

# State Statutes Regulating Video Games in the USA

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## Introduction

This document quotes various state statutes in the USA that have attempted to regulate the sale, lending, or viewing of video games to children, when those video games depict what legislators consider excessive violence. This document is posted at my website as a resource for students, parents concerned about violence in media, and state legislators. The statutes are listed in approximate chronological order, with the earliest first, so the reader can follow the evolution of statutes.

My separate essay at <http://www.rbs2.com/infotort.pdf> cites the court cases that have invalidated these state statutes as violative of First Amendment rights, as well as discusses possible tort liability for information, including entertainment, that causes harm.

This essay is intended only to present general information about an interesting topic in law and is *not* legal advice for your specific problem. See my disclaimer at <http://www.rbs2.com/disclaim.htm> .

## Missouri

In 1989, the Missouri legislature enacted one of the earliest statutes regulating the videogames to children.

1. Video cassettes or other video reproduction devices, or the jackets, cases or coverings of such video reproduction devices shall be displayed or maintained in a separate area if the same are pornographic for minors as defined in section 573.010, or if:

(1) Taken as a whole and applying contemporary community standards, the average person would find that it has a tendency to cater or appeal to morbid interest in violence for persons under the age of seventeen; and

(2) It depicts violence in a way which is patently offensive to the average person applying contemporary adult community standards with respect to what is suitable for persons under the age of seventeen; and

(3) Taken as a whole, it lacks serious literary, artistic, political, or scientific value for persons under the age of seventeen.

2. Any video cassette or other video reproduction devices meeting the description in subsection 1 of this section shall not be rented or sold to a person under the age of seventeen years.

3. Any violation of the provisions of subsection 1 or 2 of this section shall be punishable as an infraction, unless such violation constitutes furnishing pornographic materials to minors ... or unless such violation constitutes promoting obscenity in the second degree ....

Missouri Statute § 573.090 (enacted 1989).

Part quoted in *Video Software Dealers Ass'n v. Webster*, 773 F.Supp. 1275, 1276 (W.D.Mo. 1991), *aff'd*, 968 F.2d 684, 687 (8th Cir. 1992). Remarkably, in December 2006, 14 years after being declared unconstitutional, this statute is still included in the Missouri statutes.

## Indianapolis

The Indianapolis ordinance that was invalidated in the landmark case of *American Amusement Machine Ass'n v. Kendrick*, 244 F.3d 572 (7th Cir. 2001) is quoted in Appendix A of *American Amusement Mach. Ass'n v. Kendrick*, 115 F.Supp.2d 943, 981-988 (S.D.Ind. 2000).

Unfortunately, the copy available to me in Westlaw does not contain the strike-out of the words deleted from the previous version of this ordinance, which makes the Westlaw copy confusing to read.

## Washington

The following statute was declared unconstitutional in *Video Software Dealers Ass'n v. Maleng*, 325 F.Supp.2d 1180 (W.D.Wash. 2004).

**Legislative Findings — 2003 c 365:** The legislature finds that there has been an increase in studies showing a correlation between exposure to violent video and computer games and various forms of hostile and antisocial behavior. The entertainment software industry's ratings and content descriptors of video and computer games reflect that some video and computer games are suitable only for adults due to graphic depictions of sex and/or violence. Furthermore, some video and computer games focus on violence specifically against public law enforcement officers such as police and fire fighters. The legislature encourages retailers and parents to utilize the rating system.

In addition, the legislature finds there is a compelling interest to curb hostile and antisocial behavior in Washington's youth and to foster respect for public law enforcement officers.

### Statute:

(1) A person who sells, rents, or permits to be sold or rented, any video or computer game they know to be a violent video or computer game to any minor has committed a class 1 civil infraction as provided in RCW 7.80.120.

(2) "Minor" means a person under seventeen years of age.

(3) "Person" means a retailer engaged in the business of selling or renting video or computer games including any individual, partnership, corporation, or association who is subject to the tax on retailers under RCW 82.04.250.

(4) "Violent video or computer game" means a video or computer game that contains realistic or photographic-like depictions of aggressive conflict in which the player kills, injures, or otherwise causes physical harm to a human form in the game who is depicted, by dress or other recognizable symbols, as a public law enforcement officer.

Washington Code, Title 9, Chapter 91, § 180 (effective 27 July 2003).

