

# VIDEO GAMES ACT

## CHAPTER 22

*Assented to April 11, 2001*

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### **PART 1 – INTERPRETATION**

#### **Definitions**

- 1 In this Act:

“adult video game” means an adult video game as defined in the regulations;

**“advisory council”** means the Video Games Advisory Council established under section 18 (1);

**“appeal board”** means the appeal board continued under section 10 of the *Motion Picture Act*;

**“controlled access video game”** means a video game that is either a mature video game or an adult video game;

**“designated rating authority”** means a person or agency prescribed by the Lieutenant Governor in Council as a designated rating authority;

**“director”** means the Director of Film Classification under the *Motion Picture Act*;

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

**“mature video game”** means a mature video game as defined in the regulations;

**“minor”** means a person who is under the age of 18 years;

**“prohibited material”** means a depiction of any of the following:

- (a) the coercing, through the use or threat of physical force or by other means, of a person to engage in a sexual act, if 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 years 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 years 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;
- (i) conduct or activity that is prescribed;

**“video game”** means an object or device that

- (a) stores recorded data or instructions,
- (b) receives data or instructions generated by a person who uses it, and
- (c) by processing the data or instructions, creates an interactive game capable of being played, viewed or experienced on or through a computer, gaming system, console or other technology,

but does not include a prescribed class of video games;

**“video game distributor”** means a person who distributes video games to a video game retailer, to another video game distributor or to both a video game retailer and another video game distributor;

**“video game retailer”** means a person who distributes video games to the public.

## **PART 2 – OBLIGATIONS OF VIDEO GAME DISTRIBUTORS AND VIDEO GAME RETAILERS**

### **Conditions for distributing video games**

- 2** (1) Subject to the regulations, a video game distributor and video game retailer must not distribute a video game in British Columbia unless
- (a) the video game is classified under this Act,
  - (b) the packaging of the video game displays in the manner prescribed a prescribed form of marking that clearly evidences the classification of the video game, and
  - (c) the video game is distributed in accordance with the requirements imposed under this Act.
- (2) A video game distributor and a video game retailer must not distribute
- (a) a controlled access video game unless that video game is approved by the director under section 9 (2), or
  - (b) a video game that contains prohibited material, unless that video game is approved by the director under section 9 (2).

### **Conditions for operating video games**

- 3** (1) Subject to the regulations, a video game retailer must not permit a person to operate or view the operation of a video game in a public place that is under the control of the video game retailer, unless
- (a) the video game is classified under this Act,
  - (b) the housing of the video game displays, in the manner prescribed, a prescribed form of marking that clearly evidences the classification of the video game, and
  - (c) the operation and viewing of the video game are in accordance with the requirements imposed under this Act.
- (2) A video game retailer must not permit a person to operate
- (a) a controlled access video game in a public place that is under the control of the video game retailer, unless that video game is approved by the director under section 9 (2), or
  - (b) a video game that contains prohibited material, in a public place that is under the control of the video game retailer, unless that video game is approved by the director.

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**Application of sections 2 and 3**

- 4 Sections 2 (1) and 3 (1) do not apply to the distribution, operation or viewing of a video game
- (a) for educational purposes at a university or another educational institution approved by the Minister of Education or the Minister of Advanced Education, Training and Technology,
  - (b) under the auspices of the government of British Columbia or Canada, or
  - (c) in prescribed circumstances or for a prescribed purpose.

**Regulation of controlled access video games**

- 5 (1) A video game retailer must not
- (a) distribute a controlled access video game to a minor, or
  - (b) permit a minor to operate or to view the operation of a controlled access video game on a premises that is under the control of the video game retailer.
- (2) A video game retailer must ensure that all controlled access video games and related advertising are placed on the premises that is under the control of the video game retailer, in accordance with the requirements established by the regulations and conditions of a licence issued to the video game retailer under this Act.
- (3) For the purposes of subsection (2), different requirements may be established for adult video games and mature video games and for different circumstances.

**Access to adult video games**

- 6 A video game retailer must ensure that no minor enters
- (a) the area where an adult video game is located on a premises that is under the control of the video game retailer, or
  - (b) a premises that is under the control of the video game retailer if the only video games on the premises are adult video games.

