

ACT 240

S.B. NO. 2234

A Bill for an Act Relating to Sexual Exploitation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that current Hawaii law does not address the exploitation of a minor whereby a minor is used in a fashion similar to a trade commodity in providing various lascivious services that are not covered by prostitution or sexual abuse laws. This exploitation is part of the overall sexual exploitation that is known as commercial sexual exploitation (CSE), and includes nude dancing, unlicensed massage, exotic dancing, and pornographic performances.

The legislature further finds that substantiation of this growing problem is extensively documented in a recent study of CSE done by the University of Pennsylvania, School of Social Work. This report, entitled "The Commercial Sexual Exploitation of Children in the U.S., Canada and Mexico", (Richard Estes and Neil Weiner, September 10, 2001, funded in part by the National Institute of Justice of the United States Department of Justice), states that escort services, massage services, private dancing, nude dancing, lap dancing, and similar sexually provocative activities are used to organize or lure girls into prostitution and pornography.

The report's recommendations include targeting adult sexual exploiters of children for punishment and increasing the penalties associated with CSE. The report states that "[s]ome persons involved in child trafficking were quite explicit about the "cost/benefit" ledger sheets they mentally drafted; on balance, involvement in the [CSE]...was judged to be more profitable and less risky than involvement in felony-level crimes. This imbalance is an incentive to make one's illicit money from CSE rather than drugs or other felony crimes." Notably, the report states that offenders must be given an unequivocal message that commercial sexual exploitation is impermissible, and that the victimized children must be empowered to report incidents to law enforcement and human service agencies.

Therefore, the legislature finds that the establishment and enforcement of significant criminal penalties, including securing convictions for class B felonies, are necessary to ensure that the sexual exploitation of children is severely punished and discouraged, and to assure the young victims of these deplorable acts that harsh penalties will be imposed upon those who participate or profit in their exploitation. The community and the State have a responsibility and obligation to protect minors from being mere sexual objects to be bought, sold, traded, or rented for sexual purposes and profit.

The purpose of this Act is to prohibit the commercial sexual exploitation of minors in activities consisting of exotic or nude dancing, erotic or nude massage services, and pornographic performances.

SECTION 2. Chapter 707, Hawaii Revised Statutes, is amended by adding a new section to part VI to be appropriately designated and to read as follows:

"§707- Sexual exploitation of a minor. (1) A person commits the offense of sexual exploitation of a minor if that person:

- (a) Intentionally, knowingly, or recklessly engages or retains the services of a minor for money or property in consideration to:

- (i) Provide, to patrons or customers of a public establishment, exotic or nude dancing or entertainment;
- (ii) Provide exotic or nude dancing or entertainment in a private club or event; provided that a patron or customer of a private club or event shall be deemed to engage or retain the services of a minor for purposes of this section; or
- (iii) Provide erotic or nude massage services if the person massaged or performing the massage is nude; or
- (b) Entices customers through advertising that offers services of a minor in any manner prohibited under paragraph (a).

(2) As used in this section:

“Exotic dancing” or “exotic entertaining” means a person performing, dancing, or entertaining in the nude, and includes patrons participating in a contest or receiving instruction in the art of nude dancing.

“Minor” means any person less than eighteen years old.

“Nude” means unclothed or in attire, including but not limited to sheer or see-through attire, so as to expose to view any portion of the pubic hair, anus, cleft of the buttocks, genitals, or any portion of the female breast below the top of the areola.

“Property” means personal property, real property, evidence of debt or contract, or any kind of article of value.

(3) Sexual exploitation of a minor is a class B felony.

(4) A conviction under this section shall subject the defendant to section 712A-4, if applicable.”

SECTION 3. Chapter 712, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

“§712-A Failure to maintain age verification records of sexual performers. (1) A person commits the offense of failure to maintain age verification records of sexual performers if the person knowingly produces any pornographic performance, book, magazine, periodical, film, videotape, computer image, or other matter that contains one or more pornographic visual depiction’s made after June 30, 2002, of sexual conduct and:

- (a) Knowingly fails to create and maintain age verification records for each sexual performer;
- (b) Knowingly makes or causes to be made any false entry into the age verification records of sexual performers required by this section; or
- (c) Knowingly fails to produce the age verification records of sexual performers required by this section, upon request by a law enforcement officer for the purpose of verifying the age of a sexual performer.

(2) Failure to maintain age verification records of sexual performers is a class C felony.

§712-B Failure to maintain age verification records of sexually exploited individuals. (1) A person commits the offense of failure to maintain age verification records of sexually exploited individuals if, with the intent to profit therefrom, the person knowingly provides sexually exploited individuals to patrons or customers of a public establishment or provides sexually exploited individuals to a private club or event, and the person:

- (a) Knowingly fails to create and maintain age verification records for each sexually exploited individual;

- (b) Knowingly makes or causes to be made any false entry into the age verification records of sexually exploited individuals required by this section; or
 - (c) Knowingly fails to produce the age verification records of sexually exploited individuals required by this section upon request by a law enforcement officer for the purpose of verifying the age of a sexually exploited individual.
- (2) Failure to maintain age verification records of sexually exploited individuals is a class C felony.