## Michigan

Following is the text of a Michigan statute that was invalidated by *Entertainment Software Ass'n v. Granholm*, 426 F.Supp.2d 646 (E.D.Mich. 2006).

### Legislative Findings:

Sec. 15. In light of section 51 of article IV of the state constitution of 1963, which directs that "The public health and general welfare of the people of the state are hereby declared to be matters of primary public concern. The legislature shall pass suitable laws for the protection and promotion of the public health.", and after hearing from expert witnesses and law enforcement officials, considering the testimony of expert witnesses before other legislative bodies, and reviewing dozens of studies and metastudies of hundreds of studies, the legislature finds all of the following:

(a) Published research overwhelmingly finds that ultra-violent explicit video games are harmful to minors because minors who play ultra-violent explicit video games are consistently more likely to exhibit violent, asocial, or aggressive behavior and have feelings of aggression.

- (b) Spokespersons for not less than 6 major national health associations have concluded and testified that after reviewing more than 1,000 studies, the studies "point overwhelmingly to a causal connection between media violence and aggressive behavior in some children", concluding that the effects of media violence on minors "are measurable and long-lasting".
- (c) Law enforcement officers testified that recent statewide targeted enforcement efforts reveal that minors are capable of purchasing, and do purchase, ultra-violent explicit video games.
- (d) Law enforcement officers testified about cases of minors acting out ultra-violent explicit video game behaviors by victimizing other citizens.
- (e) The state has a legitimate and compelling interest in safeguarding both the physical and psychological well-being of minors.
- (f) The state has a legitimate and compelling interest in preventing violent, aggressive, and asocial behavior from manifesting itself in minors.
- (g) The state has a legitimate and compelling interest in directly and substantially alleviating the real-life harms perpetrated by minors who play ultra-violent explicit video games.

Michigan Compiled Laws, 722.685 (effective 1 Dec 2005).

### **Definitions:**

Sec. 16. As used in this part:

- (a) "Computer" means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.
- (b) "Computer network" means the interconnection of hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of 2 or more interconnected computers.
- (c) "Computer program" means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.
- (d) "Computer system" means a set of related, connected or unconnected, computer equipment, devices, software, or hardware.
- (e) "Device" includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.
- (f) "Disseminate" means to sell, lend, give, exhibit, show, or allow to examine or to offer or agree to do the same.

- (g) "Extreme and loathsome violence" means real or simulated graphic depictions of physical injuries or physical violence against parties who realistically appear to be human beings, including actions causing death, inflicting cruelty, dismemberment, decapitation, maiming, disfigurement, or other mutilation of body parts, murder, criminal sexual conduct, or torture.
- (h) "Harmful to minors" means having all of the following characteristics:
- (i) Considered as a whole, appeals to the morbid interest in asocial, aggressive behavior of minors as determined by contemporary local community standards.
  - (ii) Is patently offensive to contemporary local community standards of adults as to what is suitable for minors.
  - (iii) Considered as a whole, lacks serious literary, artistic, political, educational, or scientific value for minors.
- (i) "Local community" means the county in which the video game was disseminated.
- (j) "Minor" means a person less than 17 years of age.
- (k) "Morbid interest in asocial, aggressive behavior" means a morbid interest in committing uncontrolled aggression against an individual. In determining whether an ultra-violent explicit video game appeals to this interest, the video game shall be judged with reference to average 16-year-old minors. If it appears from the character of the video game that it is designed to appeal to this interest of a particular group of persons, then the video game shall be judged with reference to average 16-year-old minors within the particular group for which it appears to be designed.
- (l) "Ultra-violent explicit video game" means a video game that continually and repetitively depicts extreme and loathsome violence.
- (m) "Video game" means an object or device that stores recorded 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, game console, or other technology.
- Michigan Compiled Laws, 722.686 (effective 1 Dec 2005).

### **Offense & Penalties:**

Sec. 17. (1) A person shall not knowingly disseminate to a minor an ultra-violent explicit video game that is harmful to minors. Except as provided in subsections (2) and (3), a person who violates this subsection is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$5,000.00.

(2) A person who violates subsection (1) and who has 1 prior determination of responsibility under this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$15,000.00.

(3) A person who violates subsection (1) and who has 2 or more prior determinations of responsibility under this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$40,000.00. In imposing a fine under this subsection, the court shall consider the scope of the defendant's commercial activity in disseminating ultra-violent explicit video games to minors.

