

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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SENATE BILL 2  
Corrected Copy 1/28/05  
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Commerce Committee Substitute Adopted 4/19/05

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

(Public)

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Sponsors:

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Referred to:

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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

- 1 c. The material or performance lacks serious literary, artistic,  
2 political, or scientific value for minors.
- 3 (2) Material. – Pictures, drawings, video recordings, video games, films or  
4 other visual depictions or representations but not material consisting  
5 entirely of written words.
- 6 (3) Minor. – An individual who is less than 18 years old and is not  
7 married or judicially emancipated.
- 8 (4) Prostitution. – Engaging or offering to engage in sexual activity with  
9 or for another in exchange for anything of value.
- 10 (5) Sexual Activity. – Any of the following acts:
- 11 a. Masturbation, whether done alone or with another human or an  
12 animal.
- 13 b. Vaginal, anal, or oral intercourse, whether done with another  
14 human or with an animal.
- 15 c. Touching, in an act of apparent sexual stimulation or sexual  
16 abuse, of the clothed or unclothed genitals, pubic area, or  
17 buttocks of another person or the clothed or unclothed breasts  
18 of a human female.
- 19 d. An act or condition that depicts torture, physical restraint by  
20 being fettered or bound, or flagellation of or by a person clad in  
21 undergarments or in revealing or bizarre costume.
- 22 e. Excretory functions; provided, however, that this  
23 sub-subdivision shall not apply to G.S. 14-190.17A.
- 24 f. The insertion of any part of a person's body, other than the male  
25 sexual organ, or of any object into another person's anus or  
26 vagina, except when done as part of a recognized medical  
27 procedure.
- 28 (6) Sexually Explicit Nudity. – The showing of:
- 29 a. Uncovered, or less than opaquely covered, human genitals,  
30 pubic area, or buttocks, or the nipple or any portion of the  
31 areola of the human female breast, except as provided in  
32 G.S. 14-190.9(b); or
- 33 b. Covered human male genitals in a discernibly turgid state.
- 34 (7) Video game. – An object or device that stores recorded data or  
35 instructions, receives data or instructions generated by a person who  
36 uses it, and, by processing the data or instructions, creates an  
37 interactive game capable of being played, viewed, or experienced on  
38 or through a computer, gaming system, console, or other technology."

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

41 **"§ 14-317.1. Definitions for certain offenses concerning video games.**

42 The following definitions apply to G.S. 14-317.2, disseminating to a minor a video  
43 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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