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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000



ENROLLED

Committee Substitute for
SENATE BILL NO. 133

(By Senators Tomblin, Mr. President, and
Sprouse, By Request of the Executive)



PASSED March 10, 2000
In Effect ninety days from Passage

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SENATE
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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 133

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

[Passed March 10, 2000; in effect ninety days from passage.]

AN ACT to repeal sections six and seven, article eight-a, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three, four and five of said article, all relating to the distribution and display of obscene matter to minors; defining terms; creating felony for distributing, offering to distribute or displaying obscene matter to a minor; creating felony for distributing or displaying obscene matter to a minor with intent to seduce; establishing defenses; establishing exemptions from criminal liability; creating felony for using a minor in certain circumstances and providing penalties.

Be it enacted by the Legislature of West Virginia:

That sections six and seven, article eight-a, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two, three, four, and five of said article be amended and reenacted, all to read as follows:

ARTICLE 8A. PREPARATION, DISTRIBUTION OR DISPLAY OF OBSCENE MATTER TO MINORS.

§61-8A-1. Definitions.

1 When used in this article, the following words, and any
2 variations thereof required by the context, shall have the
3 meaning ascribed to them in this section:

4 (a) "Adult" means a person eighteen years of age or
5 older.

6 (b) "Computer network" means the interconnection of
7 hardware or wireless communication lines with a com-
8 puter through remote terminals, or a complex consisting of
9 two or more interconnected computers.

10 (c) "Display" means to show, exhibit or expose matter,
11 in a manner visible to general or invited public, including
12 minors. As used in this article, display shall include the
13 placing or exhibiting of matter on or in a billboard,
14 viewing screen, theater, marquee, newsstand, display rack,
15 window, showcase, display case or similar public place.

16 (d) "Distribute" means to transfer possession, transport,
17 transmit, sell or rent, whether with or without consider-
18 ation.

19 (e) "Employee" means any individual who renders
20 personal services in the course of a business, who receives
21 compensation and who has no financial interest in the
22 ownership or operation of the business other than his
23 salary or wages.

24 (f) "Internet" means the international computer network
25 of both federal and nonfederal interoperable packet
26 switched data networks.

27 (g) "Knowledge of the character of the matter" means
28 having awareness of or notice of the overall sexual content
29 and character of matter as depicting, representing, or
30 describing obscene matter.

31 (h) "Matter" means any visual, audio, or physical item,
32 article, production transmission, publication, exhibition,
33 or live performance, or reproduction thereof, including any
34 two or three dimensional visual or written material, film,
35 picture, drawing, video, graphic, or computer generated or
36 reproduced image; or any book, magazine, newspaper or
37 other visual or written material; or any motion picture or
38 other pictorial representation; or any statue or other
39 figure; or any recording, transcription, or mechanical,
40 chemical, or electrical reproduction; or any other articles,
41 video laser disc, computer hardware and software, or
42 computer generated images or message recording, tran-
43 scription, or object, or any public or commercial live
44 exhibition performed for consideration or before an
45 audience of one or more.

46 (i) "Minor" means an unemancipated person under
47 eighteen years of age.

48 (j) "Obscene matter" means matter that:

49 (1) An average person, applying contemporary adult
50 community standards, would find, taken as a whole,
51 appeals to the prurient interest, is intended to appeal to
52 the prurient interest, or is pandered to a prurient interest;

53 (2) An average person, applying community standards,
54 would find depicts or describes, in a patently offensive
55 way, sexually explicit conduct; and

56 (3) A reasonable person would find, taken as a whole,
57 lacks serious literary, artistic, political or scientific value.

58 (k) "Parent" includes a biological or adoptive parent,
59 legal guardian or legal custodian.

60 (l) "Person" means any adult, partnership, firm, associa-
61 tion, corporation or other legal entity.

62 (m) "Sexually explicit conduct" means an ultimate
63 sexual act, normal or perverted, actual or simulated,
64 including sexual intercourse, sodomy, oral copulation,
65 sexualbestiality, sexualsadism and masochism, masturba-
66 tion, excretory functions and lewd exhibition of the
67 genitals.

