



SENATE BILL No. 165

January 31, 1995, Introduced by Senator SHUGARS and referred to the Committee on Local, Urban and State Affairs.

A bill to amend the title and sections 6, 9, 10, 11, and 12 of Act No. 33 of the Public Acts of 1978, entitled

"An act to prohibit the dissemination, exhibiting, or displaying of certain sexually explicit matter to minors; to prohibit certain misrepresentations facilitating the dissemination of sexually explicit matter to minors; to provide penalties; to provide for declaratory judgments and injunctive relief in certain instances; to impose certain duties upon prosecuting attorneys and the circuit court; to preempt local units of government from proscribing certain conduct; and to repeal certain acts and parts of acts,"

being sections 722.676, 722.679, 722.680, 722.681, and 722.682 of the Michigan Compiled Laws; to add sections 1a, 8a, and 8b; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 6, 9, 10, 11, and 12 of
2 Act No. 33 of the Public Acts of 1978, being sections 722.676,
3 722.679, 722.680, 722.681, and 722.682 of the Michigan Compiled

1 Laws, are amended and sections 1a, 8a, and 8b are added to read
2 as follows:

3 TITLE

4 An act to prohibit the dissemination, exhibiting, or dis-
5 playing of certain sexually explicit matter to minors; TO AUTHO-
6 RIZE ORDINANCES TO PROHIBIT THE DISSEMINATION, EXHIBITING, OR
7 DISPLAYING OF CERTAIN SEXUALLY EXPLICIT MATTER THAT IS HARMFUL TO
8 MINORS UNDER CERTAIN CIRCUMSTANCES; to prohibit certain misrepre-
9 sentations facilitating the dissemination of sexually explicit
10 matter to minors; to provide penalties; to provide for declara-
11 tory judgments and injunctive relief in certain instances; to
12 impose certain duties upon prosecuting attorneys and the ~~circuit~~
13 ~~court~~ COURTS; AND to preempt local units of government from pro-
14 scribing certain conduct. ~~; and to repeal certain acts and parts~~
15 ~~of acts.~~

16 SEC. 1A. AS USED IN THIS ACT:

17 (A) "ADULT BOOKSTORE" MEANS AN ESTABLISHMENT HAVING AS ITS
18 PRIMARY STOCK IN TRADE BOOKS OR MAGAZINES OR OTHER PERIODICALS
19 THAT ARE DISTINGUISHED OR CHARACTERIZED BY AN EMPHASIS ON SEXU-
20 ALLY EXPLICIT MATTER THAT IS HARMFUL TO MINORS.

21 (B) "ADULT BUSINESS" MEANS AN ADULT BOOKSTORE, AN ADULT CAB-
22 ARET, AN ADULT DRIVE-IN THEATER, AN ADULT MOTION PICTURE THEATER,
23 OR OTHER SEXUALLY ORIENTED BUSINESS.

24 (C) "ADULT CABARET" MEANS A CABARET WHICH FEATURES GO-GO
25 DANCERS, EXOTIC DANCERS, STRIPPERS, MALE OR FEMALE IMPERSONATORS,
26 OR SIMILAR ENTERTAINERS.

1 (D) "ADULT DRIVE-IN THEATER" MEANS A DRIVE-IN THEATER FOR
2 PRESENTING MATERIAL THAT IS DISTINGUISHED OR CHARACTERIZED BY AN
3 EMPHASIS ON SEXUALLY EXPLICIT MATTER THAT IS HARMFUL TO MINORS
4 FOR OBSERVATION BY PATRONS.

5 (E) "ADULT MOTION PICTURE THEATER" MEANS AN ENCLOSED BUILD-
6 ING USED FOR PRESENTING MATERIAL DISTINGUISHED OR CHARACTERIZED
7 BY AN EMPHASIS ON SEXUALLY EXPLICIT MATTER THAT IS HARMFUL TO
8 MINORS FOR OBSERVATION BY PATRONS IN THE BUILDING.