Michigan Compiled Laws, 722.687 (effective 1 Dec 2005).

**Exceptions:**

Sec. 18. Section 17 [i.e., § 722.687] does not apply to the dissemination of an ultra-violent explicit video game to a minor by any of the following:

- (a) A parent or guardian who disseminates an ultra-violent explicit video game to his or her child or ward.
- (b) An immediate family member of the minor who disseminates an ultra-violent explicit video game to the minor in the immediate family member's residence or the minor's residence.
- (c) An individual who disseminates an ultra-violent video game to a minor who is a guest in the individual's residence.
- (d) An individual who disseminates an ultra-violent explicit video game for a legitimate medical, scientific, governmental, or judicial purpose.

Michigan Compiled Laws, 722.688 (effective 1 Dec 2005).

**False representations:**

Sec. 19. (1) A person shall not knowingly make a false representation that he or she is the parent or guardian of a minor, or that a minor is 17 years of age or older, with the intent to facilitate the dissemination to the minor of an ultra-violent explicit video game that is harmful to minors. A person knowingly makes a false representation as to the age of a minor or as to the status of being the parent or guardian of a minor if the person either is aware that the representation is false or recklessly disregards a substantial risk that the representation is false.

(2) A person who violates subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$15,000.00, or both.

Michigan Compiled Laws, 722.689 (effective 1 Dec 2005).

**Business shall not permit unaccompanied minor to play/view ...**

Sec. 20. A person who possesses managerial responsibility for a business enterprise renting or selling ultra-violent explicit video games that are harmful to minors shall not knowingly permit a minor who is not accompanied by a parent or guardian to play or view the playing of an ultra-violent explicit video game that is harmful to minors. A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$25,000.00, or both.

Michigan Compiled Laws, 722.690 (effective 1 Dec 2005).

**Knowing dissemination:**

Sec. 21. (1) A person knowingly disseminates an ultra-violent explicit video game to a minor if the person knows both the nature of the video game and the status of the minor to whom the video game is disseminated.

(2) A person knows the nature of the ultra-violent explicit video game if the person either is aware of its character and content or recklessly disregards circumstances suggesting its character and content.

(3) A person knows the status of a minor if the person either is aware that the person to whom the dissemination is made is a minor or recklessly disregards a substantial risk that the person to whom the dissemination is made is a minor.

Michigan Compiled Laws, 722.691 (effective 1 Dec 2005).

**Affirmative defenses:**

Sec. 23. (1) It is an affirmative defense to an alleged violation under this part that the person acted in good faith. Except as provided in subsection (2), good faith exists if at the time the alleged violation occurs all of the following conditions are satisfied:

(a) The minor shows the person identification that appears to be valid and that contains a photograph and a date of birth purporting to show that the minor is 17 years of age or older, or the service terms of the internet provider of a seller or rental enterprise that sells or rents ultra-violent explicit video games over the internet require a purchaser or renter to be 17 years of age or older if all of the following conditions are met:

(i) The ultra-violent explicit video game is purchased or rented over the internet.

(ii) The ultra-violent explicit video game is sent to the purchaser's or renter's home or place of residence or otherwise made directly available through the internet to the purchaser or renter.

(iii) The purchaser or renter of the ultra-violent explicit video game uses a credit card to purchase or rent the ultra-violent explicit video game.

(b) The person does not have independent knowledge that the minor is under 17 years of age.

(c) Relying upon information described in subdivisions (a) and (b), the person complies with a rating system established by the pertinent entertainment industry that does not conflict with this part.

(2) If the person possesses managerial responsibility for a business enterprise, good faith exists if at the time the alleged violation occurs the business enterprise satisfies all of the following conditions:

(a) The business enterprise has in existence a policy that its employees are required to comply with a rating system established by the pertinent entertainment industry that does not conflict with this part.

(b) The business enterprise trains its employees to follow the policy described in subdivision (a).

(c) The business enterprise enforces the policy described in subdivision (a).

Michigan Compiled Laws, 722.693 (effective 1 Dec 2005).

## Illinois

The following two Illinois laws were declared unconstitutional in *Entertainment Software Ass'n v. Blagojevich*, 404 F.Supp.2d 1051 (N.D.Ill. 2005), *aff'd*, 469 F.3d 641 (7th Cir. 2006).

