

Government Bill

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Legislative Assembly of British Columbia

BILL 30

MOTION PICTURE ACT

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Attorney General

Explanatory Note

This Bill repeals and replaces the current *Motion Picture Act* retaining the review and classification scheme that exists in the current legislation in a manner that is consistent with the *Canadian Charter of Rights and Freedoms*. In addition the Bill regulates the distribution of motion pictures that are reproduced in the form of video tapes and video discs.

The Bill empowers the Director of Film Classification to cut certain types of offensive material from motion pictures or to prohibit the exhibition or distribution of motion pictures where their content consists predominantly of offensive material described in the Bill. As well, the Bill empowers the making of regulations establishing a classification scheme for motion pictures that will be exhibited to the public.

The Bill provides for a licensing scheme for outlets that sell or rent video tapes and films to members of the public. Any outlet that distributes motion pictures in this form that fall within the definition of "adult motion picture" in the Bill will require a licence. All of these films and tapes will have been reviewed by the Director of Film Classification before distribution is permitted. As well, the director will be placing licensing conditions on these outlets to ensure that this material or any advertising in connection with it will be out of the sight and reach of persons under the age of 18.

The courts have held that this type of legislation, while limiting freedom of expression under the *Canadian Charter of Rights and Freedoms*, is a justifiable limitation of that right, providing the limitations are prescribed by law and are clearly defined. Accordingly, the Bill endeavours to limit the discretion of the Director of Film Classification and to clearly define material that is prohibited. Because the standards of the community change, and due to the impossibility of describing in exhaustive detail the actual content of all types of offensive material, the director is given some discretion in removing offensive material and in prohibiting the exhibition and distribution of motion pictures containing the material.

The scheme established by this Bill will preserve the freedom of expression and thought enshrined in the *Canadian Charter of Rights and Freedoms*, but regulate and, in the most extreme cases, remove material which is clearly offensive to the members of the community.

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MOTION PICTURE ACT

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Interpretation

1. In this Act

"adult film" means a film that produces or reproduces an adult motion picture;

"adult film distributor" means a person who distributes adult films to an adult film retailer or to another adult film distributor;

"adult film retailer" means a person who distributes adult films to the public, but does not include an adult film distributor;

"adult motion picture" means

- (a) a motion picture that was submitted for review under the former Act or under section 2 (1) of this Act for the purpose of exhibition in a theatre and, following the review,
 - (i) was not approved,
 - (ii) was approved, but had a portion removed, or
 - (iii) was approved, but with a condition that it may only be exhibited in theatres designated by the director,
- (b) a motion picture that has not been reviewed under section 5 that depicts
 - (i) explicit sexual scenes,
 - (ii) the coercing, through the use or threat of physical force or by other means, of a person to engage in a sexual act, where that sexual act is depicted in explicit sexual scenes or sexually suggestive scenes,
 - (iii) incest or necrophilia,

- (iv) bondage in a sexual context,
 - (v) persons who are or who appear to be under the age of 14 involved in sexually suggestive scenes, whether or not they appear nude or partially nude,
 - (vi) persons who are or who appear to be under the age of 18 involved in explicit sexual scenes,
 - (vii) explicit sexual scenes involving violence,
 - (viii) scenes of brutality or torture to persons or animals, depicted in a realistic and explicit manner, or
 - (ix) sexual conduct between a human being and an animal, or
- (c) a motion picture that contains scenes that depict conduct or an activity that is prescribed in a regulation made under section 14 (d);

"copy" means

- (a) in respect of a motion picture or an adult film that is required to be submitted to the director under section 2 (1) or 3 (1), a motion picture or an adult film that is an identical reproduction, on any type of film, of the motion picture or the adult film that is required to be submitted under those sections, or
- (b) in respect of a motion picture or an adult motion picture that was reviewed and approved under section 5, a motion picture or an adult motion picture that is an identical reproduction, on any type of film, of the motion picture or the adult motion picture that was approved under section 5 in the form that it was so approved;

"director" means the Director of Film Classification;

"distribute" includes rent, lease, sell or supply, or to make an offer to do any of those things;

