of sexual gratification or abuse.

6. "Sexual activity" means:

(a) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated.

(b) Patently offensive representations or descriptions of masturbation, excretory functions, sadomasochistic abuse and lewd exhibition of the genitals.

7. "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person is a female, breast.

8. "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

9. "Ultimate sexual acts" means sexual intercourse, vaginal or anal, fellatio, cunnilingus, bestiality or sodomy. A sexual act is simulated when it depicts explicit sexual activity which gives the appearance of consummation of ultimate sexual acts.

### **13-3551. Definitions**

In this chapter, unless the context otherwise requires:

1. "Communication service provider" has the same meaning prescribed in section 13-3001.

2. "Computer" has the same meaning prescribed in section 13-2301, subsection E.

3. "Computer system" has the same meaning prescribed in section 13-2301, subsection E.

4. "Exploitive exhibition" means the actual or simulated exhibition of the genitals or pubic or rectal areas of any person for the purpose of sexual stimulation of the viewer.

5. "Minor" means a person or persons who were under eighteen years of age at the time a visual depiction was created, adapted or modified.

6. "Network" has the same meaning prescribed in section 13-2301, subsection E.

7. "Producing" means financing, directing, manufacturing, issuing, publishing or advertising for pecuniary gain.

8. "Remote computing service" has the same meaning prescribed in section 13-3001.

9. "Sexual conduct" means actual or simulated:

(a) Sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex.

(b) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

(c) Sexual bestiality.

(d) Masturbation, for the purpose of sexual stimulation of the viewer.

(e) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(f) Defecation or urination for the purpose of sexual stimulation of the viewer.

10. "Simulated" means any depicting of the genitals or rectal areas that gives the appearance of sexual conduct or incipient sexual conduct.

11. "Visual depiction" includes each visual image that is contained in an undeveloped film, videotape or photograph or data stored in any form and that is capable of conversion into a visual image.

### **13-3552. Commercial sexual exploitation of a minor; classification**

A. A person commits commercial sexual exploitation of a minor by knowingly:

1. Using, employing, persuading, enticing, inducing or coercing a minor to engage in or assist others to engage in exploitive exhibition or other sexual conduct for the purpose of producing any visual depiction or live act depicting such conduct.

2. Using, employing, persuading, enticing, inducing or coercing a minor to expose the genitals or anus or the areola or nipple of the female breast for financial or commercial gain.

3. Permitting a minor under such person's custody or control to engage in or assist others to engage in exploitive exhibition or other sexual conduct for the purpose of producing any visual depiction or live act depicting such conduct.

4. Transporting or financing the transportation of any minor through or across this state with the intent that the minor engage in prostitution, exploitive exhibition or other sexual conduct for the purpose of producing a visual depiction or live act depicting such conduct.

B. Commercial sexual exploitation of a minor is a class 2 felony and if the minor is under fifteen years of age it is punishable pursuant to section 13-604.01.

### **13-3553. Sexual exploitation of a minor; evidence; exemption; classification**

A. A person commits sexual exploitation of a minor by knowingly:

1. Recording, filming, photographing, developing or duplicating any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.

2. Distributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing or exchanging any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.

B. If any visual depiction of sexual exploitation of a minor is admitted into evidence, the court shall seal that evidence at the conclusion of any grand jury proceeding, hearing or trial.

C. Sexual exploitation of a minor is a class 2 felony and if the minor is under fifteen years of age it is punishable pursuant to section 13-604.01.