

770: 1411

APPROVED AND SIGNED BY THE GOVERNOR

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Date 3-26-83

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983

— ● —

# ENROLLED

Com. Sub. for  
HOUSE BILL No. 1411

(By Mr. McKinley & Mr. Kelly)

— ● —

Passed March 11, 1983

In Effect Ninety Days From Passage



**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**

**H. B. 1411**

(By MCKINLEY and MR. KELLY)

[Passed March 11, 1983; in effect ninety days from passage.]

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four, and to amend article twelve, chapter eight of said code, by adding thereto a new section, designated section five-b, authorizing county commissions and municipalities to adopt an ordinance relating to obscene matter; defining terms; injunctive relief; restricting certain activities in relation to obscene matter; establishing penalties for violations; and exempting certain employees from prosecution.

*Be it enacted by the Legislature of West Virginia:*

That article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four; and that article twelve, chapter eight of said code be amended by adding thereto a new section, designated section five-b, all to read as follows:

**CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

**ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

**§7-1-4. County commission authority to enact ordinance; ordinance provisions defining terms; restricting certain activities in relation to obscene matter; and establishing penalties for violations.**

1 (a) In addition to all other powers which county commis-

2 sions now possess by law, county commissions may adopt the  
3 ordinance provided in subsection (b) of this section.

4 A county commission when adopting this ordinance may  
5 delete therefrom such portions of paragraph (A), subdivision  
6 (4), subsection (b) of this section that it deems appropriate.

7 (b) The ordinance which county commissions may adopt  
8 pursuant to the power granted them under subsection (a) of  
9 this section shall be:

Section 1. Definitions.

1 For purposes of this ordinance:

2 (1) "Knowingly" means to have knowledge of or to be  
3 aware of the content or character of obscene matter.

4 (2) "Matter" means any book, magazine, newspaper or  
5 other printed or written material, or any picture, drawing or  
6 photograph, motion picture, or other visual representation, or  
7 live conduct, or any recording, transcription or mechanical,  
8 chemical or electrical reproduction, or any other articles,  
9 equipment, machines or materials.

10 (3) "Individual" means any human being regardless of age.

11 (4) "Obscene" means matter which the average individual  
12 applying contemporary community standards would find (i)  
13 taken as a whole, appeals to the prurient interest; (ii) depicts or  
14 describes in a patently offensive way ultimate sexual acts,  
15 normal or perverted, actual or simulated; and (iii) the matter,  
16 taken as a whole, lacks serious literary, artistic, political or  
17 scientific value, and which either:

18 (A) Depicts or describes patently offensive representation  
19 of masturbation, excretory functions, lewd exhibition of the  
20 genitals, sodomy, fellatio, cunnilingus, bestiality, sadism,  
21 masochism; or

22 (B) Depicts or describes nudity or sexual acts of persons,  
23 male or female, below the age of eighteen years.

24 (5) "Person" means any individual, partnership, firm, asso-  
25 ciation, corporation or other legal entity.

26 (6) "Prepare" means to produce, publish or print.

27 (7) "Public display" means the placing of material on or  
28 in a billboard, viewing screen, theatre, marquee, newstand,  
29 display rack, window, showcase, display case or similar pub-  
30 lic place so that material can be purchased or viewed by indi-  
31 viduals.

Section 1a. Injunctive relief.

1 The circuit court shall have jurisdiction to issue an injunc-  
2 tion to enforce the purposes of this ordinance upon petition by  
3 the prosecuting attorney or any citizen of the county who can  
4 show a good faith and valid reason for making such applica-  
5 tion. No bond shall be required unless for good cause shown.

Section 2. Activities prohibited; penalties.

1 Any person who knowingly sends or causes to be sent or  
2 causes to be brought into the county of (name of county) for  
3 sale or public display, or prepares, sells or makes a public  
4 display, or in the county of (name of county) offers to prepare,  
5 sell or make a public display, or has in his possession with  
6 the intent to sell or make a public display of any obscene mat-  
7 ter to any individual, is guilty of a misdemeanor, and, upon  
8 conviction thereof, shall be fined not more than five hundred  
9 dollars or imprisoned in the county jail not more than thirty  
10 days or both fined and imprisoned. A person convicted of a  
11 second or subsequent offense under this ordinance is guilty  
12 of a misdemeanor, and, upon conviction thereof, shall be fined  
13 not more than one thousand dollars or imprisoned in the  
14 county jail not more than six months or both fined and im-  
15 prisoned.

Section 3. Prosecution by presentment or indictment.

1 No person may be prosecuted for an offense under this  
2 ordinance except by indictment or information.

Section 4. Employees acting within scope of employment  
shall not be prosecuted.

1 No employee shall be guilty of a violation of this ordinance  
2 when such employee is a projectionist, ticket taker, usher, or  
3 when such employee prepares, sells or make a public dis-

4 play of obscene matter while acting within the scope of his  
5 regular employment, unless such employee has a proprietary  
6 interest in such obscene matter or is a shareholder or officer  
7 of a corporation which has a proprietary interest in such ob-  
8 scene matter.

Section 5. Exceptions.

1 Nothing in this ordinance shall be construed so as to apply  
2 to any person exercising a right secured by the constitution or  
3 laws of this state or of these United States.

**CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES AND  
COUNTIES; INTERGOVERNMENTAL RELATIONS.**

**ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND AL-  
LIED RELATIONS OF MUNICIPALITIES, GOVERN-  
ING BODIES AND MUNICIPAL OFFICERS AND EM-  
PLOYEES; SUITS AGAINST MUNICIPALITIES.**

**§8-12-5b. Municipal authority to enact ordinance; ordinance provi-  
sions defining terms, restricting certain activities in  
relation to obscene matter and establishing penalties  
for violations.**

1 (a) Notwithstanding the provisions of section one, article  
2 eleven, chapter eight of this code, in addition to all other pow-  
3 ers which municipalities now possess by law, every municipal-  
4 ity and the governing body thereof may adopt the ordinance  
5 provided in subsection (b) of this section.

6 A municipality when adopting this ordinance, may delete  
7 therefrom such portions of paragraph (A), subdivision (4), sub-  
8 section (b) of this section that it deems appropriate.

9 (b) The ordinance which municipalities may adopt pursuant  
10 to the power granted them under subsection (a) of this section  
11 shall be:

Section 1. Definitions.

1 For purposes of this ordinance:

2 (1) "Knowingly" means to have knowledge of or to be  
3 aware of the content or character of obscene matter.

4 (2) "Matter" means any book, magazine, newspaper or

5 other printed or written material, or any picture, drawing or  
6 photograph, motion picture, or other visual representation, or  
7 live conduct, or any recording, transcription or mechanical,  
8 chemical or electrical reproduction, or any other articles,  
9 equipment, machines or materials.

10 (3) "Individual" means any human being regardless of age.

11 (4) "Obscene" means matter which the average individual  
12 applying contemporary community standards would find (i)  
13 taken as a whole, appeals to the prurient interest; (ii) depicts or  
14 describes in a patently offensive way ultimate sexual acts,  
15 normal or perverted, actual or simulated; and (iii) the matter,  
16 taken as a whole, lacks serious literary, artistic, political or  
17 scientific value, and which either:

18 (A) Depicts or describes patently offensive representation  
19 of masturbation, excretory functions, lewd exhibition of the  
20 genitals, sodomy, fellatio, cunnilingus, bestiality, sadism,  
21 masochism, or

22 (B) Depicts or describes nudity or sexual acts of persons,  
23 male or female, below the age of eighteen years.

24 (5) "Person" means any individual, partnership, firm, asso-  
25 ciation, corporation or other legal entity.

26 (6) "Prepare" means to produce, publish or print.

27 (7) "Public display" means the placing of material on or  
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30 lic place so that material can be purchased or viewed by in-  
31 dividuals.

#### Section 1a. Injunctive relief.

1 The circuit court shall have jurisdiction to issue an injunc-  
2 tion to enforce the purposes of this ordinance upon petition  
3 by the attorney for the municipality or a representative there-  
4 of or any citizen of the municipality who can show a good  
5 faith and valid reason for making such application. No bond  
6 shall be required unless for good cause shown.

Section 2. Activities prohibited; penalties.

1 Any person who knowingly sends or causes to be sent or  
2 causes to be brought into the municipality of (name of munic-  
3 ipality) for sale or public display, or prepares, sells or makes  
4 a public display, or in the municipality of (name of munic-  
5 ipality) offers to prepare, sell or make a public display, or has  
6 in his possession with the intent to sell or make a public dis-  
7 play of any obscene matter to any individual, is guilty of a mis-  
8 demeanor, and, upon conviction thereof, shall be fined not  
9 more than five hundred dollars or imprisoned not more than  
10 thirty days or both fined and imprisoned. A person convicted  
11 of a second or subsequent offense under this ordinance is  
12 guilty of a misdemeanor, and, upon conviction thereof, shall be  
13 fined not more than one thousand dollars or imprisoned not  
14 more than six months or both fined and imprisoned.

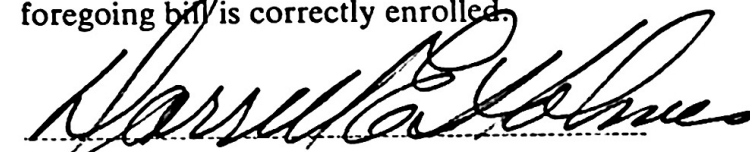
Section 3. Employees acting within scope of employment shall not be prosecuted.

1 No employee shall be guilty of a violation of this ordinance  
2 when such employee is a projectionist, ticket taker, usher,  
3 or when such employee prepares, sells or makes a public  
4 display of obscene matter while acting within the scope of his  
5 regular employment, unless such employee has a proprietary  
6 interest in such obscene matter or is a shareholder or officer  
7 of a corporation which has a proprietary interest in such ob-  
8 scene matter.

Section 4. Exceptions.

1 Nothing in this ordinance shall be construed so as to apply  
2 to any person exercising a right secured by the constitution or  
3 laws of this state or of these United States.


The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
Chairman Senate Committee


  
Chairman House Committee

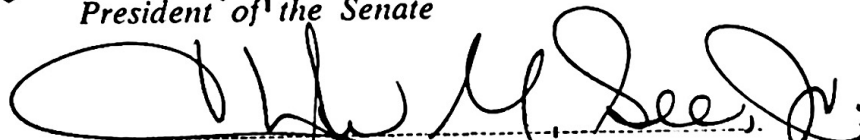
Originating in the House.

Takes effect ninety days from passage.

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker House of Delegates

The within is approved this the 26  
day of March, 1983.

  
Governor



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SECY. OF STATE