**PART 3 – ADMINISTRATION OF THE ACT****Conditions of mature and adult licences**

- 7 (1) Without limiting section 11, the director may impose conditions on the licence of a video game retailer who is authorized under the licence to distribute or permit the operation of adult video games, respecting
- (a) the presence of minors, including employees or service contractors of the licensee, on the premises where adult video games are to be operated or from which adult video games are to be distributed, and

- (b) the manner of ensuring that adult video games and any advertising material related to adult video games are physically and visually segregated from minors who may be permitted on the premises.
- (2) Without limiting section 11, the director may impose conditions on the licence of a video game retailer who is authorized under the licence to distribute or permit the operation of mature video games respecting the location of mature video games on the licensed premises.

#### **Classification of video games**

- 8 (1) A video game distributor may apply to the director for classification of a video game by submitting
  - (a) an application in the form required by the director,
  - (b) a copy of the video game to be classified, and
  - (c) the fees required by the regulations.
- (2) On receipt of an application for classification of a video game, the director may
  - (a) review and classify the video game in accordance with the regulations,
  - (b) review the video game but not classify it, if the director has refused to approve the video game under section 9 (2), or
  - (c) direct the applicant to submit the video game or cause the video game to be submitted to a designated rating authority for classification.
- (3) Subject to the regulations, a designated rating authority may classify a video game in accordance with the criteria established in the regulations.

#### **Examination for prohibited material**

- 9 (1) A video game distributor may apply to the director for examination of a controlled access video game to determine if that video game contains prohibited material
  - (a) by submitting to the director
    - (i) an application in the form required by the director,
    - (ii) a copy of the video game to be approved, and
    - (iii) the fees required by the regulations, and
  - (b) by complying with any additional requirements set out in the regulations.
- (2) Subject to the regulations and subsections (3) and (4), the director may, with or without application being made under subsection (1),
  - (a) examine a video game to determine whether it contains prohibited material, and
  - (b) after examining the video game, do one or more of the following:
    - (i) approve the video game;

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- (ii) approve the video game, subject to conditions that the director considers appropriate;
  - (iii) remove or require the removal, by erasure or otherwise, of any portion of the video game that depicts prohibited material;
  - (iv) refuse to approve the video game.
- (3) Subject to subsection (4), the director must not approve a video game if the video game predominantly consists of any, or a combination of, scenes referred to in paragraphs (a) to (i) of the definition of "prohibited material".
- (4) The director is not required to remove, or require the removal of, material under subsection (2) or refuse approval of a video game under subsection (3) if the director considers that the theme, subject matter or plot of the video game is artistic, historical, political, educational or scientific.
- (5) The director must publish a decision made under subsection (2) as soon as practicable.
- (6) The director may, in his or her discretion and after making all reasonable efforts to notify the distributor who submitted the initial application under subsection (1), reconsider a decision made under subsection (2), and make another decision under that subsection.

**Prohibited material and orders for recall**

- 10**
- (1) If the director, under section 9 (2), refuses to approve a video game or approves a video game subject to prohibited material being erased or otherwise removed, the director may order a video game retailer to return all copies of the video game that are in his or her possession or under his or her control to the video game distributor from whom the video game retailer received the video game.
  - (2) The director must
    - (a) publish an order made under this section as soon as practicable, and
    - (b) make all reasonable efforts to serve notice of the order on video game retailers and video game distributors by personal service, mail, electronic mail or fax.
  - (3) Subject to subsection (4), a video game retailer must return all copies of the video game referred to in an order under subsection (1) no later than 14 days after the notice of the order is served on the video game retailer.
  - (4) If a video game retailer is unable to return a video game in accordance with subsection (3), the video game retailer must surrender all copies of the video game to the director within the period set out in that subsection.
  - (5) If the director, under section 9 (2), refuses to approve a video game or approves a video game subject to the condition that prohibited material be erased or otherwise removed, the director may order a video game distributor to provide a report, in accordance with the requirements specified by the director, respecting

- (a) the distribution of all copies of the video game by the video game distributor, and
  - (b) all copies that were returned to the video game distributor by video game retailers.
- (6) A video game distributor must provide the director with the report referred to in an order under subsection (5) no later than 45 days after the order is served on the video game distributor.
- (7) If the director considers that the report provided by a video game distributor under subsection (5) is not adequate, the director may order the video game distributor to provide, at the expense of the video game distributor, a report prepared by an auditor that is in a form and contains the information specified by the director.
- (8) For the purpose of subsections (3) and (6), a notice of an order that is served on a video game distributor or a video game retailer is deemed to have been received by the video game distributor or the video game retailer,
  - (a) if served by mail, on the fifth day after mailing it, or
  - (b) if served by electronic mail or fax, on the third day after electronically mailing or faxing it.
- (9) A notice of an order under this section is sufficiently given if it is
  - (a) sent by mail to the last address known to the director, or
  - (b) sent by electronic mail or fax to the last electronic mail address or fax number known to the director.

