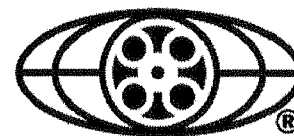


From the Desk of Senator Ginny Burdick



MEDIA COALITION INC.



M. P. A. A.

The ACLU of Oregon, Media Coalition and the Motion Picture Association of America, Inc., urge you to vote “No” on HB 2843. The members of Media Coalition represent most of the publishers, booksellers, librarians, recording, film and video game manufacturers, recording, video and video game retailers and film exhibitors in Oregon and the rest of the United States.

Despite the good intentions of the drafters and the recent amendment removing Section 10, we have concluded HB 2843 is unconstitutional under the First Amendment of the U.S. Constitution and Article I, section 8 of the Oregon Bill of Rights.

Section 2 of the bill, known as the “furnishing” provision, would make it a crime to intentionally provide “sexually explicit” material to a minor under 13. Despite claims that the Oregon Constitution grants greater protection to speech than the First Amendment, Section 2 fails to meet even the lower standard of the U.S. Constitution. Under the First Amendment and U.S. Supreme Court case law, criminalizing the furnishing of material to minors (without intending to harm the minor) may be proscribed only if the material is “harmful to minors,” as defined in Ginsberg v. New York, 390 US 629 (1968).

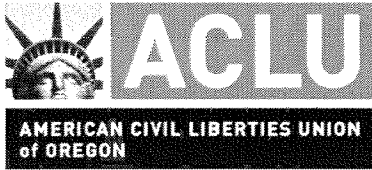
That standard requires a finding that the material “predominantly appeals to the prurient, shameful or morbid interests of minors, and is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors, and is utterly without redeeming social importance for minors.” **Section 2 of HB 2843 does not satisfy the Ginsberg test and therefore sweeps in protected material beyond that allowed to be restricted under the First Amendment.**

Section 3 would restrict furnishing an even broader category of images, as well as verbal descriptions or narrative to anyone under 18 by defining it as “luring.” This material would still be legal for minors and adults to possess or furnish even if Section 2 is enacted. Furnishing such content cannot be transformed into an illegal act merely by attaching it to an action—unless that action is itself already illegal. **Because the underlying action in Section 3 (1)(b)(A) is not necessarily illegal, it therefore cannot be the basis for making the furnishing of otherwise constitutionally protected speech a crime simply because the Legislature labels it as “luring.”**

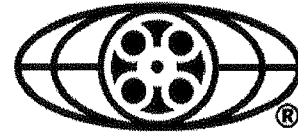
Overall, this bill would have a significant chilling effect on the distribution of lawful, constitutionally protected material.

HB 2843 is also vulnerable to a challenge under Article I, section 8 of the Oregon Constitution. Although the Oregon free expression clause allows for some regulation of speech, it may do so only if there is a well established historical exception and the regulation is narrowly tailored. Even assuming there may be an historical exception to help protect minors from sexual predators, HB 2843 is too broad to comply with constitutional requirements.

The ACLU, Media Coalition and MPAA urge you to vote “No” on HB 2843



MEDIA COALITION inc



M. P. A. A.

The ACLU of Oregon, Media Coalition and the Motion Picture Association of America, Inc., urge you to vote “No” on HB 2843. The members of Media Coalition represent most of the publishers, booksellers, librarians, recording, film and video game manufacturers, recording, video and video game retailers and film exhibitors in Oregon and the rest of the United States.

Despite the good intentions of the drafters and the recent amendment removing Section 10, we have concluded HB 2843 is unconstitutional under the First Amendment of the U.S. Constitution and Article I, section 8 of the Oregon Bill of Rights.

Section 2 of the bill, known as the “furnishing” provision, would make it a crime to intentionally provide “sexually explicit” material to a minor under 13. Despite claims that the Oregon Constitution grants greater protection to speech than the First Amendment, Section 2 fails to meet even the lower standard of the U.S. Constitution. Under the First Amendment and U.S. Supreme Court case law, criminalizing the furnishing of material to minors (without intending to harm the minor) may be proscribed only if the material is “harmful to minors,” as defined in Ginsberg v. New York, 390 US 629 (1968).

That standard requires a finding that the material “predominantly appeals to the prurient, shameful or morbid interests of minors, and is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors, and is utterly without redeeming social importance for minors.” **Section 2 of HB 2843 does not satisfy the Ginsberg test and therefore sweeps in protected material beyond that allowed to be restricted under the First Amendment.**

Section 3 would restrict furnishing an even broader category of images, as well as verbal descriptions or narrative to anyone under 18 by defining it as “luring.” This material would still be legal for minors and adults to possess or furnish even if Section 2 is enacted. Furnishing such content cannot be transformed into an illegal act merely by attaching it to an action—unless that action is itself already illegal. **Because the underlying action in Section 3 (1)(b)(A) is not necessarily illegal, it therefore cannot be the basis for making the furnishing of otherwise constitutionally protected speech a crime simply because the Legislature labels it as “luring.”**

Overall, this bill would have a significant chilling effect on the distribution of lawful, constitutionally protected material.

HB 2843 is also vulnerable to a challenge under Article I, section 8 of the Oregon Constitution. Although the Oregon free expression clause allows for some regulation of speech, it may do so only if there is a well established historical exception and the regulation is narrowly tailored. Even assuming there may be an historical exception to help protect minors from sexual predators, HB 2843 is too broad to comply with constitutional requirements.

The ACLU, Media Coalition and MPAA urge you to vote “No” on HB 2843