9 (F) "CABARET" MEANS A CAFE OR RESTAURANT WHERE PATRONS ARE
10 ENTERTAINED BY PERFORMERS WHO DANCE, SING, OR PLAY MUSICAL
11 INSTRUMENTS.

12 (G) "PLACE FREQUENTED BY MINORS" MEANS A RESIDENTIAL ZONE, A
13 SINGLE- OR MULTIPLE-FAMILY DWELLING, A CHURCH, A PARK, OR A
14 SCHOOL.

15 (H) "SEXUALLY ORIENTED BUSINESS" MEANS AN ESTABLISHMENT
16 HAVING AS ITS PRIMARY STOCK IN TRADE MATERIAL THAT IS DISTIN-
17 GUISHED OR CHARACTERIZED BY ITS EMPHASIS ON SEXUALLY EXPLICIT
18 MATTER THAT IS HARMFUL TO MINORS.

19 Sec. 6. Section 5 ~~does~~ AND AN ORDINANCE ADOPTED UNDER
20 SECTION 8A DO not apply to ~~the dissemination of sexually~~
21 ~~explicit matter to a minor by~~ any of the following persons:

22 (a) A parent or guardian who disseminates sexually explicit
23 matter to his or her child or ward.

24 (b) A teacher or administrator at a public or private ele-
25 mentary or secondary school ~~which~~ THAT complies with the provi-
26 sions of THE SCHOOL CODE OF 1976, Act No. 451 of the Public Acts
27 of 1976, being sections 380.1 to ~~380.1853~~ 380.1852 of the

1 Michigan Compiled Laws, who disseminates sexually explicit matter
2 to a student as part of a school program permitted by law.

3 (c) A licensed physician or ~~certified~~ LICENSED psycholo-
4 gist who disseminates sexually explicit matter in the treatment
5 of a patient.

6 (d) A librarian employed by a library of a public or private
7 elementary or secondary school which complies with the provisions
8 of Act No. 451 of the Public Acts of 1976, or employed by a
9 public library, who disseminates sexually explicit matter in the
10 course of that person's employment.

11 (e) Any public or private college or university or any other
12 person who disseminates sexually explicit matter for a legitimate
13 medical, scientific, governmental, or judicial purpose.

14 SEC. 8A. (1) THE LEGISLATURE RECOGNIZES THAT ADULT BUSI-
15 NESSES OFTEN ADVERSELY AFFECT THE SURROUNDING COMMUNITY. URBAN
16 PLANNERS ACROSS THE UNITED STATES HAVE NOTED THAT ADULT BUSI-
17 NESSES CAN BRING DETERIORATING PROPERTY VALUES, INCREASED CRIME
18 RATES, TRAFFIC CONGESTION, AND DEPRESSED NEIGHBORHOOD
19 CONDITIONS. THESE SECONDARY EFFECTS OF ADULT BUSINESSES CONCERN
20 THE LEGISLATURE NOT ONLY BECAUSE OF THEIR TENDENCY TO DAMAGE THE
21 PHYSICAL ENVIRONMENT OF THEIR SURROUNDING COMMUNITIES, BUT
22 BECAUSE OF THE RISK OF HARM THESE CONDITIONS PRESENT TO MINORS
23 LIVING IN THOSE COMMUNITIES. AT THE SAME TIME, THE LEGISLATURE
24 RECOGNIZES THAT THE COMMUNITIES WHICH COULD BE AFFECTED BY ADULT
25 BUSINESSES ARE IN THE BEST POSITION TO WORK WITH ADULT BUSINESSES
26 TO AVOID THESE CONDITIONS. ACCORDINGLY, THE LEGISLATURE
27 CONSIDERS IT APPROPRIATE TO PERMIT LOCAL UNITS OF GOVERNMENT TO

1 ENACT ORDINANCES DESCRIBED IN SUBSECTION (2) TO AVOID OR MINIMIZE
2 THE SECONDARY EFFECTS OF ADULT BUSINESSES ON THE SURROUNDING
3 COMMUNITY.

