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SENATE BILL 2
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Short Title: No Violent/Obscene Video Game Sales to Minor.

(Public)

Sponsors:

Referred to:

January 27, 2005

A BILL TO BE ENTITLED

1 AN ACT TO PROHIBIT THE DISSEMINATION OF OBSCENE AND
2 GRAPHICALLY VIOLENT VIDEO GAMES TO MINORS AND TO REQUIRE
3 VIDEO GAME RETAILERS TO INFORM CONSUMERS THAT A VIDEO
4 GAME RATING SYSTEM IS AVAILABLE.
5

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 14-190.13 reads as rewritten:

8 **"§ 14-190.13. Definitions for certain offenses concerning minors.**

9 The following definitions apply to G.S. 14-190.14, displaying material harmful to
10 minors; G.S. 14-190.15, disseminating or exhibiting to minors harmful material or
11 performances; G.S. 14-190.16, first degree sexual exploitation of a minor;
12 G.S. 14-190.17, second degree sexual exploitation of a minor; G.S. 14-190.17A, third
13 degree sexual exploitation of a minor; G.S. 14-190.18, promoting prostitution of a
14 minor; and G.S. 14-190.19, participating in prostitution of a minor.

15 (1) Harmful to Minors. – That quality of any material or performance that
16 depicts sexually explicit nudity or sexual activity and that, taken as a
17 whole, has the following characteristics:

- 18 a. The average adult person applying contemporary community
19 standards would find that the material or performance has a
20 predominant tendency to appeal to a prurient interest of minors
21 in sex; and
22 b. The average adult person applying contemporary community
23 standards would find that the depiction of sexually explicit
24 nudity or sexual activity in the material or performance is
25 patently offensive to prevailing standards in the adult
26 community concerning what is suitable for minors; and

- c. The material or performance lacks serious literary, artistic, political, or scientific value for minors.
- (2) Material. – Pictures, drawings, video recordings, video games, films or other visual depictions or representations but not material consisting entirely of written words.
- (3) Minor. – An individual who is less than 18 years old and is not married or judicially emancipated.
- (4) Prostitution. – Engaging or offering to engage in sexual activity with or for another in exchange for anything of value.
- (5) Sexual Activity. – Any of the following acts:
 - a. Masturbation, whether done alone or with another human or an animal.
 - b. Vaginal, anal, or oral intercourse, whether done with another human or with an animal.
 - c. Touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female.
 - d. An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a person clad in undergarments or in revealing or bizarre costume.
 - e. Excretory functions; ~~provided, however, that this sub-subdivision shall not apply to G.S. 14-190.17A.~~
 - f. The insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure.
- (6) Sexually Explicit Nudity. – The showing of:
 - a. Uncovered, or less than opaquely covered, human genitals, pubic area, or buttocks, or the nipple or any portion of the areola of the human female breast, except as provided in G.S. 14-190.9(b); or
 - b. Covered human male genitals in a discernibly turgid state.
- (7) Video game. – 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, gaming system, console, or other technology."

SECTION 2. Article 39 of Chapter 14 of the General Statutes is amended by adding the following new sections to read:

"§ 14-317.1. Definitions for certain offenses concerning video games.

The following definitions apply to G.S. 14-317.2, disseminating to a minor a video game that is harmful to minors; G.S. 14-317.3, video games that are harmful to minors

1 shall be located in an area not open to view by minors; and G.S. 14-317.4, video game
2 retailer and video arcade must inform customer that video game ratings are available.

3 (1) Graphic violence. – The realistic visual depiction of serious injury to
4 human beings, actual or virtual, including aggravated assault,
5 decapitation, dismemberment, or death.

6 (2) Harmful to minors. – That quality of any video game that depicts
7 graphic violence and that, taken as a whole, has the following
8 characteristics:

9 a. The average adult person applying contemporary community
10 standards would find that the depiction of graphic violence in
11 the video game has a predominant tendency to appeal to a
12 morbid interest of minors in violence; and

13 b. The average adult person applying contemporary community
14 standards would find that the depiction of graphic violence in
15 the video game is patently offensive to prevailing standards in
16 the adult community concerning what is suitable for minors;
17 and

18 c. The video game lacks serious literary, artistic, political, or
19 scientific value for minors.

20 (3) Minor. – An individual who is less than 18 years old and is not
21 married or judicially emancipated.

22 (4) Video arcade. – Any premises where minors are legally permitted to
23 conduct business and 10 or more video game machines or devices are
24 operated.

25 (5) Video game. – An object or device that stores recorded data or
26 instructions, receives data or instructions generated by a person who
27 uses it, and, by processing the data or instructions, creates an
28 interactive game capable of being played, viewed, or experienced on
29 or through a computer, gaming system, console, or other technology.

30 (6) Video game retailer. – Any person who sells or rents video games to
31 the public.

