

SENATE BILL REPORT

SB 6131

As Reported By Senate Committee On:
Law & Justice, January 29, 1996

Title: An act relating to a civil action as a remedy for coercion in the making of sexually explicit films or videos.

Brief Description: Providing a cause of action for persons who are coerced into sexually explicit conduct.

Sponsors: Senators Fairley, Fraser, Kohl, Quigley and Rasmussen.

Brief History:

Committee Activity: Law & Justice: 1/23/96, 1/29/96 [DPS].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 6131 be substituted therefor, and the substitute bill do pass.

Signed by Senators Smith, Chair; Fairley, Vice Chair; Goings, Hargrove, Haugen and Long.

Staff: Martin Lovinger (786-7443)

Background: A number of people have been coerced into performing sexual acts in films and videos for the financial benefit of others. The victims of such acts are further victimized when the films are reproduced and viewed by others. It is felt that it is important to provide to the victims of such exploitation a legal remedy, as well as a means to prevent further damage.

Summary of Substitute Bill: A cause of action is created against any person who coerces another into performing sexually explicit conduct in a film or video. A victim may recover actual damages, punitive damages, attorneys' fees and court costs, as well as injunctive relief if the performance is found to be coerced. The court must order all copies of the film in the possession of the defendant to be surrendered to the court for destruction.

If a person obtains a judgment finding coercion, he or she can serve a copy of the judgment on anyone who makes, copies, sells, distributes, or exhibits the film or video to force the surrender of all copies of the film to the court for destruction. Failure to comply can result in a lawsuit in which the victim may be awarded damages, injunctive relief, attorneys' fees and costs. The court must order the surrender and destruction of all copies of the film or video in the possession of the defendant.

If the film or video is enjoined from further public display, a purchaser of the product is entitled to reimbursement of the purchase price from whom it is purchased and may sue to

enforce this provision. All copies of the film or video that are subject to reimbursement must be surrendered to the court for destruction.

There is a six year statute of limitations from the date of the coerced performance or from the last sale of the film or video, whichever is later, except that the six year period does not begin to run until the victim of coercion has reached the age of 18.

A court or jury can find that coercion occurred despite the proof of a list of specified items. The list includes whether the coerced person is a prostitute, received compensation for the performance, previously posed for sexually explicit pictures, or is related by blood or marriage to anyone involved in the production of the film.

Substitute Bill Compared to Original Bill: The finder of fact can be a jury, as well as a court. The six year statute of limitations does not begin to run until the victim's eighteenth birthday. The language regarding the weight to be given to proof of a specified list of facts is clarified.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This bill will go a long way to help prevent coercion because it eliminates the economic incentive. Threats of physical violence can compel people to participate where they otherwise never would. People are definitely further victimized by showing the coerced performance to new audiences. The surrender and destruction of the film is essential to the healing process of the victim. This bill will help the large number of people who have been coerced into performing in these films. This bill is a useful tool in that it provides for the seizure and destruction of remaining evidence of victimization. The bill is protective of first amendment rights because it requires that coercion be proved before any sanctions can be applied.

Testimony Against: The bill sweeps too broadly and violates the first amendment.

Testified: Richard Eymann, attorney for victims of coercion (pro); Alicia, victim of coercion (pro); Linda Carr, victim advocate (pro); Nancy Mullane, mental therapist for victims (pro); Celia Fritz, Motion Picture Association (con); Deborah Ruggles, WA Coalition of Sexual Assault Programs (pro).