**§61-8A-2. Distribution and display to minor of obscene matter;
penalties; defenses.**

1 (a) Any adult, with knowledge of the character of the
2 matter, who knowingly and intentionally distributes,
3 offers to distribute, or displays to a minor any obscene
4 matter, is guilty of a felony and, upon conviction thereof,
5 shall be fined not more than twenty-five thousand dollars,
6 or confined in a state correctional facility for not more
7 than five years, or both.

8 (b) It is a defense to a prosecution under the provisions
9 of this section that the obscene matter:

10 (1) Was displayed in an area from which minors are
11 physically excluded and the matter so located cannot be
12 viewed by a minor from nonrestricted areas; or

13 (2) Was covered by a device, commonly known as a
14 "blinder rack," such that the lower two thirds of the cover
15 of the material is not exposed to view; or

16 (3) Was enclosed in an opaque wrapper such that the
17 lower two thirds of the cover of the material was not
18 exposed to view; or

19 (4) Was displayed or distributed after taking reasonable
20 steps to receive, obtain or check an adult identification
21 card, such as a driver's license or other technically or
22 reasonably feasible means of verification of age; or

23 (c) It is a defense to an alleged violation under this
24 section that a parent had taken reasonable steps to limit
25 the minor's access to the obscene matter.

§61-8A-3. Exemptions from criminal liability.

1 The criminal provisions of section two of this article do
2 not apply to:

3 (a) A bona fide school, in the presentation of local or
4 state approved curriculum;

5 (b) A public library, or museum, which is displaying or
6 distributing any obscene matter to a minor only when the
7 minor was accompanied by his or her parent;

8 (c) A licensed medical or mental health care provider, or
9 judicial or law-enforcement officer, during the course of
10 medical, psychiatric, or psychological treatment or judicial
11 or law-enforcement activities; or

12 (d) A person who did not know or have reason to know,
13 and could not reasonably have learned, that the person to
14 whom the obscene matter was distributed or displayed was
15 a minor and who took reasonable measures to ascertain
16 the identity and age of the minor;

17 (e) A person who routinely distributes obscene matter by
18 the use of telephone, computer network or the internet and
19 who distributes such matter to any minor under the age of
20 eighteen years after the person has taken reasonable

21 measures to prevent access by minors to the obscene
22 matter; or

23 (f) A radio or television station, cable television service
24 or other telecommunications service regulated by the
25 federal communications commission.

§61-8A-4. Use of obscene matter with intent to seduce minor.

1 Any adult, having knowledge of the character of the
2 matter, who knows that a person is a minor and distrib-
3 utes, offers to distribute or displays by any means any
4 obscene matter to the minor, and such distribution, offer
5 to distribute, or display is undertaken with the intent or
6 for the purpose of facilitating the sexual seduction or
7 abuse of the minor, is guilty of a felony and, upon convic-
8 tion thereof, shall be fined not more than twenty-five
9 thousand dollars, or confined in a state correctional
10 facility for not more than five years, or both. For a second
11 and each subsequent commission of such offense, such
12 person is guilty of a felony and, upon conviction, shall be
13 fined not more than fifty thousand dollars or confined in
14 a state correctional facility for not more than ten years, or
15 both.

**§61-8A-5. Employment or use of minor to produce obscene
matter or assist in doing sexually explicit con-
duct; penalties.**

1 Any adult who, with knowledge that a person is a minor
2 or who fails to exercise reasonable care in ascertaining the
3 age of a minor, hires, employs or uses such minor to
4 produce obscene matter or to do or assist in doing any
5 sexually explicit conduct, is guilty of a felony and, upon
6 conviction thereof, shall be fined not more than fifty
7 thousand dollars or confined in a state correctional facility
8 for not more than ten years, or both.

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

[Handwritten signature]

Chairman Senate Committee

[Handwritten signature]

Chairman House Committee

Originating in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

[Handwritten signature]

Clerk of the House of Delegates

[Handwritten signature]

President of the Senate

[Handwritten signature]

Speaker House of Delegates

The within *approved* this the *3rd*
Day of *April*, 2000

[Handwritten signature]
Governor

PRESENTED TO THE

GOVERNOR

Date

3/31/00

Time

2:40 pm