§712-C Failure to affix information disclosing location of age verification records of sexual performers. (1) A person commits the offense of failure to affix information disclosing location of age verification records of sexual performers if the person knowingly produces any pornographic book, magazine, periodical, film, videotape, computer image, or other matter that contains one or more pornographic visual depiction's made after June 30, 2002, of sexual conduct and fails to affix to each copy a statement describing where any records required by section 712-A with respect to all performers depicted in that copy of the matter may be located, including the current address and telephone number of the custodian of those records.

(2) If the person to whom any record-keeping requirement of section 712-A applies is an organization, the affixed information required under subsection (1) shall include the name, title, and business address of the individual employed by the organization who is responsible for maintaining the records required by section 712-A.

(3) Failure to affix information disclosing the location of age verification records of sexual performers is a class C felony.

§712-D Disseminating visual depiction of sexual conduct without affixed information disclosing location of age verification records of sexual performers.

(1) A person commits the offense of disseminating visual depiction of sexual conduct without affixed information disclosing location of age verification records of sexual performers if the person knowingly disseminates, sells, or otherwise transfers, or offers for sale or transfer, any book, magazine, periodical, film, videotape, computer image, or other matter that contains one or more visual depiction's made after June 30, 2002, of sexual conduct, and that does not have affixed thereto a statement describing where the age verification records required by section 712-A may be located; provided that this section shall not be construed to impose a duty upon any persons to determine the accuracy of the contents of the affixed statement or of the records required to be kept at that location.

(2) Disseminating visual depiction of sexual conduct without affixed information disclosing location of age verification records of sexual performers is a misdemeanor."

SECTION 4. Section 712-1210, Hawaii Revised Statutes, is amended by adding ten new definitions to be appropriately inserted and to read as follows:

““Age verification records of sexual performers” means individually identifiable records pertaining to every sexual performer portrayed in a visual depiction of sexual conduct, which include:

- (1) Each performer's name and date of birth, as ascertained by the producer's personal examination of a performer's valid driver's license, official state identification card, or passport;
- (2) A certified copy of each performer's valid driver's license, official state identification card, or passport; and

- (3) Any name ever used by each performer including, but not limited to, maiden name, alias, nickname, stage name, or professional name.

“Age verification records of sexually exploited individuals” means individually identifiable records pertaining to every sexually exploited individual provided to patrons or customers of a public establishment or in a private club or event. Such records shall include:

- (1) Each sexually exploited individual’s name and date of birth, as ascertained by an examination of the individual’s valid driver’s license, official state identification card, or passport;
- (2) A certified copy of each sexually exploited individual’s driver’s license, official state identification card, or passport; and
- (3) Any name ever used by each sexually exploited individual including but not limited to maiden name, aliases, nicknames, stage names, or professional names.

“Erotic or nude massager” means a nude person providing massage services with or without a license.

“Exotic or nude dancer” means a person performing, dancing, or entertaining in the nude, and includes patrons participating in a contest or receiving instruction in nude dancing.

“Intent to profit” means the intent to obtain monetary gain.

“Nude” means unclothed or in attire, including but not limited to sheer or see-through attire, so as to expose to view any portion of the pubic hair, anus, cleft of the buttocks, genitals or any portion of the female breast below the top of the areola.

“Produces” means to manufacture or publish any pornographic performance, book, magazine, periodical, film, videotape, computer image, or other similar matter and includes the duplication, reproduction, or reissuing of any such matter, but does not include mere distribution or any other activity that does not involve hiring, contracting for, managing, or otherwise arranging for the participation of the performers depicted.

“Sexual conduct” has the same meaning as in section 712-1200(2).

“Sexually exploited individuals” means erotic or nude massagers and exotic or nude dancers.

“Sexual performer” includes any person portrayed in a pornographic visual depiction engaging in, or assisting another person to engage in, sexual conduct.”

SECTION 5. Section 712A-4, Hawaii Revised Statutes, is amended to read as follows:

“§712A-4 Covered offenses. Offenses for which property is subject to forfeiture under this chapter are:

- (a) All offenses which specifically authorize forfeiture;
- (b) Murder, kidnapping, gambling, criminal property damage, robbery, bribery, extortion, theft, unauthorized entry into motor vehicle, burglary, money laundering, trademark counterfeiting, insurance fraud, promoting a dangerous, harmful, or detrimental drug, or commercial promotion of marijuana, which is chargeable as a felony offense under state law;
- (c) The manufacture, sale, or distribution of a controlled substance in violation of chapter 329, promoting detrimental drugs or intoxicating compounds, promoting pornography, promoting pornography for minors, sexual exploitation of a minor, or promoting prostitution, which is chargeable as a felony or misdemeanor offense, but not as a petty misdemeanor, under state law; and

- (d) The attempt, conspiracy, solicitation, coercion, or intimidation of another to commit any offense for which property is subject to forfeiture.’’

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 7. If any provision of this Act or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of this Act, and to this end the provisions of this Act are severable.

SECTION 8. In codifying the new sections added by section 3 of this Act, the revisor of statutes shall substitute appropriate section number for the letters used in designating the new sections in this Act.

SECTION 9. Each county prosecutor shall submit a report of the numbers of arrests, charges, convictions, and dismissals under the new offenses created pursuant to this Act to the Legislature prior to the convening of the 2004 regular session.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 11. This Act shall take effect upon its approval; provided that sections 2 and 5 shall be repealed on July 1, 2004, and section 712A-4, Hawaii Revised Statutes, shall be reenacted as it read on the day before the effective date of this Act.

(Approved June 28, 2002.)

Note

1. Edited pursuant to HRS §23G-16.5.