

HOUSE BILL REPORT

HB 1422

As Reported By House Committee On:
Judiciary

Title: An act relating to erotic material.

Brief Description: Specifying additional notice of any court ruling that material is "erotic material."

Sponsors: Representatives King, Padden, Appelwick, Brough, Casada and Sheldon.

Brief History:

Reported by House Committee on:
Judiciary, March 3, 1993, DP.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 12 members:
Representatives Appelwick, Chair; Ludwig, Vice Chair;
Padden, Ranking Minority Member; Ballasiotes, Assistant
Ranking Minority Member; Chappell; Forner; Long; Mastin;
H. Myers; Schmidt; Scott; and Tate.

Minority Report: Do not pass. Signed by 3 members:
Representatives Johanson; Locke; and Riley.

Staff: Bill Perry (786-7123).

Background: The sale, distribution, or exhibition of "erotic material" to minors is generally prohibited.

"Erotic material" is defined to include printed material, photographs, pictures, motion pictures, sound recordings, or other material the dominant theme of which taken as a whole appeals to the prurient interest of minors in sex, and which is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters or sadomasochistic abuse, and which is utterly without redeeming social value.

Following notice to a dealer, distributor, or exhibitor, a county prosecuting attorney may seek a judicial determination that the material is erotic. If the material is found to be erotic, it must be labelled "adults only" and may not be displayed or sold in a manner that makes the material readily accessible to minors. Failure to comply

with these labelling and display provisions subjects the dealer, distributor, or exhibitor to contempt. Actually selling, distributing, or exhibiting such material to a minor is a crime. A first offense carries a maximum fine of \$500 and up to six months in jail; a second offense carries a maximum fine of \$1,000 and up to a year in jail; and a third offense is a felony with a maximum fine of \$5,000 and a minimum jail sentence of one year.

Retailers who try to comply with the requirements of this law may not be discriminated against by their wholesalers or franchisers. Treble damages may be awarded against any wholesaler or franchiser who violates this provision.

The law does not apply to public libraries, recognized historical societies and museums, county law libraries, libraries of colleges and universities, the State Library, the State Law Library, or public archives. An exception to the law is also made for minors who are accompanied by a parent or guardian while attending a motion picture.

Legislation in 1992 added sound recordings to the definition of "erotic material" that may not be sold, distributed, or exhibited to minors.

The erotic materials law was recently declared unconstitutional by a Superior Court in King County. That decision is technically limited only to sound recordings, but the rationale for the decision, if upheld on appeal, would seem to invalidate the law with respect to all forms of erotic material. One of the grounds upon which the Superior Court found the statute defective is that it did not give adequate notice to persons who may be liable under the statute. Specifically, for example, the statute has no mechanism for alerting merchants across the state that a particular item has been declared erotic, and that therefore they are subject to criminal liability for displaying or selling the item to minors.

Summary of Bill: Whenever a prosecuting attorney secures a determination that material is "erotic," the prosecutor is to notify the code reviser of the court decision. The code reviser is then to publish the court's decision in the Washington State Register. That publication is deemed official notice of the determination that the material is erotic.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill addresses one of the concerns about the law raised in the recent Superior Court decision.

Testimony Against: The Legislature should not act on this issue before the Supreme Court has ruled.

Witnesses: Adam Prazenica, Youth Action Council (pro); Stu Halsan, Recording Industry Association (con); Bill Fritz, Motion Picture Association of America (con); Jerry Sheehan, American Civil Liberties Union (con); Richard White, Washington Music Industry Coalition (con); Carrie Akre (con); and Kathleen Mix, Attorney General's Office.