

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5191

By Delegate Mazzocchi

[Introduced January 25, 2024; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact sections §61-8A-1, §61-8A-2 and §61-8A-3 of the Code of West
 2 Virginia, 1931, as amended, relating to distribution and display to minor of obscene matter;
 3 penalties; defenses and exemptions; providing that exemptions do not apply to public
 4 libraries or museums with regard minors in elementary or middle schools; and requiring
 5 public libraries or museums to block access to obscene matter to minors in elementary or
 6 middle schools who have a library card or a county or state board of education that
 7 supplies a tablet or notepad or a laptop computer.

Be it enacted by the Legislature of West Virginia:

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

§61-8A-1. Definitions.

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

3 ~~(a)~~-"Adult" means a person 18 years of age or older.

4 ~~(b)~~-"Computer" means an electronic, magnetic, optical, electrochemical or other high-
 5 speed data processing device performing logical, arithmetic or storage functions and includes any
 6 data storage facility or communication facility directly related to or operating in conjunction with
 7 such device. As used in this article, computer includes file servers, mainframe systems, desktop
 8 personal computers, laptop personal computers, tablet personal computers, cellular telephones,
 9 game consoles and any electronic data storage device or equipment. The term "computer"
 10 includes any connected or directly related device, equipment or facility which enables the
 11 computer to store, retrieve or communicate computer programs, computer data or the results of
 12 computer operations to or from a person, another computer or another device, but such term does
 13 not include an automated typewriter or typesetter, a portable hand-held calculator or other similar
 14 device.

15 ~~(e)~~ "Computer network" means the interconnection of hardware or wireless communication
16 lines with a computer through remote terminals, or a complex consisting of two or more
17 interconnected computers.

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

22 ~~(e)~~ "Distribute" means to transfer possession, transport, transmit, sell or rent, whether with
23 or without consideration.

24 ~~(f)~~ "Employee" means any individual who renders personal services in the course of a
25 business, who receives compensation and who has no financial interest in the ownership or
26 operation of the business other than his or her salary or wages.

27 ~~(g)~~ "Internet" means the international computer network of both federal and nonfederal
28 interoperable packet switched data networks.

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

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

41 (j)-"Minor" means an person under eighteen years of age or a person representing himself
 42 or herself to be a minor. Any prosecution under this article relating to a victim who is representing
 43 himself or herself to be a minor shall be limited to investigations being conducted or overseen by
 44 law enforcement.

45 (k)-"Obscene matter" means matter that:

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

49 (2) An average person, applying community standards, would find depicts or describes, in
 50 a patently offensive way, sexually explicit conduct, or that a particular item is lascivious or
 51 pornographic in nature; and

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

54 (l)-"Parent" includes a biological or adoptive parent, legal guardian or legal custodian.

55 (m)-"Person" means any adult, partnership, firm, association, corporation or other legal
 56 entity.

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

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

1 (a) (1) Any adult, with knowledge of the character of the matter, who knowingly and
 2 intentionally distributes, offers to distribute, or displays to a minor any obscene matter, is guilty of a
 3 felony and, upon conviction thereof, shall be fined not more than \$25,000, or ~~confined~~ imprisoned
 4 in a state correctional facility for not more than five years, or both fined and imprisoned.

5 (2) Any adult, with knowledge of the character of the matter, who knowingly and
 6 intentionally uses interactive computer services to display obscenity in a manner that makes it

7 available to a minor under the age of 18 years is guilty of a felony and, upon conviction thereof,
8 shall be fined not more than \$25,000, or imprisoned in a state correctional facility for not more than
9 five years, or both fined and imprisoned.

10 (3) Any person using misleading domain name, words, or digital images on the internet
11 with intent to deceive a minor under the age of 18 years into viewing harmful or obscene material is
12 guilty of a felony and, upon conviction thereof, shall be fined not more than \$25,000, or imprisoned
13 in a state correctional facility for not more than five years, or both fined and imprisoned.

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

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

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

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

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

25 (c) A public library, or museum that displays any obscene matter and that issues a library
26 card and a county or state board of education that supplies a tablet or notepad laptop computer to
27 minors in elementary or middle schools shall block access by those minors to the obscene
28 matters.

29 (d)

30 (e) (d) It is a defense to an alleged violation under this section that a parent had taken
31 reasonable steps to limit the minor's access to the obscene matter.

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

- 1 The criminal provisions of §61-8A-2 of this code do not apply to:
- 2 (a) A bona fide school, in the presentation of local or state approved curriculum: Provided,
- 3 That this exemption does not apply to elementary or middle schools levels;
- 4 (b) A public library, or museum, which is displaying or distributing any obscene matter to a
- 5 minor only when the minor was accompanied by his or her parent: Provided, That this exemption
- 6 does not apply to elementary or middle schools levels;
- 7 (c) A licensed medical or mental health care provider, or judicial or law-enforcement officer,
- 8 during the course of medical, psychiatric, or psychological treatment or judicial or law-enforcement
- 9 activities;
- 10 (d) A person who did not know or have reason to know, and could not reasonably have
- 11 learned, that the person to whom the obscene matter was distributed or displayed was a minor and
- 12 who took reasonable measures to ascertain the identity and age of the minor;
- 13 (e) A person who routinely distributes obscene matter by the use of telephone, computer
- 14 network or the Internet and who distributes such matter to any minor under the age of eighteen
- 15 years after the person has taken reasonable measures to prevent access by minors to the
- 16 obscene matter; or
- 17 (f) A radio or television station, cable television service or other telecommunications
- 18 service regulated by the federal communications commission.

NOTE: The purpose of this bill is to provide that exemptions to distribution and display to minor of obscene matters do not apply to public libraries or museums with regard minors in elementary or middle schools. The bill also requires public libraries or museums to block access to obscene matter to minors in elementary or middle schools who have a library card or a county or state board of education that supplies a tablet or notepad or a laptop computer.

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