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HOUSE BILL NO. 1403

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 10, 2006)

(Patron Prior to Substitute—Delegate Ingram)

A BILL to amend and reenact §§ 18.2-390 and 18.2-391 of the Code of Virginia, relating to sale of violent or sexually explicit video games to juveniles; penalty.

Be it enacted by the General Assembly of Virginia:**1. That §§ 18.2-390 and 18.2-391 of the Code of Virginia are amended and reenacted as follows:**

§ 18.2-390. Definitions.

As used in this article:

(1) "Juvenile" means a person less than ~~eighteen~~ 18 years of age.

(2) "Nudity" means a state of undress so as to expose the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered or uncovered male genitals in a discernibly turgid state.

(3) "Sexual conduct" means actual or explicitly simulated acts of masturbation, homosexuality, sexual intercourse, or physical contact in an act of apparent sexual stimulation or gratification with a person's clothed or unclothed genitals, pubic area, buttocks or, if such be female, breast.

(4) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(5) "Sadomasochistic abuse" means actual or explicitly simulated flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(6) "Harmful to juveniles" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it (a) predominantly appeals to the prurient, shameful or morbid interest of juveniles, (b) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for juveniles, and (c) is, when taken as a whole, lacking in serious literary, artistic, political or scientific value for juveniles.

(7) "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both (a) the character and content of any material described herein which is reasonably susceptible of examination by the defendant, and (b) the age of the juvenile, provided however, that an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such juvenile.

(8) "Video or computer game" means an object or device that stores recorded data or instructions, receives data or instructions generated by a person who uses it, and, by processing the data or instructions, creates an interactive game capable of being played, viewed, or experienced on or through a computer, television gaming system, console, or other technology.

§ 18.2-391. Unlawful acts; penalties.

A. It shall be unlawful for any person to sell, rent or loan to a juvenile, knowing or having reason to know that such person is a juvenile, or to knowingly display for commercial purpose in a manner whereby juveniles may examine and peruse:

1. Any picture, photography, drawing, sculpture, motion picture in any format or medium, *video or computer game*, electronic file or message containing an image, or similar visual representation or image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct or sadomasochistic abuse and which is harmful to juveniles, or

2. Any book, pamphlet, magazine, printed matter however reproduced, electronic file or message containing words, or sound recording which contains any matter enumerated in subdivision 1 of this subsection, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sadomasochistic abuse and which, taken as a whole, is harmful to juveniles.

However, if a person uses services of an Internet service provider or an electronic mail service provider in committing acts prohibited under this subsection, such Internet service provider or electronic mail service provider shall not be held responsible for violating this subsection.

B. It shall be unlawful for any person knowingly to sell to a juvenile an admission ticket or pass, or knowingly to admit a juvenile to premises whereon there is exhibited a motion picture, show or other presentation which, in whole or in part, depicts sexually explicit nudity, sexual conduct or sadomasochistic abuse and which is harmful to juveniles or to exhibit any such motion picture at any such premises which are not designed to prevent viewing from any public way of such motion picture

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60 by juveniles not admitted to any such premises.

61 C. It shall be unlawful for any juvenile falsely to represent to any person mentioned in subsection A
62 or subsection B hereof, or to his agent, that such juvenile is ~~eighteen~~ 18 years of age or older, with the
63 intent to procure any material set forth in subsection A, or with the intent to procure such juvenile's
64 admission to any motion picture, show or other presentation, as set forth in subsection B.

65 D. It shall be unlawful for any person knowingly to make a false representation to any person
66 mentioned in subsection A or subsection B hereof or to his agent, that he is the parent or guardian of
67 any juvenile, or that any juvenile is ~~eighteen~~ 18 years of age, with the intent to procure any material set
68 forth in subsection A, or with the intent to procure such juvenile's admission to any motion picture,
69 show or other presentation, as set forth in subsection B.

70 E. No person shall sell, rent, or loan any item described in subdivision A 1 or A 2 to any individual
71 who does not demonstrate his age in accordance with the provisions of subsection C of § 18.2-371.2.

72 F. A violation of subsection A, B, C, or D is a Class 1 misdemeanor. A person or separate retail
73 establishment who violates subsection E shall be liable for a civil penalty not to exceed \$100 for a first
74 violation, a civil penalty not to exceed \$200 for a second violation, and a civil penalty not to exceed
75 \$500 for a third or subsequent violation.