"film" means photographic film, pre-recorded video tapes, pre-recorded video discs and includes any other object or device on or within which there is recorded, by photographic, electronic or other means, the contents of a motion picture, and from which, by the use of a projector, machine or other appropriate technology, the motion picture may be viewed, exhibited or projected;

"former Act" means the *Motion Picture Act* repealed by section 17 of this Act;

"minor" means a person under the age of 18;

"motion picture distributor" means a person who distributes a film to a proprietor, lessee, manager or employee of a theatre or who contracts respecting films with any of those persons or with any other motion picture distributor, but does not include

- (a) a public library,
- (b) a university,
- (c) an educational institution approved by the Minister of Education where the film is distributed for educational purposes,
- (d) the government of British Columbia, or
- (e) the government of Canada;

"theatre" includes a hall, building, premises, room or place, including an open air place commonly known as a "drive-in theatre", where motion pictures are exhibited to the public;

"video distributor" means a person who distributes films to a video retailer or to another video distributor;

"video retailer" means a person who distributes films to any person.

Approval of films for exhibition

2. (1) Where a motion picture or a copy of it is intended to be exhibited in a theatre, the motion picture distributor shall submit the motion picture to the director for approval.

(2) A motion picture distributor shall not distribute a motion picture or a copy of a motion picture for the purpose of exhibition in a theatre unless the motion picture has been approved by the director under this Act, or was approved under the former Act.

(3) A person shall not exhibit in a theatre a motion picture or a copy of it unless the motion picture has been approved by the director and, where the approval is subject to conditions under the former Act or under section 5 (7) of this Act, in accordance with those conditions.

(4) Before a motion picture distributor distributes a motion picture for the purpose of exhibition in a theatre, he shall attach, in a manner determined by the director, a certificate or some other evidence of approval, satisfactory to the director, to the film or film casing and to all copies of the motion picture that are intended for exhibition.

(5) The certificate or other evidence may be inspected by any person on demand.

(6) This section does not apply to the exhibition of a motion picture for educational purposes

- (a) at a university or at another educational institution approved by the Minister of Education, or
- (b) under the auspices of the government of British Columbia or Canada.

Approval of films for distribution

3. (1) Where an adult film or a copy of it is intended to be distributed by an adult film distributor, the distributor shall submit the adult film to the director for approval of the adult motion picture that it produces or reproduces.

(2) No adult film distributor or adult film retailer shall distribute an adult film or a copy of it unless the adult motion picture that it produces or reproduces has been approved by the director and, where the approval is subject to conditions under section 5 (8), in accordance with those conditions.

(3) Before an adult film distributor distributes an adult film or a copy of an adult film to an adult film retailer, he shall attach, in a manner determined by the director, a certificate or some other evidence of approval, satisfactory to the director, to the adult film or copy stating that the adult motion picture that it produces or reproduces has been approved by the director.

Exemption for film societies

4. (1) The director may, in the public interest, exempt from section 2 a non-profit cultural organization, membership of which is by annual subscription and is limited to persons who are not less than 18 years of age, where the director considers that the organization has as its objects the encouragement and appreciation of motion pictures as a medium of art, information or education, subject to any conditions contained in the exemption.

(2) Where an organization that has been exempted under subsection (1) exhibits a motion picture, it shall not permit any person who is not a member of

that organization to be present at the place where the motion picture is being exhibited

Examination and classification

5. (1) The director, on payment of the prescribed fee, shall review every motion picture and adult motion picture submitted to him for approval under section 2 (1) or 3 (1).

(2) Notwithstanding the *Financial Administration Act*, the director may, where he considers it to be in the public interest, waive payment of the prescribed fee.

(3) Subject to subsection (5), the director shall, before approving a motion picture submitted under section 2 (1) or 3 (1), remove or require the removal of, by erasure or otherwise, any portion of it that depicts

- (a) the coercing, through the use or threat of physical force or by other means, of a person to engage in a sexual act, where the sexual act that was coerced is depicted in explicit sexual scenes,
- (b) incest or necrophilia,
- (c) bondage in a sexual context,
- (d) persons who are or who appear to be under the age of 14 involved in sexually suggestive scenes, whether or not they appear nude or partially nude,
- (e) persons who are or who appear to be under the age of 18 involved in explicit sexual scenes,
- (f) explicit sexual scenes involving violence,
- (g) scenes of brutality to or torture, maiming or dismemberment of persons or animals that are portrayed with such a degree of reality and explicitness that the scenes would, in the director's opinion, be intolerable to the community,
- (h) sexual conduct between a human being and an animal, or
- (i) conduct or an activity that is prescribed in a regulation made under section 14 (f).