4 (2) SUBJECT TO SECTION 6, A LOCAL UNIT OF GOVERNMENT MAY
5 ADOPT AN ORDINANCE IMPOSING A PENALTY ON AN ADULT BUSINESS THAT
6 KNOWINGLY DISSEMINATES SEXUALLY EXPLICIT MATTER THAT IS HARMFUL
7 TO MINORS WITHIN 1,000 FEET OF A PLACE FREQUENTED BY MINORS. THE
8 ORDINANCE SHALL DESCRIBE THE TYPES OF PLACES FREQUENTED BY MINORS
9 AND TYPES OF SEXUALLY EXPLICIT MATTER TO WHICH IT APPLIES.

10 SEC. 8B. (1) IF THE USE OF A PREMISES TO DISSEMINATE SEXU-
11 ALLY EXPLICIT MATTER THAT IS HARMFUL TO MINORS IS EXISTING AND
12 LAWFUL AT THE TIME OF ENACTMENT OF AN ORDINANCE, OR AN AMENDMENT
13 OF AN ORDINANCE, UNDER SECTION 8A, THEN THAT USE MAY BE CONTINUED
14 ALTHOUGH THAT USE DOES NOT CONFORM WITH THE PROVISIONS OF THE
15 ORDINANCE OR AMENDMENT.

16 (2) THE LEGISLATIVE BODY OF THE LOCAL UNIT OF GOVERNMENT
17 SHALL PROVIDE IN AN ORDINANCE ADOPTED UNDER SECTION 8A FOR THE
18 COMPLETION, RESTORATION, RECONSTRUCTION, EXTENSION, OR SUBSTITU-
19 TION OF A NONCONFORMING USE UNDER THIS ACT UPON REASONABLE TERMS
20 SET FORTH IN THE ORDINANCE. IN ESTABLISHING THE TERMS FOR THE
21 COMPLETION, RESTORATION, RECONSTRUCTION, EXTENSION, OR SUBSTITU-
22 TION OF NONCONFORMING USES, DIFFERENT CLASSES OF NONCONFORMING
23 USE MAY BE ESTABLISHED IN THE ORDINANCE WITH DIFFERENT REGULA-
24 TIONS APPLICABLE TO EACH CLASS.

25 (3) A LOCAL UNIT OF GOVERNMENT MAY ACQUIRE, BY PURCHASE,
26 CONDEMNATION, OR OTHERWISE, PRIVATE PROPERTY OR AN INTEREST IN
27 PRIVATE PROPERTY FOR THE REMOVAL OF A NONCONFORMING USE UNDER AN

1 ORDINANCE ADOPTED UNDER SECTION 8A. THE COST OF ACQUIRING THE
2 PRIVATE PROPERTY MAY BE PAID FROM GENERAL FUNDS OF THE LOCAL UNIT
3 OF GOVERNMENT OR ASSESSED TO A SPECIAL DISTRICT IN ACCORDANCE
4 WITH STATUTORY OR CHARTER PROVISIONS RELATING TO THE CREATION AND
5 OPERATION OF A SPECIAL ASSESSMENT DISTRICT FOR A PUBLIC IMPROVE-
6 MENT IN THAT LOCAL UNIT OF GOVERNMENT. THE ELIMINATION OF A NON-
7 CONFORMING USE IS FOR A PUBLIC PURPOSE AND FOR A PUBLIC USE. THE
8 LEGISLATIVE BODY OF THE LOCAL UNIT OF GOVERNMENT MAY CONDEMN PRI-
9 VATE PROPERTY UNDER THIS SECTION PURSUANT TO THE UNIFORM CONDEM-
10 NATION PROCEDURES ACT, ACT NO. 87 OF THE PUBLIC ACTS OF 1980,
11 BEING SECTIONS 213.51 TO 213.77 OF THE MICHIGAN COMPILED LAWS.

