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article eight-a, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two, three, four, and five of said article be amended and reenacted, all to read as follows: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


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

(a) “Adult” means a person eighteen years of age or older.

(b) “Computer network” means the interconnection of hardware or wireless communication lines with a computer through remote terminals, or a complex consisting of two or more interconnected computers.

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

(d) “Distribute” means to transfer possession, transport, transmit, sell or rent, whether with or without consideration.

(e) “Employee” means any individual who renders personal services in the course of a business, who receives compensation and who has no financial interest in the ownership or operation of the business other than his salary or wages.
(f) "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks.

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

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

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

(j) "Obscene matter" means matter that:

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

(2) An average person, applying community standards, would find depicts or describes, in a patently offensive way, sexually explicit conduct; and
(3) A reasonable person would find, taken as a whole, lacks serious literary, artistic, political or scientific value.

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

(l) "Person" means any adult, partnership, firm, association, corporation or other legal entity.

(m) "Sexually explicit conduct" means an ultimate sexual act, normal or perverted, actual or simulated, including sexual intercourse, sodomy, oral copulation, sexual bestiality, sexual sadism and masochism, masturbation, excretory functions and lewd exhibition of the genitals.

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

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

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

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

(2) Was covered by a device, commonly known as a "blinder rack," such that the lower two thirds of the cover of the material is not exposed to view; or
(3) Was enclosed in an opaque wrapper such that the lower two thirds of the cover of the material was not exposed to view; or

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

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


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

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

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

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

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

(e) A person who routinely distributes obscene matter by the use of telephone, computer network or the internet and who distributes such matter to any minor under the age of eighteen years after the person has taken reasonable
measures to prevent access by minors to the obscene matter; or

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

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

Any adult, having knowledge of the character of the matter, who knows that a person is a minor and distributes, offers to distribute or displays by any means any obscene matter to the minor, and such distribution, offer to distribute, or display is undertaken with the intent or for the purpose of facilitating the sexual seduction or abuse of the minor, is guilty of a felony and, upon conviction thereof, shall be fined not more than twenty-five thousand dollars, or confined in a state correctional facility for not more than five years, or both. For a second and each subsequent commission of such offense, such person is guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars or confined in a state correctional facility for not more than ten years, or both.

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

Any adult who, with knowledge that a person is a minor or who fails to exercise reasonable care in ascertaining the age of a minor, hires, employs or uses such minor to produce obscene matter or to do or assist in doing any sexually explicit conduct, is guilty of a felony and, upon conviction thereof, shall be fined not more than fifty thousand dollars or confined in a state correctional facility for not more than ten years, or both.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Origining in the Senate.

In 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 ........................................ this the ........................................ Day of ........................................ 2000

Governor