(4) Subject to subsection (5), the director shall not approve of a motion picture submitted under section 2 (1) or an adult motion picture submitted under section 3 (1) where the motion picture or the adult motion picture predominantly consists of any, or a combination of, scenes referred to in subsection (3) (a) to (i).

(5) The director is not required to remove material under subsection (3) or refuse approval of a motion picture or adult motion picture under subsection (4) where he considers that the theme, subject matter or plot of the motion picture or adult motion picture is artistic, historical, political, educational or scientific.

(6) Where the director reviews a motion picture under subsection (1), he shall, unless he takes action under subsection (3) or (4),

- (a) approve the motion picture, and
- (b) where the motion picture is intended to be exhibited in a theatre, classify the motion picture in accordance with the regulations made under section 14 (c).

(7) The director may impose conditions on his approval of a motion picture submitted under section 2 (1) including conditions

- (a) respecting the use and exhibition of it,
- (b) imposing age restrictions on the attendance by minors at theatres where the motion picture will be exhibited,

- (c) that any advertising material in connection with the exhibition of the motion picture be submitted to the director for approval, and
 - (d) that the classification designation of the motion picture and warnings, having a content specified by the director, be placed on all advertising material in the manner specified by the director.
- (8) The director, on approving an adult motion picture submitted under section 3 (1), may
- (a) require that a copy of the adult film be deposited with the director, and
 - (b) attach conditions to the approval including the conditions referred to in subsection (7) (c) and (d).

Attendance of and distribution to minors

6. (1) Where the director has approved a motion picture subject to a condition that a minor be prohibited from viewing it in a theatre, no person in charge of a theatre shall permit a minor to attend at the theatre to view the motion picture.

(2) No video retailer shall distribute a film or a copy of a film to a minor where,

- (a) as a condition of approval imposed under section 5 (7), all minors are prohibited from viewing it in a theatre, or
 - (b) as a condition of approval under the former Act, it could only be exhibited in theatres designated by the director.
- (3) No adult film retailer shall
- (a) distribute an adult film to a minor, or,
 - (b) except in accordance with conditions imposed under subsection (4) (a), permit a minor to be present on his premises.
- (4) The director may impose conditions on the licence of an adult film retailer respecting
- (a) the presence of minors on premises where adult films are distributed, and
 - (b) the manner of ensuring that adult films and any advertising material in connection with them will be physically and visually segregated from minors who may be permitted on the premises of that retailer.

Advertising

7. The director may require that advertising material contain
- (a) words describing the classification of the motion picture, and
 - (b) other comments that the director considers advisable.

Licensing

8. (1) Unless the director otherwise orders, no person shall carry on the business of a motion picture distributor, adult film distributor, video distributor, adult film retailer, video retailer or theatre unless it is licensed to do so by the director.

- (2) Where a licensee
- (a) contravenes this Act, the regulations or an order of the director, or
 - (b) is convicted of an offence under this Act,

the director may suspend or cancel a licence that has been issued.

(3) A motion picture distributor shall not distribute a film to a person who carries on business as a theatre unless that person holds a valid licence issued under subsection (1).

(4) An adult film distributor shall not distribute an adult film to an adult film retailer unless that retailer holds a valid licence issued under subsection (1).

Restriction on licensing

9. Notwithstanding any other Act, a municipality shall not

- (a) issue a licence authorizing a person to conduct business as a motion picture distributor, adult film distributor, adult film retailer or theatre unless an appropriate licence is in force under this Act, or
- (b) deny a licence to a motion picture distributor, adult film distributor, adult film retailer or theatre where an appropriate licence is in force under this Act.

Appeal Board

10. (1) An appeal board is continued consisting of a chairman and 4 other persons appointed by the minister.

(2) A member of the appeal board may be paid reasonable travelling and other out of pocket expenses incurred in discharging his duties, and he may be paid the remuneration that the minister determines.

