

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 252

By Senators Azinger, Deeds, and Maynard

[Introduced January 17, 2023; referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §18-5-29; and to amend and reenact §61-8A-1 of said code, all relating to the
 3 prohibition of obscene materials in or within 2,500 feet of West Virginia schools; and
 4 defining criminal penalties for obscene materials in or within 2,500 feet of West Virginia
 5 schools.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-29. Obscene matter in public schools prohibited.

1 (a) Obscene matter, as defined in §61-8A-1 of this code, is prohibited in, or within 2,500
 2 feet of, any public school library, classroom, building or other facility under the general supervision
 3 of the state board, including any public school building containing any of grades prekindergarten
 4 through 12, any public charter school building, any multi-county career technical education center
 5 building, and any buildings of the West Virginia Schools for the Deaf and Blind. Any school officials
 6 or school personnel having knowledge of any obscene matter in a public school building under the
 7 general supervision of the state board shall ensure that the obscene matter is promptly removed.
 8 This prohibition does not apply to obscene material used in the presentation of local or state
 9 approved curriculum.

10 (b) Any school officials or school personnel while engaged in a professional capacity or
 11 activity any public school library, classroom, building or other facility under the general supervision
 12 of the state board shall be deemed a custodian of children under §61-8D-4 of the Code of West
 13 Virginia. If any such school officials or school personnel while engaged in a professional capacity
 14 or activity any public school library, classroom, building or other facility under the general
 15 supervision of the state board learns of facts that give reason to suspect that a child has been
 16 exposed to obscene matter while in any public school library, classroom, building or other facility
 17 and fails to make a timely report may be prosecuted for a misdemeanor under §61-8D-4(f) of the
 18 Code of West Virginia and upon conviction shall be fined not exceeding \$500 or imprisoned not

19 more than 1 year or both.

20 (c) The State Superintendent shall establish a procedure for any person to file a complaint
21 alleging a violation of subsection (a) of this section and a procedure for investigating any complaint
22 that is filed. The investigation shall include a determination of whether there is obscene matter in,
23 or within 2,500 feet of, the public school library, classroom, building or facility and whether §61-8A-
24 2 of this code, relating to distribution or display of obscene matter to a minor, is likely to have been
25 violated. If it is determined that there is obscene matter in, or within 2,500 feet of, a public school
26 library, classroom, building or facility, the state superintendent shall use his or her authority set
27 forth in §18-3-4 of this code or any other reasonable means to ensure that the obscene matter is
28 removed from the public school library, classroom, building or facility, or within 2,500 feet thereof. If
29 it is determined that a violation of §61-8A-2 of this code is likely to have occurred, the state
30 superintendent, investigator, or other person acting on behalf of the superintendent shall notify the
31 appropriate law-enforcement agency or agencies.

32 (d) No funds authorized by the Legislature, including, but not limited to, funds sourced from
33 the federal government, may be used by any school under the general supervision of the state
34 board or any public charter school: (i) to develop or distribute materials, or operate programs or
35 courses of instruction directed at youth, that are designed to promote or encourage sexual activity,
36 whether homosexual or heterosexual; or (ii) to distribute or to aid in the distribution by any
37 organization of legally obscene materials, as defined in §61-8A-1 of this code, to minors on, or
38 within 2,500 feet of, any school library, classroom, building or facility.

39 (e) If an adult individual meets the criteria for an adult to have committed a felony under
40 §61-8A-2 of this code, and no exemption set forth in §61-8A-3 of this code applies, the individual
41 shall be subject to the penalty or penalties imposed pursuant to §61-8A-2 of this code.

42 (f) Any student or parent, guardian, or custodian on behalf of the student shall have a civil
43 cause of action against a county board, a public charter school, the state board, or the
44 administrative council of a multi-county career technical education center if the entity caused or

45 was negligent in allowing a violation of this section. In any such cause of action, the student or
46 parent, guardian, or custodian on behalf of the student may recover actual damages, punitive
47 damages, reasonable attorney fees, and reasonable costs of litigation incurred.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

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 (c) "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) "Graphic", when used with respect to a depiction of sexually explicit conduct, means
28 that a viewer can observe any part of the genitals or pubic area of any depicted person or animal
29 during any part of the time that the sexually explicit conduct is being depicted.

30 (h) "Identifiable minor" means a person: (i) who was a minor at the time the visual depiction
31 was created, adapted, or modified; or (ii) whose image as a minor was used in creating, adapting,
32 or modifying the visual depiction; and (iii) who is recognizable as an actual person by the person's
33 face, likeness, or other distinguishing characteristic, such as a unique birthmark or other
34 recognizable feature; and shall not be construed to require proof of the actual identity of the
35 identifiable minor.

36 (i) "Indistinguishable" used with respect to a depiction, means virtually indistinguishable, in
37 that the depiction is such that an ordinary person viewing the depiction would conclude that the
38 depiction is of an actual minor engaged in sexually explicit conduct.

39 "Internet" means the international computer network of both federal and nonfederal
40 interoperable packet switched data networks.

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

44 (k) "Matter" means any visual, audio, or physical item, article, production transmission,

45 publication, display, exposure, exhibition, or live performance, or reproduction thereof, including
46 any two- or three- dimensional visual or written material, stereopticon, moving picture, slide, film,
47 picture, drawing, not exceeding \$500 video, graphic, graphic novel, or computer generated or
48 reproduced image; or any book, not exceeding \$500 magazine, newspaper or other visual or
49 written material; or any motion picture or other pictorial representation; or any statue or other
50 figure; or any recording, transcription, or mechanical, chemical, or electrical reproduction; or any
51 other articles, video laser disc, computer hardware and software, or computer generated images
52 or message recording, transcription, or object, or any public or commercial live exhibition
53 performed for consideration or before an audience of one or more.

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

55 (m) "Obscene matter" means matter that:

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

59 (2) An average person, applying community standards, would find depicts or describes, in
60 a patently offensive way, sexually explicit conduct; and

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

63 (4) For the purposes of any prohibition, protection or requirement under any and all articles
64 and sections of the Code of West Virginia protecting children from exposure to indecent displays of
65 a sexually explicit nature, such prohibited displays shall include, but not be limited to, any
66 transvestite and/or transgender exposure, performances or display to any minor.

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

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

70 (p) "Sexually explicit conduct" means a definitive sexual act between persons of the same

71 or opposite sex, actual or simulated, including genital-genital, oral-genital, anal-genital, or oral-
72 anal sexual intercourse, sodomy, oral copulation of any kind, sexual bestiality, sexual sadism and
73 masochism, masturbation, excretory functions and lewd exhibition of the anus, genitals or pubic
74 area of any person, or lascivious simulated sexual intercourse where the genitals, breast, or pubic
75 area of any person is exhibited.

NOTE: The purpose of this bill is to prohibit obscene materials in West Virginia schools.

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