12 Sec. 9. A prosecuting attorney may commence an action in
13 ~~the circuit~~ A court OF COMPETENT JURISDICTION against a person
14 OR ADULT BUSINESS, other than a person described in section 6, to
15 enjoin that person OR ADULT BUSINESS from ~~disseminating to a~~
16 ~~minor sexually explicit matter that is harmful to minors~~
17 VIOLATING SECTION 5 OR AN ORDINANCE ADOPTED UNDER SECTION 8A. A
18 CIRCUIT COURT, DISTRICT COURT, OR MUNICIPAL COURT HAVING JURIS-
19 DICTION OVER A PROSECUTION FOR A VIOLATION OF SECTION 5 OR OF AN
20 ORDINANCE ADOPTED UNDER SECTION 8A MAY ISSUE AN INJUNCTION IN AN
21 ACTION TO ENJOIN SUCH A VIOLATION.

22 Sec. 10. (1) A person OR ADULT BUSINESS intending to dis-
23 seminate ~~to a minor~~ matter that may be considered sexually
24 explicit AND THAT IS HARMFUL TO MINORS may request ~~from~~ 1 OR
25 MORE OF THE FOLLOWING:

1 (A) FROM the prosecuting attorney of the county in which the
2 dissemination is intended, an advisory opinion as to the legality
3 of that dissemination UNDER SECTION 5.

4 (B) FROM THE PROSECUTING ATTORNEY OF A LOCAL UNIT OF GOVERN-
5 MENT THAT ADOPTS AN ORDINANCE ADOPTED UNDER SECTION 8A, AN
6 ADVISORY OPINION AS TO THE LEGALITY OF THAT DISSEMINATION UNDER
7 THAT ORDINANCE.

8 (2) The request for an advisory opinion shall be in writing
9 and shall be accompanied by a reasonable and timely opportunity
10 for the prosecuting attorney to examine the matter. Not more
11 than 5 business days after receipt of a proper request, the pros-
12 ecuting attorney shall issue to the person OR ADULT BUSINESS
13 making the request an advisory opinion, or a refusal to issue an
14 advisory opinion, in writing. The advisory opinion shall state
15 in unequivocal terms ~~whether~~ 1 OR MORE OF THE FOLLOWING, AS THE
16 CASE MAY BE:

17 (A) WHETHER knowing dissemination of the matter to a minor
18 would be considered by the prosecuting attorney to violate
19 section 5.

20 (B) WHETHER KNOWING DISSEMINATION OF THE MATTER WOULD BE
21 CONSIDERED BY THE PROSECUTING ATTORNEY TO VIOLATE AN ORDINANCE
22 ADOPTED UNDER SECTION 8A.

23 (3) ~~(2)~~ A person OR ADULT BUSINESS who has requested an
24 advisory opinion may commence an action for a declaratory judg-
25 ment in ~~the circuit~~ A court in the same county WHICH WOULD HAVE
26 JURISDICTION IN AN ACTION FOR VIOLATION OF SECTION 5 OR OF AN
27 ORDINANCE ADOPTED UNDER SECTION 8A, AS THE CASE MAY BE, to obtain

1 an adjudication of the legality of the intended dissemination if
2 either of the following conditions ~~exist~~ EXISTS:

3 (a) The action is commenced more than 5 business days after
4 submission of a proper request, and the prosecuting attorney has
5 failed to issue an advisory opinion.

6 (b) The prosecuting attorney has issued an advisory opinion
7 and that opinion fails to state in unequivocal terms ~~that~~ 1 OR
8 MORE OF THE FOLLOWING, AS THE CASE MAY BE:

9 (i) THAT knowing dissemination of the matter to a minor
10 would not be considered by the prosecuting attorney to violate
11 section 5.

12 (ii) THAT KNOWING DISSEMINATION OF THE MATTER TO A MINOR
13 WOULD NOT BE CONSIDERED BY THE PROSECUTING ATTORNEY TO VIOLATE AN
14 ORDINANCE ADOPTED UNDER SECTION 8A.

15 (4) ~~(3)~~ The prosecuting attorney shall be made the
16 defendant to an action commenced pursuant to subsection ~~(2)~~
17 (3). In responding to the complaint, the prosecuting attorney
18 may join a counterclaim for the injunctive relief permitted under
19 section 9.