Appeal

11. (1) A motion picture distributor, adult film distributor, video distributor, adult film retailer, video retailer or a proprietor, lessee, manager or employee of a theatre may, within 10 days after being notified, appeal to the appeal board

- (a) a decision, order or prohibition of the director,
- (b) a seizure under section 12 (2), or
- (c) a refusal to issue, or a suspension or cancellation of, a licence by the director.

(2) Where an appeal has been commenced under subsection (1), a person

- (a) who is appealing a decision, order or prohibition of the director, or
 - (b) whose license has been suspended or cancelled
- may apply to the appeal board for an order that
- (c) the decision, order or prohibition not take effect pending the outcome of the appeal, or
 - (d) the suspension or cancellation be stayed.

(3) The appeal board shall not make an order under subsection (2) unless it considers that special circumstances exist.

(4) A person who appeals to the appeal board shall file with the director a written notice of appeal required by the director and shall pay the prescribed fee.

(5) The appeal board shall hear and determine the appeal and may make any decision or order that the director may make.

Power to enter, inspect and seize

12. (1) The director, a peace officer or a person authorized by the director may enter a theatre or the premises of a motion picture distributor, an adult film

distributor, a video distributor, or an adult film retailer or a video retailer at any time during regular business hours for the purpose of viewing or inspecting a film or an adult film, and may use any equipment located at the theatre or on those premises for that purpose.

(2) An individual authorized under subsection (1) may seize

- (a) any film that he believes will be exhibited in a theatre, or
- (b) any adult film that he believes will be distributed by an adult film distributor or adult film retailer,

that has not been approved, or that does not carry an authorized certificate of approval, for exhibition in a theatre or for distribution by an adult film distributor or adult film retailer.

(3) The director may destroy a film seized under subsection (2) 60 days after it was seized, unless an appeal has been commenced under section 11 (1) (b).

Offences

13. (1) A member of council or other official of a municipality who issues a business licence to a person whose licence has been cancelled under section 8 (2) commits an offence.

(2) A person who

- (a) contravenes section 2 (2) or (3), 3 (2) or (3), 6 (1), (2) or (3) or 8 (1), (3) or (4),
- (b) contravenes an order of the director made under this Act or under the regulations, or
- (c) obstructs an individual authorized under section 12 (1) in the performance of his duties or supplies that person with false information

commits an offence and is liable to a fine of not more than \$10 000 or to imprisonment for not more than 6 months, or to both.

(3) An offence under subsection (2) committed by a person in respect of a theatre is also an offence of the person licensed to carry on the business of that theatre.

Regulations

14. The Lieutenant Governor in Council may make regulations including regulations

- (a) respecting the operation and licensing of motion picture distributors, adult film distributors, video distributors, adult film retailers and video retailers and prescribing conditions under which adult films may be distributed,
- (b) respecting the location of adult film retailers,
- (c) prescribing a classification scheme, for the purposes of section 5 (6), that he considers necessary for motion pictures that are exhibited in theatres,
- (d) prescribing conduct or an activity for the purpose of paragraph (c) of the definition of "adult motion picture",
- (e) defining "explicit sexual scenes" and "sexually suggestive scenes" for the purposes of this Act and the regulations,
- (f) prescribing conduct or an activity for the purposes of section 5 (3) (i),

- (g) respecting the use and display of advertising material in connection with motion pictures or their exhibition,
- (h) respecting practice and procedure on appeals under section 11, and
- (i) prescribing the fees payable under this Act, and the fees may be different for different kinds of motion pictures and their intended uses.

Offence Act

15. Section 5 of the *Offence Act* does not apply to this Act or the regulations.

Appropriation

16. In addition to money appropriated under any other Act, \$558 900 may be paid out of the consolidated revenue fund on or before March 31, 1987 for

- (a) expenditures that may be required as a result of the enactment of this Act, and
- (b) a public education and communication program on pornography, administered by the Ministry of Attorney General.

Repeal

17. The *Motion Picture Act*, R.S.B.C. 1979, c. 284, is repealed.

Commencement

18. This Act comes into force by regulation of the Lieutenant Governor in Council.