### Violent Video Games Law

#### **Findings.**

- (a) The General Assembly finds that minors who play violent video games are more likely to:
    - (1) Exhibit violent, asocial, or aggressive behavior.
    - (2) Experience feelings of aggression.
    - (3) Experience a reduction of activity in the frontal lobes of the brain which is responsible for controlling behavior.
  - (b) While the video game industry has adopted its own voluntary standards describing which games are appropriate for minors, those standards are not adequately enforced.
  - (c) Minors are capable of purchasing and do purchase violent video games.
  - (d) The State has a compelling interest in assisting parents in protecting their minor children from violent video games.
  - (e) The State has a compelling interest in preventing violent, aggressive, and asocial behavior.
  - (f) The State has a compelling interest in preventing psychological harm to minors who play violent video games.
  - (g) The State has a compelling interest in eliminating any societal factors that may inhibit the physiological and neurological development of its youth.
  - (h) The State has a compelling interest in facilitating the maturation of Illinois' children into law-abiding, productive adults.
- Illinois Criminal Code, § 5/12A-5 (effective 1 Jan 2006).

**Definitions.** For the purposes of this Article, the following terms have the following meanings:

- (a) "Video game retailer" means a person who sells or rents video games to the public.
- (b) "Video 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, gaming system, console, or other technology.
- (c) "Minor" means a person under 18 years of age.
- (d) "Person" includes but is not limited to an individual, corporation, partnership, and association.

(e) "Violent" video games include depictions of or simulations of human-on-human violence in which the player kills or otherwise causes serious physical harm to another human. "Serious physical harm" includes depictions of death, dismemberment, amputation, decapitation, maiming, disfigurement, mutilation of body parts, or rape.

Illinois Criminal Code, § 5/12A-10 (effective 1 Jan 2006).

**Restricted sale or rental of violent video games.**

(a) A person who sells, rents, or permits to be sold or rented, any violent video game to any minor, commits a petty offense for which a fine of \$1,000 may be imposed.

(b) A person who sells, rents, or permits to be sold or rented any violent video game via electronic scanner must program the electronic scanner to prompt sales clerks to check identification before the sale or rental transaction is completed. A person who violates this subsection (b) commits a petty offense for which a fine of \$1,000 may be imposed.

(c) A person may not sell or rent, or permit to be sold or rented, any violent video game through a self-scanning checkout mechanism. A person who violates this subsection (c) commits a petty offense for which a fine of \$1,000 may be imposed.

(d) A retail sales clerk shall not be found in violation of this Section unless he or she has complete knowledge that the party to whom he or she sold or rented a violent video game was a minor and the clerk sold or rented the video game to the minor with the specific intent to do so.

Illinois Criminal Code, § 5/12A-15 (effective 1 Jan 2006).

**Labeling of violent video games.**

(a) Video game retailers shall label all violent video games as defined in this Article, with a solid white "18" outlined in black. The "18" shall have dimensions of no less than 2 inches by 2 inches. The "18" shall be displayed on the front face of the video game package.

(b) A retailer's failure to comply with this Section is a petty offense punishable by a fine of \$500 for the first 3 violations, and \$1,000 for every subsequent violation.

Illinois Criminal Code, § 5/12A-25 (effective 1 Jan 2006).

**Sexually Explicit Video Games**

**Findings.** The General Assembly finds sexually explicit video games inappropriate for minors and that the State has a compelling interest in assisting parents in protecting their minor children from sexually explicit video games.

Illinois Criminal Code, § 5/12B-5 (effective 1 Jan 2006).

**Definitions.** For the purposes of this Article, the following terms have the following meanings:

(a) "Video game retailer" means a person who sells or rents video games to the public.

(b) "Video 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, gaming system, console, or other technology.

(c) "Minor" means a person under 18 years of age.

(d) "Person" includes but is not limited to an individual, corporation, partnership, and association.

(e) "Sexually explicit" video games include those that the average person, applying contemporary community standards would find, with respect to minors, is designed to appeal or pander to the prurient interest and depict or represent in a manner patently offensive with respect to minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act or a lewd exhibition of the genitals or post-pubescent female breast.

Illinois Criminal Code, § 5/12B-10 (effective 1 Jan 2006).

**Restricted sale or rental of sexually explicit video games.**

(a) A person who sells, rents, or permits to be sold or rented, any sexually explicit video game to any minor, commits a petty offense for which a fine of \$1,000 may be imposed.