20 (5) ~~(4)~~ If THE ACTION SHALL BE DISMISSED IF the prosecut-
21 ing attorney, after commencement of the action, issues an
22 advisory opinion stating in unequivocal terms ~~that~~ 1 OR MORE OF
23 THE FOLLOWING, AS THE CASE MAY BE:

24 (A) THAT knowing dissemination of the matter to a minor
25 would not be considered by the prosecuting attorney to violate
26 section 5. ~~, the action shall be dismissed~~

1 (B) THAT KNOWING DISSEMINATION OF THE MATTER WOULD NOT BE
2 CONSIDERED BY THE PROSECUTING ATTORNEY TO VIOLATE AN ORDINANCE
3 ADOPTED UNDER SECTION 8A.

4 Sec. 11. The following provisions apply in an action com-
5 menced pursuant to section 9 or 10:

6 (a) The prosecuting attorney shall bear the burden of prov-
7 ing, by clear and convincing evidence, that knowing dissemination
8 of the specified matter to a minor would violate section 5 OR
9 THAT KNOWING DISSEMINATION OF SEXUALLY EXPLICIT MATTER THAT IS
10 HARMFUL TO MINORS WOULD VIOLATE AN ORDINANCE ADOPTED UNDER
11 SECTION 8A.

12 (b) Upon appropriate motion of the prosecuting attorney or
13 order to show cause, the court may grant a preliminary injunction
14 or ex parte restraining order. A person OR ADULT BUSINESS
15 enjoined under this subdivision is entitled to a trial on the
16 legality of the intended dissemination within 1 day after
17 ~~joinder of issue~~ THE INJUNCTION TAKES EFFECT, and a decision
18 shall be rendered by the court within 2 days after the conclusion
19 of the trial.

20 (c) The prosecuting attorney shall not be required to file
21 any security before the granting of a preliminary injunction or
22 restraining order, shall not be liable for costs, and shall not
23 be liable for damages sustained by reason of the preliminary
24 injunction or restraining order.

25 (d) The proceedings are equitable in nature.

1 Sec. 12. (1) Except as provided in this section, sections 9
2 to 11 ~~shall~~ DO not preclude or impair prosecution for violation
3 of any law of this state.

4 (2) If a declaratory judgment has been obtained pursuant to
5 sections 10 and 11, or an application for an injunction pursuant
6 to section 9 has been denied, on the ground that the knowing dis-
7 semination to a minor of specified matter does not violate sec-
8 tion 5 OR THAT THE KNOWING DISSEMINATION OF SPECIFIED MATTER DOES
9 NOT VIOLATE AN ORDINANCE ADOPTED UNDER SECTION 8A, that determi-
10 nation is a complete defense for a person OR ADULT BUSINESS
11 against a prosecution under section 5 OR AN ORDINANCE ADOPTED
12 UNDER SECTION 8A, RESPECTIVELY, based upon the dissemination of
13 that specified matter and against a prosecution for violation of
14 a preliminary injunction or restraining order granted pursuant to
15 section 11.

16 (3) If a prosecuting attorney issues an advisory opinion
17 stating in unequivocal terms that knowing dissemination of speci-
18 fied matter to a minor is not considered by the prosecuting
19 attorney to violate section 5, OR THAT DISSEMINATION OF SPECIFIED
20 MATTER IS NOT CONSIDERED BY THE PROSECUTING ATTORNEY TO VIOLATE
21 AN ORDINANCE ADOPTED UNDER SECTION 8A, then the recipient of the
22 opinion may be prosecuted under section 5 OR AN ORDINANCE ADOPTED
23 UNDER SECTION 8A, RESPECTIVELY, for the dissemination of that
24 specified matter only after the prosecutor has both withdrawn the
25 opinion and obtained an injunction pursuant to section 9 against
26 the dissemination of that specified material by that person OR
27 ADULT BUSINESS.

1 (4) A declaratory judgment or injunction shall apply only to
2 the ~~county~~ LOCAL UNIT OF GOVERNMENT in which the prosecuting
3 attorney serves.

4 Section 2. Sections 13 and 14 of Act No. 33 of the Public
5 Acts of 1978, being sections 722.683 and 722.684 of the Michigan
6 Compiled Laws, are repealed.