

1 H. B. 4006

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3 (By Delegates L. Phillips, Rowan, Fleischauer, Sobonya,
4 Guthrie, Sumner, Lawrence, Miller, Poore, Border and Arvon)

[Introduced January 8, 2014; referred to the Committee on the Judiciary then Finance.]

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FISCAL NOTE

11 A BILL to amend and reenact §61-8C-3 of the Code of West Virginia,
12 1931, as amended, relating to crimes pertaining to the
13 possession, transmission, transportation, distribution and
14 exhibiting of material depicting minors in sexually explicit
15 conduct; adding the accessing of such materials with intent to
16 view as a defined offense; creating an enhanced felony offense
17 and penalty for possessing, accessing with intent to view,
18 transporting, receiving or distributing files or materials
19 which contain more than five hundred images in digital,
20 photographic or video format which depict minors engaging in
21 sexually explicit conduct; providing enhanced criminal
22 penalties when the offender was previously convicted of a
23 sexual offense when the victim was a child; and establishing
24 criminal penalties for second or subsequent violations.

25 Be it enacted by the Legislature of West Virginia:

26 That §61-8C-3 of the Code of West Virginia, 1931, as amended,
27 be amended and reenacted to read as follows:

1 ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF MINORS.

2 §61-8C-3. Distribution and exhibiting of material depicting minors
3 engaged in sexually explicit conduct prohibited;
4 penalty.

5 (a) Any person who, with knowledge, sends or causes to be
6 sent, or distributes, exhibits, possesses, accesses with intent to
7 view, or displays or transports any material visually portraying a
8 minor engaged in any sexually explicit conduct is guilty of a
9 felony, and, upon conviction thereof, shall be imprisoned in the
10 penitentiary correctional facility, not more than two years, and
11 fined not more than \$2,000.

12 (b) Any person who, with knowledge, sends or causes to be
13 sent, distributes, exhibits, displays or transports, or possesses
14 or accesses with intent to view, files or other materials that
15 contain more than five hundred separate images visually portraying
16 a minor engaged in any sexually explicit conduct is guilty of a
17 felony and, upon conviction, shall be imprisoned in a correctional
18 facility, not less than eighteen months nor more than five years,
19 and fined not more than \$10,000. For purposes of determining
20 violations under this defined offense, each video frame and each
21 image file or photograph that includes such sexually explicit
22 content shall be counted as a separate image.

23 (c) Any person who violates this section and has been
24 previously convicted of a felony for a sexual offense committed
25 against a victim who was under the age of eighteen at the time of
26 offense shall be imprisoned in a correctional facility, not less
27 than two nor more than ten years, and fined not more than \$10,000.

1 (d) Any person convicted of a second or subsequent violation
2 or the provisions of this section is guilty of a felony, and upon
3 conviction, shall be imprisoned in a correctional facility, not
4 less than two nor more than ten years, and fined not more than
5 \$10,000.

NOTE: The purpose of this bill is to amend the defined crimes and penalties imposed by West Virginia law related to the possession and distribution of child pornography. The bill adds the "accessing with intent to view" images of child pornography to the defined offense, and amends and clarifies certain elements of the defined offenses. The bill also creates enhanced penalties for offenders who intentionally view, possess, distribute or transmit a large quantity of such images. The bill also creates enhanced penalties for those who are convicted of a second and subsequent offenses and for those who were previously convicted of a felony sex offense where the victim was a minor.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the House Select Committee for Crimes Against Children.