**Licensing**

- 11**
- (1) A person must not carry on the business of a video game distributor or video game retailer unless
    - (a) the person is licensed to do so by the director in respect of each location from which the business is carried on, or
    - (b) the director otherwise orders.
  - (2) A person may apply to the director for a licence by submitting
    - (a) an application in the form required by the director, and
    - (b) the fees required under the regulations.
  - (3) The director may, in his or her discretion,
    - (a) issue a licence to a video game distributor or a video game retailer, for a term set by the director in accordance with the regulations, and
    - (b) impose conditions on a licence issued under paragraph (a).
  - (4) If a licensee
    - (a) contravenes this Act or the regulations,

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- (b) contravenes the *Motion Picture Act* or the regulations,
  - (c) contravenes a condition or a provision of a licence issued to the licensee under this Act,
  - (d) contravenes a condition or provision of a licence issued to the licensee under the *Motion Picture Act*,
  - (e) contravenes a decision or order of the director made under this Act or the regulations,
  - (f) contravenes a decision or order of the director made under the *Motion Picture Act* or the regulations,
  - (g) is convicted of an offence under this Act, or
  - (h) is convicted of an offence under the *Motion Picture Act*,
- the director may, with respect to any licence issued to the licensee under this Act
- (i) impose conditions on the licence or rescind or amend existing conditions of the licence, or
  - (j) suspend or cancel the licence.
- (5) A video game distributor may distribute a controlled access video game only to a person who holds a licence issued under subsection (1) that authorizes the person to
- (a) distribute controlled access video games, or
  - (b) permit the operation of controlled access video games on his or her premises for which a licence is issued.
- (6) A licence issued under subsection (1) to a corporation is deemed to be automatically cancelled on a transfer of the controlling interest in the corporation to another person.

**Power to enter, inspect and seize**

- 12 (1) The director, a peace officer or anyone authorized by the director may
- (a) at any time during regular business hours enter the premises of a video game distributor or a video game retailer for the purpose of
    - (i) viewing or inspecting a video game or advertising material related to the video game, or
    - (ii) determining whether the provisions of this Act or the regulations or the conditions of a licence have been or are being complied with, and
  - (b) use any equipment located on the premises referred to in paragraph (a) for the purposes referred to in that paragraph.
- (2) Anyone authorized by or under subsection (1) to enter on premises may seize a video game that he or she believes will be operated in that place or distributed from that place and any advertising material that is related to the video game if
- (a) the video game is not classified under this Act,

- (b) the video game is classified as a controlled access video game but is not approved by the director under section 9 (2),
  - (c) the video game or the packaging or housing of the video game does not have attached the evidence of classification required under this Act,
  - (d) the video game contains prohibited material and has not been approved by the director under section 9 (2),
  - (e) the licensee has not complied with an order of the director under section 10 with respect to the video game, or
  - (f) the video game is an adult or mature video game that is not placed on the premises in accordance with the requirements established under this Act.
- (3) If the person whose premises are entered under this section is required to be licensed under section 11, anyone authorized by or under subsection (1) of this section may seize a controlled access video game that the person is not licensed to distribute from these premises or to permit to be operated on these premises even though
- (a) the controlled access video game has been approved for distribution or operation, and
  - (b) the packaging or housing of the video game has attached evidence of classification as required under this Act.
- (4) Unless an appeal is commenced under section 15, a video game, the housing of a video game and advertising material seized under subsection (2) and a video game surrendered under section 10 (4) become the property of the government and the director may destroy the video game, video game housing and advertising material 60 days after the seizure.

#### Payment of fees

- 13 Despite the *Financial Administration Act*, if the director considers it to be in the public interest, the director may waive payment of a prescribed fee.

#### Delegation

- 14 (1) Subject to subsection (2) and the regulations, the director may delegate to any person or class of persons any of the director's powers, duties or functions under this Act, including any power, duty or function referred to in sections 7, 8 (1) and (2), 9, 10, 11 (1) to (4) and 13.
- (2) The delegation of the powers, duties or functions of the director must be in writing and may include any terms or conditions the director considers advisable.

