

**SENATE BILL NO. 117**

January 27, 1999, Introduced by Senator HAMMERSTROM and referred to the Committee on Judiciary.

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 3 and 5 (MCL 722.673 and 722.675).

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 3. As used in this act:

2       (a) "Sexually explicit matter" means sexually explicit  
3 visual material, sexually explicit verbal material, or sexually  
4 explicit performance.

5       (b) "Sexually explicit performance" means a motion picture,  
6 exhibition, show, representation, INTERNET TRANSMISSION, or other  
7 presentation, ~~which~~ THAT, in whole or in part, depicts nudity,

1 sexual excitement, erotic fondling, sexual intercourse, or  
2 sadomasochistic abuse.

3 (c) "Sexually explicit verbal material" means a book, pam-  
4 phlet, magazine, INTERNET TRANSMISSION, printed matter reproduced  
5 in any manner, or sound recording ~~which~~ THAT contains an  
6 explicit and detailed verbal description or narrative account of  
7 sexual excitement, erotic fondling, sexual intercourse, or sado-  
8 masochistic abuse.

9 (d) "Sexually explicit visual material" means a picture,  
10 photograph, drawing, sculpture, INTERNET TRANSMISSION, motion  
11 picture film, or similar visual representation ~~which~~ THAT  
12 depicts nudity, sexual excitement, erotic fondling, sexual inter-  
13 course, or sadomasochistic abuse, or a book, magazine, or pam-  
14 phlet ~~which~~ THAT contains such a visual representation. An  
15 undeveloped photograph, mold, or similar visual material may be  
16 sexually explicit material notwithstanding that processing or  
17 other acts may be required to make its sexually explicit content  
18 apparent.

19 Sec. 5. (1) A person is guilty of distributing obscene  
20 matter to a minor if that person does either of the following:

21 (a) Knowingly disseminates to a minor sexually explicit  
22 visual or verbal material that is harmful to minors.

23 (b) Knowingly exhibits to a minor a sexually explicit per-  
24 formance that is harmful to minors.

25 (2) A person knowingly disseminates sexually explicit matter  
26 to a minor when the person knows both the nature of the matter  
27 and the status of the minor to whom the matter is disseminated.

1           (3) ~~A~~ SUBJECT TO SUBSECTION (5), A person knows the nature  
2 of matter if the person either is aware of the character and con-  
3 tent of the matter or recklessly disregards circumstances sug-  
4 gesting the character and content of the matter.

5           (4) ~~A~~ SUBJECT TO SUBSECTION (5), A person knows the status  
6 of a minor if the person either is aware that the person to whom  
7 the dissemination is made is under 18 years of age or recklessly  
8 disregards a substantial risk that the person to whom the dissem-  
9 ination is made is under 18 years of age.

10           (5) SUBSECTIONS (3) AND (4) DO NOT APPLY TO AN INTERNET  
11 SERVICE PROVIDER WHO IN GOOD FAITH AND WITHOUT KNOWLEDGE OF THE  
12 NATURE OF A SEXUALLY EXPLICIT MATTER OR THE STATUS OF A MINOR  
13 PROVIDES THE MEDIUM FOR THE DISSEMINATION OF A SEXUALLY EXPLICIT  
14 MATTER TO THE MINOR.

15           (6) ~~(5)~~ Distributing obscene matter to a minor is a misde-  
16 meanor, punishable by imprisonment for not more than 2 years or a  
17 fine of not more than \$10,000.00, or both. In imposing the fine  
18 authorized for this offense, the court shall consider the scope  
19 of the defendant's commercial activity in distributing obscene  
20 matter to minors.