



## Editorial

by Jim Olsen, President

### Have You Seen Any Indecent Public Displays Lately?

Earlier this year several of our retailers received letters from a group called "Women for Decency". The group indicated they would be publishing store's magazine policies, or lack of policies, in their newsletter and on their website. The group expressed a desire to work with stores in the development or update of their magazine policies. Association members were calling our office and asking where this issue came from. The "Indecent Public Display Law" was actually passed in Utah back in the late 1970's. It was state law but never involved our membership, nor was it brought to their attention until now. In the 2000 General Session of the Utah Legislature Representative Evan Olsen passed a bill creating a position in the Attorney General's Office called the "Obscenity and Pornography Complaints Ombudsman," nicknamed the "Porn Czar." The individual hired for the position was Paula Houston. She approached Representative Peggy Wallace last year and asked her to run House Bill 236 in the 2002 General Session of the Utah Legislature. The bill was actually beneficial to our industry in that it cleared up several vague parts of the law. Because of HB 236 the law came to our attention and we became concerned.

Reading the law, you realize the amount of material in our stores that could possibly violate the law. We are not talking about men's magazines like "Playboy" or "Hussler". The law states, "a person is guilty of a class A misdemeanor who willfully or knowingly **engages in the business of selling, . . . showing, advertising for sales or distributing** to any person under the age of 18 or has in his possession with intent to engage in that business or to otherwise offer for sale or commercial distribution **to any individual under the age of 18** any material with descriptions or depictions of illicit sex, sexual immorality, or nude or partially denuded figures; or publicly displays at . . . any establishment frequented by minors under the age of 18, or where the minors are or may be invited as a part of the general public, any . . . taped, or recorded performance, or any still picture or photograph, or any book, pocket book, pamphlet, or magazine the cover or content of which exploits, is devoted to, or is principally made up of indecent descriptions or depictions of illicit sex or sexual immorality, or that consists of pictures of nude or partially denuded figures posed or presented in a manner to provoke or arouse lust or passion or to exploit lust or perversion. A vio-

lation of this section is **punishable by a minimum mandatory fine of not less than \$500 and by incarceration, without suspension of sentence in any way, for a term of not less than 30 days.**"

At first glance we don't get too worried until we read the definitions of some of the terms used. For example, "'Nude or partially denuded figures' means: (a) less than completely and opaquely covered: . . . (iii) buttock; and (iv) female breast below a point immediately above the top of the areola. 'Description or depictions of illicit sex or sexual immorality' means: . . . (c) fondling or other erotic touching of human genitals or pubic region; or (d) fondling or other erotic touching of the human buttock or female breast."

We are talking about many of the magazines and tabloids sold in our stores—even TV Guide. When we see pictures on the cover of a magazine or tabloid of some of the female movie stars with plunging necklines clear to their navel and if it shows any part of the female breast below the top of the areola, then, according to the law, the picture is considered an indecent public display. If the clothing is transparent, slit or open, or the swimsuit is a French cut and covers very little of the buttocks, then again the picture is considered indecent public display.

But it doesn't have to be a picture. It may be descriptions of "sexual immorality." What about the articles in the magazines with headline teasers on the cover like, "20 new ways to take your partner to all time new pleasure highs!" You can be sure most of those articles contain descriptions of, "fondling or other erotic touching!" If they do they are defined as "indecent public displays." And if these publications with pictures or descriptions are being **shown**, advertised for sale, or distributed to any person under the age of 18 the retailer could be found guilty of a class A misdemeanor. And if they are the law says there is a "minimum mandatory fine of \$500" and "incarceration, without suspension of sentence in any way, for a term of not less than 30 days."

Our retailers do not have the personnel to go through every publication to see if there is a picture or article that violates this law. Retailers are caught between "a rock and a hard place" because if they start pulling publications that "might be in violation of the law" many customers are going to ask, "who appointed them as the Gestapo to filter what customers can buy and/or read." But if they don't pull, cover or restrict

minors' access to the material then other groups are going to start filing complaints with local or state prosecutors. If the Association goes to the legislature and tries to amend the law then we will be labeled by some as "porn peddlers, only caring about the almighty dollar."

So what can retailers do about this dilemma? The first step has been taken by becoming aware of the law. They can also:

- formulate a store or company policy on how to address potential problems when they come to your attention.
- Have plastic covers that cover the picture or wording on the covers but still allow the customer to see the title or name of the publication. This is especially important in the checkstand lanes or end caps.
- Move certain publications out of the checkout lanes and into the magazine racks and book areas.

- Move certain publications up and in the back of magazine racks out of easy view or reach of minors.
- Enclose or wrap the questionable magazines. If the cover of the magazine is questionable don't use clear plastic but use a non-transparent wrap or cover the questionable picture.
- One of the most important steps would be to ask for identification if the customer purchasing the publication looks like they are underage. Retailers would use the same techniques they do for other age-restricted products.

These suggestions do not totally bring a retailer into compliance with the law, but they will address the vast majority of the concerns and complaints we are hearing from those concerned with this issue.



BUNZL UTAH, INC.

**Supermarket Packaging Solutions  
for Salt Lake City and the  
Intermountain Area**

- Warehouse to Warehouse J.I.T. Delivery
- Cross-Dock Delivery System

- Telxor Ordering
- Direct Store Delivery

**AFS: Ron Rodda**

**Fleming: Paul McNeel SuperValu: Justin Perfli**

**General Manager: Craig Bankhead**

3498 W 2400 S #1050 West Valley City, UT Fax: (801) 972-2565

(801) 972-2210

(800) 264-4882