(b) A person who sells, rents, or permits to be sold or rented any sexually explicit video game via electronic scanner must program the electronic scanner to prompt sales clerks to check identification before the sale or rental transaction is completed. A person who violates this subsection (b) commits a petty offense for which a fine of \$1,000 may be imposed.

(c) A person may not sell or rent, or permit to be sold or rented, any sexually explicit video game through a self-scanning checkout mechanism. A person who violates this subsection (c) commits a petty offense for which a fine of \$1,000 may be imposed.

(d) A retail sales clerk shall not be found in violation of this Section unless he or she has complete knowledge that the party to whom he or she sold or rented a sexually explicit video game was a minor and the clerk sold or rented the video game to the minor with the specific intent to do so.

Illinois Criminal Code, § 5/12B-15 (effective 1 Jan 2006).

**Labeling of sexually explicit video games.**

(a) Video game retailers shall label all sexually explicit video games as defined in this Act, with a solid white "18" outlined in black. The "18" shall have dimensions of no less than 2 inches by 2 inches. The "18" shall be displayed on the front face of the video game package.

(b) A retailer who fails to comply with this Section is guilty of a petty offense punishable by a fine of \$500 for the first 3 violations, and \$1,000 for every subsequent violation.

Illinois Criminal Code, § 5/12B-25 (effective 1 Jan 2006).

## California

California was preliminarily enjoined from enforcing the following statute in *Video Software Dealers Ass'n v. Schwarzenegger*, 401 F.Supp.2d 1034 (N.D.Cal. 21 Dec 2005).

### Legislative findings:

Section 1 of Stats.2005, c. 638, provides:

The Legislature finds and declares all of the following:

(a) Exposing minors to depictions of violence in video games, including sexual and heinous violence, makes those minors more likely to experience feelings of aggression, to experience a reduction of activity in the frontal lobes of the brain, and to exhibit violent antisocial or aggressive behavior.

(b) Even minors who do not commit acts of violence suffer psychological harm from prolonged exposure to violent video games.

(c) The state has a compelling interest in preventing violent, aggressive, and antisocial behavior, and in preventing psychological or neurological harm to minors who play violent video games.

### Definitions:

For purposes of this title, the following definitions shall apply:

(a) "Minor" means any natural person who is under 18 years of age.

(b) "Person" means any natural person, partnership, firm, association, corporation, limited liability company, or other legal entity.

(c) "Video game" means any electronic amusement device that utilizes a computer, microprocessor, or similar electronic circuitry and its own monitor, or is designed to be used with a television set or a computer monitor, that interacts with the user of the device.

(d)(1) "Violent video game" means a video game in which the range of options available to a player includes killing, maiming, dismembering, or sexually assaulting an image of a human being, if those acts are depicted in the game in a manner that does either of the following:

(A) Comes within all of the following descriptions:

(i) A reasonable person, considering the game as a whole, would find appeals to a deviant or morbid interest of minors.

(ii) It is patently offensive to prevailing standards in the community as to what is suitable for minors.

(iii) It causes the game, as a whole, to lack serious literary, artistic, political, or scientific value for minors.

(B) Enables the player to virtually inflict serious injury upon images of human beings or characters with substantially human characteristics in a manner which is especially heinous, cruel, or depraved in that it involves torture or serious physical abuse to the victim.

(2) For purposes of this subdivision, the following definitions apply:

(A) "Cruel" means that the player intends to virtually inflict a high degree of pain by torture or serious physical abuse of the victim in addition to killing the victim.

(B) "Depraved" means that the player relishes the virtual killing or shows indifference to the suffering of the victim, as evidenced by torture or serious physical abuse of the victim.

(C) "Heinous" means shockingly atrocious. For the killing depicted in a video game to be heinous, it must involve additional acts of torture or serious physical abuse of the victim as set apart from other killings.

(D) "Serious physical abuse" means a significant or considerable amount of injury or damage to the victim's body which involves a substantial risk of death, unconsciousness, extreme physical pain, substantial disfigurement, or substantial impairment of the function of a bodily member, organ, or mental faculty. Serious physical abuse, unlike torture, does not require that the victim be conscious of the abuse at the time it is inflicted. However, the player must specifically intend the abuse apart from the killing.

(E) "Torture" includes mental as well as physical abuse of the victim. In either case, the virtual victim must be conscious of the abuse at the time it is inflicted; and the player must specifically intend to virtually inflict severe mental or physical pain or suffering upon the victim, apart from killing the victim.

