

**SUBSTITUTE FOR
HOUSE BILL NO. 4327**

A bill to amend 1978 PA 33, 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,"

by amending sections 1, 6, and 7 (MCL 722.671, 722.676, and 722.677), sections 6 and 7 as amended by 1999 PA 33.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (A) "DISPLAY" MEANS TO PUT OR SET OUT TO VIEW OR TO MAKE
3 VISIBLE.

4 (B) "DISSEMINATE" MEANS TO SELL, LEND, GIVE, EXHIBIT, SHOW,
5 OR ALLOW TO EXAMINE OR TO OFFER OR AGREE TO DO THE SAME.

HB4327, As Passed House, March 21, 2000

House Bill No. 4327

2

1 (C) ~~-(a)-~~ "Exhibit" means to do 1 or more of the following:

2 (i) Present a performance.

3 (ii) Sell, give, or offer to agree to sell or give a ticket
4 to a performance.

5 (iii) Admit a minor to premises where a performance is being
6 presented or is about to be presented.

7 ~~-(b)- "Disseminate" means to sell, lend, give, exhibit, or~~
8 ~~show or to offer or agree to do the same.~~

9 (D) ~~-(c)-~~ "Minor" means a person ~~under~~ LESS THAN 18 years
10 of age.

11 (E) "RESTRICTED AREA" MEANS ANY OF THE FOLLOWING:

12 (i) AN AREA BEHIND A COUNTER IF ACCESS IS LIMITED ONLY TO
13 EMPLOYEES WHO ARE NOT MINORS AND SEXUALLY EXPLICIT VISUAL OR
14 VERBAL MATERIAL IS DISPLAYED ONLY IN DEVICES THAT PREVENT PUBLIC
15 VIEW OF THE LOWER 2/3 OF THE MATERIAL'S COVER OR EXTERIOR.

16 (ii) A BUILDING, OR A DISTINCT AND ENCLOSED AREA OR ROOM
17 WITHIN A BUILDING, IF ACCESS BY MINORS IS PROHIBITED, NOTICE OF
18 THE PROHIBITION IS PROMINENTLY DISPLAYED, AND ACCESS IS MONITORED
19 TO PREVENT MINORS FROM ENTERING.

20 (iii) AN AREA WITH AT LEAST 75% OF ITS PERIMETER SURROUNDED
21 BY WALLS OR SOLID, NONTRANSPARENT DIVIDERS THAT ARE SUFFICIENTLY
22 HIGH TO PREVENT A MINOR IN A NONRESTRICTED AREA FROM SEEING SEXU-
23 ALLY EXPLICIT VISUAL OR VERBAL MATERIAL WITHIN THE PERIMETER IF
24 THE POINT OF ACCESS PROVIDES PROMINENT NOTICE THAT ACCESS TO
25 MINORS IS PROHIBITED.

26 Sec. 6. Section 5 does not apply to the dissemination of
27 sexually explicit matter to a minor by any of the following:

HB4327, As Passed House, March 21, 2000

House Bill No. 4327

3

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

3 (b) A teacher or administrator at a public or private ele-
4 mentary or secondary school that complies with the revised school
5 code, 1976 PA 451, MCL 380.1 to 380.1852, and who disseminates
6 sexually explicit matter to a student as part of a school program
7 permitted by law.

8 (c) A licensed physician or licensed psychologist who dis-
9 seminate sexually explicit matter in the treatment of a
10 patient.

11 (d) A librarian employed by a library of a public or private
12 elementary or secondary school that complies with the revised
13 school code, 1976 PA 451, MCL 380.1 to 380.1852, or employed by a
14 public library, who disseminates sexually explicit matter in the
15 course of that person's employment.

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

19 (f) A person who disseminates sexually explicit matter that
20 is a public document, publication, record, or other material
21 issued by a state, local, or federal official, department, board,
22 commission, agency, or other governmental entity, or an accurate
23 republication of such a public document, publication, record, or
24 other material.

25 (G) A RADIO OR TELEVISION BROADCASTER LICENSED BY THE FED-
26 ERAL COMMUNICATIONS COMMISSION.

1 Sec. 7. (1) A person ~~is guilty of displaying sexually~~
2 ~~explicit matter to a minor if that person~~ WHO possesses
3 managerial responsibility for a business enterprise selling
4 SEXUALLY EXPLICIT visual ~~matter~~ OR VERBAL MATERIAL that depicts
5 sexual intercourse or sadomasochistic abuse and is harmful to
6 minors ~~, and that person knowingly permits a minor who is not~~
7 ~~accompanied by a parent or guardian to examine that matter~~ SHALL
8 NOT DISPLAY THAT MATERIAL KNOWING ITS NATURE UNLESS THE PERSON
9 DOES SO IN A RESTRICTED AREA.

10 ~~(2) A person knowingly permits a minor to examine visual~~
11 ~~matter that depicts sexual intercourse or sadomasochistic abuse~~
12 ~~and is harmful to minors if the person knows both the nature of~~
13 ~~the matter and the status of the minor permitted to examine the~~
14 ~~matter.~~

15 (2) ~~(3)~~ A person knows the nature of the ~~matter~~ MATERIAL
16 if the person either is aware of its character and content or
17 recklessly disregards circumstances suggesting its character and
18 content.

19 ~~(4) A person knows the status of a minor if the person~~
20 ~~either is aware that the person who is permitted to examine the~~
21 ~~matter is under 18 years of age or recklessly disregards a sub-~~
22 ~~stantial risk that the person who is permitted to examine the~~
23 ~~matter is under 18 years of age.~~

24 (3) ~~(5) Displaying sexually explicit matter to a minor~~ A
25 PERSON WHO VIOLATES SUBSECTION (1) is GUILTY OF a misdemeanor
26 punishable by imprisonment for not more than 90 days or a fine of
27 not more than \$5,000.00, or both.

HB4327, As Passed House, March 21, 2000

House Bill No. 4327

5

1 (4) ~~—(6)—~~ This section does not apply if a person displays
2 sexually explicit matter to a minor by means of the internet or a
3 computer network unless 1 or both of the following apply:

4 (a) The matter is obscene as that term is defined in
5 section 2 of 1984 PA 343, MCL 752.362.

6 (b) The prosecuting attorney proves that the person dis-
7 played the matter to 1 or more specific minors and knew his or
8 her status as a minor.

9 (5) THIS SECTION DOES NOT APPLY TO A RADIO OR TELEVISION
10 BROADCASTER LICENSED BY THE FEDERAL COMMUNICATIONS COMMISSION.