32 **"§ 14-317.2. Disseminating to a minor a video game that is harmful to minors.**

33 (a) Offense. – It is unlawful for a person to do any of the following:

34 (1) Sell, rent, or otherwise disseminate for consideration to a minor a
35 video game that is harmful to minors if the person knows the character
36 or content of the video game.

37 (2) Allow a minor for consideration to operate a video game that is
38 harmful to minors in a video arcade if the person knows the character
39 or content of the video game.

40 (b) Defenses. – Except as provided in subdivision (2) of this subsection, a
41 mistake of age is not a defense to a prosecution under this section. It is an affirmative
42 defense to a prosecution under this section that:

43 (1) The person was a parent or legal guardian of the minor.

1 (2) Before the dissemination, the defendant requested and received a
2 drivers license, student identification card, or other official
3 governmental or educational identification card or paper indicating
4 that the minor to whom the video game was disseminated was at least
5 18 years old, and the defendant reasonably believed the minor was at
6 least 18 years old.

7 (3) The dissemination was made with the prior consent of a parent or
8 guardian of the recipient.

9 (c) Penalty. – A violation of this section is a Class 1 misdemeanor.

10 **"§ 14-317.3. Video games that are harmful to minors shall be located in an area**
11 **not open to view by minors.**

12 (a) Video Game Retailer Must Provide Separate Viewing Area for Video Games
13 That Are Harmful to Minors. – A video game retailer who sells or rents video games
14 that are harmful to minors shall create an area within the retailer's business
15 establishment that is not open to view by minors for the placement of the video games
16 and for any material that advertises the sale or rental of the video games. The area shall
17 be labeled 'adults only'.

18 (b) Video Arcade Must Provide Separate Viewing Area for Video Games That
19 Are Harmful to Minors. – Any person who has custody, control, or supervision of a
20 video arcade that includes video games that are harmful to minors as a selection on its
21 video game machines or devices shall create an area within the arcade that is not open to
22 view by minors for the placement of the video games and for any material that
23 advertises the video games. The area shall be labeled 'adults only'.

24 (c) Penalty. – A violation of this section is a Class 2 misdemeanor. Each day's
25 violation of this section is a separate offense.

26 **"§ 14-317.4. Video game retailer and video arcade must inform customer that**
27 **video game ratings are available.**

28 (a) Notification That Video Game Rating System Is Available. – Every video
29 game retailer and every person who has custody, control, or supervision of a video
30 arcade shall post a sign that notifies consumers of any rating system created by the
31 video gaming industry that is available to aid in the selection of a game. The sign shall
32 be posted within the retail establishment or video arcade in a prominent area.

33 (b) Duty to Provide Video Game Rating System Upon Request. – A video game
34 retailer or a person who has custody, control, or supervision of a video arcade shall
35 make available to consumers, upon request, the video game rating system and
36 information that explains the video game rating system.

37 (c) Penalty. – A violation of this section is a Class 3 misdemeanor."

38 **SECTION 3.** Chapter 66 of the General Statutes is amended by adding a
39 new Article to read:

40 "Article 41.

41 "Video Games.

42 **"§ 66-340. Labeling required for graphically violent video games; notification of**
43 **video game rating system.**

44 (a) Definitions. – The following definitions apply to this Article:

1 (1) "Graphic violence" is as defined in G.S. 14-317.1(1).

2 (2) "Video arcade" is as defined in G.S. 14-317.1(4).

3 (3) "Video game" is as defined in G.S. 14-317.1(5).

4 (4) "Video game retailer" is as defined in G.S. 14-317.1(6).

5 (b) Video Games That Contain Graphic Violence Must Be Labeled. – It is
6 unlawful for a video game retailer to sell or rent any video game that contains graphic
7 violence unless the cover of the video game displays a label that accurately describes
8 the type of violence portrayed in the video. If the video game is rated, then the video
9 game retailer shall also provide, upon request, the information that explains the game
10 rating system and identifies the sponsors of the video game rating system.

11 (c) Video Games in Video Arcades That Contain Graphic Violence Must Be
12 Labeled. – It is unlawful to allow the operation of any video game in a video arcade that
13 contains graphic violence unless the video game displays a label that accurately
14 describes the type of violence portrayed in the video game. If the video game is rated,
15 then the person who has custody, control, or supervision of the video arcade shall also
16 provide, upon request, the information that explains the video game rating system and
17 identifies the sponsors of the video game rating system.

18 (d) Violation Is an Unfair Practice. – A violation of this section shall constitute
19 an unfair practice under G.S. 75-1.1."

20 **SECTION 4.** If any provision of this act or its application is held invalid, the
21 invalidity does not affect other provisions or applications of this act that can be given
22 effect without the invalid provisions or application, and to this end the provisions of this
23 act are severable.

24 **SECTION 5.** This act becomes effective December 1, 2005, and applies to
25 offenses committed on or after that date.
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