#### Appeals

- 15 (1) A video game distributor and a video game retailer may appeal to the appeal board

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- (a) a decision or order of the director made under this Act, other than a decision respecting the classification of a video game, or
  - (b) a seizure made under section 12.
- (2) An appeal must be commenced within 30 days after
  - (a) the date the person entitled to appeal is notified by the director of a decision or order referred to in subsection (1) (a), or
  - (b) the date of the seizure under section 12.
- (3) An appeal is commenced by filing with the appeal board a written notice of the appeal in the prescribed form and by paying the prescribed fee to the appeal board.
- (4) A person who has commenced an appeal of a decision referred to in subsection (1) (a) may apply to the appeal board for an order that the decision or order not take effect until the outcome of the appeal.
- (5) The appeal board may make an order under subsection (4) if it considers that special circumstances exist.
- (6) A person who appeals to the appeal board must deliver to the director a copy of the notice of appeal.
- (7) The appeal board
  - (a) must hear and determine the appeal, and
  - (b) may make any decision that the director may make.

**Expenses of appeal board**

- 16** A member of the appeal board may be paid
- (a) reasonable travelling and other out of pocket expenses necessarily incurred in discharging his or her duties under this Act, and
  - (b) the remuneration that the minister determines.

**Agreements**

- 17** (1) The minister may enter into agreements for the purposes of this Act.
- (2) Without restricting subsection (1), the minister may enter into an agreement with a designated rating authority respecting
- (a) the functions and duties of the designated rating authority,
  - (b) the review and classification of video games by the designated rating authority, and
  - (c) other matters related to the functions and duties to be performed by the designated rating authority.

**Advisory council**

- 18 (1) The minister may establish the Video Games Advisory Council to advise the minister on policy matters respecting the regulation of video games under this Act.
- (2) The advisory council consists of not more than 11 members appointed by the minister for a term set by the minister.
- (3) The minister must designate one of the members as chair of the advisory council.
- (4) The advisory council must meet at least twice annually or more frequently as determined by the minister.
- (5) The minister may prescribe the terms of reference of the advisory council.
- (6) The advisory council must report to the minister on the effectiveness of the regulation and classification of video games under this Act by October 1, 2002 and at such later dates as the minister determines.
- (7) A member of the advisory council may be paid reasonable travelling expenses and other out of pocket expenses necessarily incurred in discharging his or her duties under this Act.

**PART 4 – MISCELLANEOUS****Offences and penalties**

- 19 (1) A person who does any of the following commits an offence:
- (a) contravenes section 2, 3, 5, 6 or 11 (1) or (5);
  - (b) contravenes a decision or order of the director made under this Act or the regulations;
  - (c) contravenes a condition or provision of a licence;
  - (d) obstructs an individual authorized under section 12 (1) in the performance of the individual's duties or supplies that individual with false information;
  - (e) provides false or misleading information to the director.
- (2) A person who commits an offence under subsection (1) or under the regulations is liable to a fine of not more than \$10 000 or to imprisonment for not more than 6 months, or to both.
- (3) Subsection (2) is subject to the regulations, if any, under section 20 (2) (r) that may prescribe lower maximum penalties for a particular offence under the regulations.

**Power to make regulations**

- 20 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

- (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:
- (a) respecting the operation and licensing of video game distributors and video game retailers;
  - (b) establishing classes of licences, and including different classes for different classes of video game retailers and video game distributors;
  - (c) establishing a classification scheme for video games, including
    - (i) the establishment of different classification schemes for different classes of video games, and
    - (ii) adopting, by reference, with changes that the minister considers appropriate, a classification scheme for video games;
  - (d) respecting information that a video game, or the packaging or housing of a video game must display before the video game is distributed or operated;
  - (e) defining additional categories of prohibited material;
  - (f) defining a word or expression used but not defined in this Act;
  - (g) respecting the distribution of controlled access video games and the operation in a public place of controlled access video games and setting conditions for the operation and distribution of these video games;
  - (h) prescribing the rules, practices and procedures to be followed on appeals under section 15, prescribing fees and establishing forms for filing appeals and providing for refunds in prescribed circumstances;
  - (i) imposing and setting fees that are required to be paid under this Act;
  - (j) exempting classes of video games from the application of one or more provisions of this Act;
  - (k) establishing the classes of video games that a designated rating authority may classify for the purposes of this Act;
  - (l) respecting the content of advertising material related to a video game or a class of video games;
  - (m) requiring applicants for licences, licensees, employees of licensees and other classes of persons to undertake criminal record checks;
  - (n) imposing obligations on licensees or classes of licensees in addition to conditions set by the director;
  - (o) respecting the records to be kept by a video game distributor or video game retailer and specifying circumstances in which these records must be produced, for the purpose of examination or copying, to a person who may enter the premises under section 12 (1);
  - (p) respecting the placement of mature video games and adult video games in the retail premises of a video game retailer and the content and placement of notices related to those video games;