(3) Pertinent factors in determining whether a killing depicted in a video game is especially heinous, cruel, or depraved include infliction of gratuitous violence upon the victim beyond that necessary to commit the killing, needless mutilation of the victim's body, and helplessness of the victim.

California Civil Code, § 1746 (enacted 2005).

(a) A person may not sell or rent a video game that has been labeled as a violent video game to a minor.

(b) Proof that a defendant, or his or her employee or agent, demanded, was shown, and reasonably relied upon evidence that a purchaser or renter of a violent video game was not a minor or that the manufacturer failed to label a violent video game as required pursuant to Section 1746.2 shall be an affirmative defense to any action brought pursuant to this title. That evidence may include, but is not limited to, a driver's license or an identification card issued to the purchaser or renter by a state or by the Armed Forces of the United States.

(c) This section shall not apply if the violent video game is sold or rented to a minor by the minor's parent, grandparent, aunt, uncle, or legal guardian.

California Civil Code, § 1746.1 (enacted 2005).

**Labeling:**

Each violent video game that is imported into or distributed in California for retail sale shall be labeled with a solid white "18" outlined in black. The "18" shall have dimensions of no less than 2 inches by 2 inches. The "18" shall be displayed on the front face of the video game package.

California Civil Code, § 1746.2 (enacted 2005).

**Penalties:**

Any person who violates any provision of this title shall be liable in an amount of up to one thousand dollars (\$1,000), or a lesser amount as determined by the court. However, this liability shall not apply to any person who violates those provisions if he or she is employed solely in the capacity of a salesclerk or other, similar position and he or she does not have an ownership interest in the business in which the violation occurred and is not employed as a manager in that business.

California Civil Code, § 1746.3 (enacted 2005).

**Louisiana**

The Louisiana statute — enjoined in *Entertainment Software Ass'n v. Foti*, 451 F.Supp.2d 823 — contains a finding of fact by the legislature:

§ 1 The legislature finds that children are the most precious resource of this state and that they are worthy of special protection from their government. The laws of Louisiana contain extensive provisions which afford children additional protection by prohibiting them from voting, entering into marriage, purchasing or publicly possessing alcoholic beverages, purchasing tobacco products, participating in gaming activities, entering into contracts, and purchasing harmful materials. The legislature has also enacted wholly distinct provisions for identifying children who are in need of care and establishing a means to provide those children with appropriate services. These laws demonstrate Louisiana's commitment to protect its citizens from physical, psychological, and financial harm during the time in which they are particularly vulnerable due to their age and immaturity. In enacting this Act, the Louisiana Legislature clearly demonstrates the state's compelling governmental interest in protecting children and that it seeks to incorporate the extensive protections otherwise afforded to minors in this state to the area of interactive video and computer games.

§ 2 [Louisiana] R.S. 14:91.14 is hereby enacted to read as follows:

**A .** An interactive video or computer game shall not be sold, leased, or rented to a minor if the trier of fact determines all of the following:

- (1) The average person, applying contemporary community standards, would find that the video or computer game, taken as a whole, appeals to the minor's morbid interest in violence.
- (2) The game depicts violence in a manner patently offensive to prevailing standards in the adult community with respect to what is suitable for minors.
- (3) The game, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

**B .** For the purposes of this Section:

- .....
- (3) "Minor" means any person under the age of eighteen years.

**C .** Whoever is found guilty of violating the provisions of this Section shall be fined not less than one hundred dollars nor more than two thousand dollars or imprisoned, with or without hard labor, for not more than one year, or both.

Louisiana Acts of 2006, Nr. 441 (approved and effective 15 June 2006).

## Oklahoma

The Oklahoma statute — enjoined in *Entertainment Merchants Ass'n v. Henry* — says:

### Definitions:

As used in Sections 1040.75 through 1040.77 of this title:

1. "Minor" means any unmarried person under the age of eighteen (18) years;
2. "Harmful to minors" means:
  - a. that quality of any description, exhibition, presentation or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when the material or performance, taken as a whole, has the following characteristics:
    - (1) the average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest in sex to minors, and
    - (2) the average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance depicts or describes nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors, and
    - (3) the material or performance lacks serious literary, scientific, medical, artistic, or political value for minors, or
  - b. any description, exhibition, presentation or representation, in whatever form, of inappropriate violence;
3. "Inappropriate violence" means any description or representation, in an interactive video game or computer software, of violence which, taken as a whole, has the following characteristics:
  - a. the average person eighteen (18) years of age or older applying contemporary community standards would find that the interactive video game or computer software is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors, and
  - b. the interactive video game or computer software lacks serious literary, scientific, medical, artistic, or political value for minors based on, but not limited to, the following criteria:
    - (1) is glamorized or gratuitous,
    - (2) is graphic violence used to shock or stimulate,
    - (3) is graphic violence that is not contextually relevant to the material,
    - (4) is so pervasive that it serves as the thread holding the plot of the material together,
    - (5) trivializes the serious nature of realistic violence,
    - (6) does not demonstrate the consequences or effects of realistic violence,
    - (7) uses brutal weapons designed to inflict the maximum amount of pain and damage,
    - (8) endorses or glorifies torture or excessive weaponry, or
    - (9) depicts lead characters who resort to violence freely;
4. "Nudity" means the ....
8. "Material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape, CD-ROM disk, Magnetic Disk Memory, Magnetic Tape Memory, video tape, computer software or video game;

9. "CD-ROM" means a compact disk with read only memory which has the capacity to store audio, video and written materials and may be used by computer to play or display materials harmful to minors;

10. "Magnetic Disk Memory" means a memory system that stores and retrieves binary data on record-like metal or plastic disks coated with a magnetic material, including but not limited to floppy diskettes;

11. "Magnetic Tape Memory" means a memory system that stores and retrieves binary data on magnetic recording tape;

....

15. "A reasonable bona fide attempt" means an attempt to ascertain the true age of the minor by requiring production of a driver license, marriage license, birth certificate or other governmental or educational identification card or paper and not relying solely on the oral allegations or apparent age of the minor.

Oklahoma Statutes, Title 21, § 1040.75 (effective 1 Nov 2006).

**prohibited acts**

No person, including but not limited to any persons having custody, control or supervision of any commercial establishment, shall knowingly:

1. Display material which is harmful to minors in such a way that minors, as a part of the invited general public, will be exposed to view such material. Provided, however, a person shall be deemed not to have "displayed" material harmful to minors if the material is kept behind devices commonly known as "blinder racks" so that the lower two-thirds ( 2/3 ) of the material is not exposed to view;

2. Sell, furnish, present, distribute, allow to view, or otherwise disseminate to a minor, with or without consideration, any material which is harmful to minors; or

3. Present to a minor or participate in presenting to a minor, with or without consideration, any performance which is harmful to a minor.

Oklahoma Statutes, Title 21, § 1040.76 (effective 1 July 1995).

**Penalties:**

Any person convicted of violating any provision of Section 1040.76 of this title shall be guilty of a misdemeanor and shall be fined a sum not exceeding Five Hundred Dollars (\$500.00) for the first or second offense. Any person convicted of a third or subsequent violation of any provision of Section 1040.76 of this title shall be guilty of a misdemeanor and shall be fined a sum not exceeding One Thousand Dollars (\$1,000.00). Each day that any violation of Section 1040.76 of this title occurs or continues shall constitute a separate offense and shall be punishable as a separate violation. Every act or transaction prohibited by Section 1040.76 of this title shall constitute a separate offense as to each item, issue or title involved and shall be punishable as such. For the purpose of this section, multiple copies of the same identical title, monthly issue, volume and number issue or other such identical material as prohibited by Section 1040.76 of this title shall constitute a single offense.

Oklahoma Statutes, Title 21, § 1040.77 (effective 1 July 2001).

## Conclusion

These statutes were poorly drafted and consistently found to violate the US. Constitution. As a result, taxpayers were forced to pay:

1. state legislators to draft and pass unconstitutional statutes
2. attorneys for the state to defend these statutes in court
3. attorneys fees (pursuant to 42 U.S.C. § 1988) spent by the video game industry in challenging these unconstitutional statutes.

Not only were these statutes a waste of taxpayers' money, but also the video-game industry won a number of important victories in court that firmly established First Amendment protection for videogames.

As several courts have pointed out, the wording of these statutes is unconstitutionally vague, in addition to infringing on First Amendment freedoms. Furthermore, in my opinion, it was stupid of legislators to include the legal standard for obscenity for *adults* in a statute regulating nonobscene videogames for children.

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My most recent search for statutes on this topic was in December 2006.

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