

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO.

Sex offender registration-promoting obscenity.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to criminal procedure; specifying offenses
2 of promoting obscenity as offenses for which convicted
3 offenders shall register as a sex offender; and providing
4 for an effective date.

5

6 *Be It Enacted by the Legislature of the State of Wyoming:*

7

8 **Section 1.** W.S. 7-19-302(h) is amended to read:

9

10 **7-19-302. Registration of offenders; procedure;**
11 **verification; fees.**

12

1 (h) For an offender convicted of a violation of W.S.
2 6-2-304(a)(iii) if the victim was at least fourteen (14)
3 years of age, W.S. 6-2-314(a)(ii) and (iii), 6-2-315(a)(i)
4 and (iii), W.S. 6-2-315(a)(iv) if the victim was thirteen
5 (13) through fifteen (15) years of age, W.S. 6-2-317(a)(i)
6 and (ii) or 6-2-318, W.S. 6-4-102 if the person solicited
7 was a minor, W.S. 6-4-103 if the person enticed or
8 compelled was a minor, W.S. 6-4-302(a)(i) if the offense
9 involves the use of a minor in a sexual performance, W.S.
10 6-4-302(a)(iii) if the obscene material was knowingly
11 disseminated to a minor or W.S. 6-4-303(b)(i) through
12 (iii), 18 U.S.C. § 2251, an offense in another jurisdiction
13 containing the same or similar elements, or arising out of
14 the same or similar facts or circumstances as a criminal
15 offense specified in this subsection, an attempt or
16 conspiracy to commit any of the offenses specified in this
17 subsection, or any offense enumerated in subsection (g) of
18 this section if the offender was previously convicted of
19 any offense enumerated in subsection (g) of this section,
20 the division shall verify the accuracy of the offender's
21 registered address, and the offender shall report, in
22 person, his current address to the sheriff in the county in
23 which the offender resides, every six (6) months after the

1 date of the initial release or commencement of parole. If
 2 the offender's appearance has changed substantially, and in
 3 any case at least annually, the sheriff shall photograph
 4 the offender. Confirmation of the in-person verification
 5 required by this subsection, and any new photographs of the
 6 offender, shall be transmitted by the sheriff to the
 7 division within three (3) working days. Any person under
 8 this subsection who has not established a residence or is
 9 transient, and who is reporting to the sheriff as required
 10 under subsection (e) of this section, shall be deemed in
 11 compliance with the address verification requirements of
 12 this section.

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STAFF COMMENT

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 18 The Committee directed LSO to draft a bill to ensure that a
 19 person convicted under West Virginia Code 61-8A-2
 20 (distribution and display to minor of obscene matter) is
 21 required to register under the Wyoming Sex Offender
 22 Registration Act.

23

24 West Virginia Code 61-8A-2 provides: "Any adult, with
 25 knowledge of the character of the matter, who knowingly and
 26 intentionally distributes, offers to distribute, or
 27 displays to a minor any obscene matter, is guilty of a
 28 felony and, upon conviction thereof, shall be fined not
 29 more than \$25,000, or confined in a state correctional
 30 facility for not more than five years, or both."

31

1 Based upon LSO's review, West Virginia Code 61-8A-2 appears
2 to contain the same or similar elements, or arise out of
3 the same or similar facts or circumstances as promoting
4 obscenity under W.S. 6-4-302(a)(iii) if the obscene
5 material was knowingly disseminated to a minor. W.S. 6-4-
6 302(a)(iii) provides: "A person commits the crime of
7 promoting obscenity if he: . . . Knowingly disseminates
8 obscene material." In Wyoming, promoting obscenity under
9 W.S. 6-4-302(a)(iii) is a misdemeanor. If the person to
10 whom the obscene material is knowingly disseminated is a
11 minor, the offense is punishable by a fine not to exceed
12 \$6,000, imprisonment not to exceed one year, or both.

13
14 As a placeholder, this bill draft specifies that W.S. 6-4-
15 302(a)(iii) (if the obscene material was knowingly
16 disseminated to a minor) is a Tier II offense under W.S. 7-
17 19-302(h) because another Wyoming obscenity offense is
18 included under that same tier. But the Committee has
19 discretion to decide whether to specify that the offense is
20 a Tier I, II or III offense.

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22 For reference:

- 23
- 24 • A person convicted of a Tier I offense (an offense
25 listed in W.S. 7-19-302(g)) is required to report in
26 person annually and may petition to be relieved of the
27 duty to continue registering after 10 years. W.S. 7-
28 19-302(g), 7-19-304(a)(i).
 - 29
30 • A person convicted of a Tier II offense (an offense
31 listed in W.S. 7-19-302(h)) is required to report in
32 person twice a year and may petition to be relieved of
33 the duty to continue registering after 25 years. W.S.
34 7-19-302(h), 7-19-304(a)(ii).
 - 35
36 • A person convicted of a Tier III offense (an offense
37 listed in W.S. 7-19-302(j)) is required to report in
38 person four times a year. W.S. 7-19-302(j). They must
39 register for life and cannot petition to be relieved
40 of the duty to continue registering. W.S. 7-19-304(a).
 - 41
42 • Juveniles are only required to register if they were
43 adjudicated delinquent for a Tier III offense. W.S. 7-
44 19-301(a)(iii). They may petition to be relieved of

1 the duty to continue registering after 10 years. W.S.
2 7-19-304(a)(i).

3
4 For reference, in West Virginia, a person may generally be
5 required to register for 10 years or for life depending on
6 their criminal history and the circumstances of the
7 offense. W. Va. Code 15-12-4. In addition, in December
8 2016, the federal Office of Sex Offender Sentencing,
9 Monitoring, Apprehending, Registering, and Tracking (SMART
10 Office) concluded that West Virginia Code 61-8A-2 does not
11 require registration under the federal Sex Offender
12 Registration and Notification Act (SORNA).

13
14 Finally, and as an alternative, the Committee may wish to
15 consider adding the amendment contained in this bill draft
16 to 24LSO-0056, Sex offender registration-registerable
17 offenses.

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24 STAFF COMMENT

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26 The Committee may wish to consider including an
27 applicability section to specify whether this act applies:
28 "only to offenders who are convicted on or after the
29 effective date of this act" or "to offenders convicted
30 before, on or after the effective date of this act."

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32 "The passage of *ex post facto* laws is prohibited by Article
33 1, § 10 of the United States Constitution and Article 1, §
34 35 of the Wyoming Constitution." *Kammerer v. State*, 2014 WY
35 50, ¶ 9, 322 P.3d 827, 831 (Wyo. 2014) (footnote omitted).
36 "[A]ny statute . . . which makes more burdensome the
37 punishment for a crime, after its commission, . . . is
38 prohibited as *ex post facto*." *Id.* (citation omitted).
39 "[T]he constitutional prohibition against *ex post facto*
40 laws applies only to statutes that impose penalties." *Id.*
41 (citation omitted).

42
43 The Wyoming Supreme Court has generally held that requiring
44 a person to register as a sex offender for a conviction

1 that occurred before the registration requirement was
 2 enacted does not violate the ex post facto prohibition
 3 because the Wyoming Sex Offender Registration Act imposes
 4 regulatory, rather than punitive, requirements. *Snyder v.*
 5 *State*, 912 P.2d 1127, 1132 (Wyo. 1996); *Kammerer*, ¶¶ 19,
 6 32-34, 322 P.3d at 835, 839-40.

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11 **Section 2.** This act is effective July 1, 2024.

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(END)