- (q) regulating the distribution, operation and viewing of video games by persons who are younger than the age prescribed for a classification of video game;
  - (r) prescribing lower maximum penalties for an offence under the regulations than the maximum penalties described in section 19 (2) and providing differently for different offences.
- (3) The fees prescribed under this Act may be different for different classes of video games and different classes of licensees and must be paid at the times and in accordance with the requirements that are prescribed.
- (4) In making a regulation under this Act, the Lieutenant Governor in Council may delegate a matter to a person and confer a discretionary power on a person.

### **Offence Act**

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

### **Transitional**

- 22 (1) A holder of a video retailer licence under the *Motion Picture Act* at the time this Act comes into force is deemed to hold a video game retailer licence under this Act that permits the distribution of video games, other than controlled access video games, for the unexpired portion of the term of the licence held under the *Motion Picture Act*.
- (2) A holder of a video distributor licence under the *Motion Picture Act* at the time this Act comes into force is deemed to hold a video game distributor licence under this Act that permits the distribution of video games, other than controlled access video games, for the unexpired portion of the term of the licence held under the *Motion Picture Act*.
- (3) Subject to subsection (5), a provision of this Act does not apply to a copy of a video game that was distributed or operated in British Columbia before this subsection comes into force, until the date prescribed for that provision.
- (4) For the purposes of subsection (3), the Lieutenant Governor in Council may prescribe different dates for different provisions of this Act.
- (5) Subsection (3) does not apply to sections 2 (2) (b), 3 (2) (b), 9 (2) to (4), 10, 12 (1) and (2) (d) to (f), 15 and 20, and section 19 with respect those sections.
- (6) On a designated rating authority being established under this Act, video games classified by the rating authority before the designation are deemed to be classified under this Act from the date of the designation, other than video games previously classified under the *Motion Picture Act*.

**Consequential Amendments*****Motion Picture Act***

**23** *Section 1 of the Motion Picture Act, R.S.B.C. 1996, c. 314, is amended by adding the following definition:*

“video game” means an object or device that

- (a) stores recorded data or instructions,
- (b) receives data or instructions generated by a person who uses it, and
- (c) by processing the data or instructions, creates an interactive game capable of being played, viewed or experienced on or through a computer, gaming system, console or other technology; .

**24** *The following section is added:*

**Application**

- 1.1** This Act does not apply to video games, other than a video game that was classified under this Act before a date to be established by the Lieutenant Governor in Council.

**25** *Section 8 (3) is repealed and the following substituted:*

(3) If a licensee

- (a) contravenes this Act or the regulations,
- (b) contravenes the *Video Games Act* or the regulations,
- (c) contravenes a condition of a licence issued to the licensee under this Act,
- (d) contravenes a condition of a licence issued to the licensee under the *Video Games Act*,
- (e) contravenes a decision or order of the director made under this Act or the regulations,
- (f) contravenes a decision or order of the director made under the *Video Games Act* or the regulations,
- (g) is convicted of an offence under this Act, or
- (h) is convicted of an offence under the *Video Games Act*,

the director may, with respect to any licence issued to the licensee under this Act

- (i) impose conditions on the licence or rescind or amend existing conditions of the licence, or
- (j) suspend or cancel the licence.

**26** *The following section is added:*

**Delegation**

- 12.1** (1) Subject to subsection (2) and the regulations, the director may delegate to any person or class of persons any of the director's powers, duties or functions under this Act, including any power, duty or function referred to in sections 2 (4), 3 (4), 4, 5, 6 (4), 7 and 8.
- (2) The delegation of the powers, duties or functions of the director must be in writing and may include any terms or conditions the director considers advisable.

**Commencement**

- 27** This Act comes into force by regulation of the Lieutenant Governor in Council.