

## DISPLAYING SEXUALLY EXPLICIT VISUAL MATERIAL TO MINORS

### House Bill 4360 (Substitute H-5) First Analysis (7-1-03)

**Sponsor: Rep. Triette Reeves**  
**Committee: Commerce**

#### ***THE APPARENT PROBLEM:***

Some people complain that minors are sometimes subjected to visual displays of sexually explicit material of a kind that cannot legally be sold to them. Since forcing children to view prominent displays of such material is not so different from allowing children to examine it (which is currently illegal), it would seem to make sense to prohibit these displays unless they are in restricted areas from which minors are excluded. Representatives of the Michigan Family Forum, in testimony before the House Committee on Commerce, cited a case in which a family (in which all of the children were under 12) traveling to see relatives stopped to visit a gas station to use the restroom and purchase snacks, only to discover that there was no way to visit the restrooms without being faced with a display of numerous adult magazines. They say this is not uncommon and that families and children should not be put in this position. Children, they say, should not be exposed to visual displays of obscene materials that they cannot legally examine or purchase.

#### ***THE CONTENT OF THE BILL:***

The bill would amend Public Act 33 of 1978, which prohibits the dissemination, exhibition, or display of sexually explicit matter to minors, to prohibit the display of certain sexually explicit visual material except in a "restricted area".

Under the bill, a person who possessed managerial responsibility for a business selling certain sexually explicit visual material could not display that material, knowing its nature, unless the person did so in a "restricted area". Specifically, the bill would apply to "sexually explicit visual material that visually depicts sexual intercourse or sadomasochistic abuse and is harmful to minors".

The term "restricted area" would mean 1) an area where sexually explicit matter is displayed only in a manner that prevents public view of the lower two-thirds of the material's cover or exterior; 2) a

building, or a distinct and enclosed area or room within a building, if access by minors is prohibited, notice of the prohibition is prominently displayed, and access is monitored to prevent minors from entering; or 3) an area with at least 75 percent of its perimeter surrounded by walls or solid, nontransparent dividers that are sufficiently high to prevent a minor in a nonrestricted area from seeing sexually explicit matter within the perimeter if the point of access provides prominent notice that access to minors is prohibited. A violation would be misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$5,000 or both.

(For the definitions currently in the act of "sexually explicit visual material" and "harmful to minors", see Background Information.)

Display. The act does not currently define the word "display". The bill would define "display" to mean "to put or set out to view or make visible".

Disseminate. The term "disseminate" currently is defined in the act to mean to sell, lend, give, exhibit, or show, or to offer or agree to do the same. The bill would add "allow to examine" to the list of actions.

Provisions amended. The bill would revise the language of the existing prohibition on displaying sexually explicit matter to a minor. Currently, the act says a person is guilty of displaying sexually explicit matter to a minor if that person possesses managerial responsibility for a business enterprise selling visual material that depicts sexual intercourse or sadomasochistic abuse and is harmful to minors, and that person knowingly permits a minor who is not accompanied by a parent or guardian to examine that matter. Under the bill, the provision would read (with changes underlined): "A person is guilty of displaying sexually explicit matter to a minor if that person possesses managerial responsibility for a business enterprise selling sexually explicit visual

material that visually depicts sexual intercourse or sadomasochistic abuse and is harmful to minors, and that person does either of the following: (A) knowingly permits a minor who is not accompanied by a parent or guardian to examine that matter. (B) Displays that matter knowing its nature, unless the person does so in a restricted area.”

MCL 722.671 and 722.677

### **BACKGROUND INFORMATION:**

The act’s definition of “sexually explicit visual material” is as follows: a picture, photograph, drawing, sculpture, motion picture film, or similar visual representation that depicts nudity, sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse, or a book, magazine, or pamphlet that contains such a visual representation. An undeveloped photograph, mold, or similar visual material may be sexually explicit material notwithstanding that processing or other acts may be required to make its sexually explicit content apparent. Sexually explicit visual material includes, but is not limited to, any visual material described in this subdivision communicated, transmitted, displayed, or otherwise made available by means of the internet or a computer, computer program, computer system, or computer network.

The act also contains separate definitions of “sexually explicit performance” and “sexually explicit verbal material” and includes all three under the more general term “sexually explicit matter”. Also, the act defines the term “harmful to minors” using a three-part test: (1) that the matter, considered as a whole, appeals to the prurient interest of minors as determined by contemporary local community standards; (2) that the matter is patently offensive to contemporary local community standards of adults as to what is suitable for minors; and (3) that the matter, considered as a whole, lacks serious literary, artistic, political, educational, and scientific value for minors.

Public Act 33 of 1999 (Senate Bill 117) amended Public Act 33 of 1978 to include material made available via the Internet, a computer, or a computer program, system, or network in the act’s prohibitions against disseminating, exhibiting, or displaying certain sexually explicit matter to minors. It also, generally speaking, adopted the term “sexually explicit” as a replacement for the term “obscene”. A lawsuit against that act (*Cyberspace v. Engler*) resulted in first a preliminary injunction against enforcing the act and, in June of 2001, an order

permanently restraining and enjoining the state from enforcing “any provision” of Public Act 33 of 1999.

### **FISCAL IMPLICATIONS:**

There is no information at present.

### **ARGUMENTS:**

#### ***For:***

The bill simply prevents retailers from displaying to minors the same kind of obscene materials that it cannot sell to them. It does not restrict what a store can sell. It does not limit an adult’s ability to purchase anything. It does not restrict free speech. Supporters say that the bill aims to protect unsuspecting parents and children from being exposed to material that cannot be sold to minors because of its harmful and offensive nature. The bill’s requirements are reasonable and should not impose any undue burden on store owners. Note that the bill is not aimed at mainstream men’s magazines or women’s magazines of the kind that some retailers have voluntarily chosen to cover (or not to sell) because they consider them risqué. It is not aimed at “verbal” material, such as the words in a book or the lyrics to a compact disc. It is aimed at obscene “visual” materials of the kind that the law already prevents stores from selling to minors. It is unconscionable that gas stations, party stores, and other outlets are allowed to display these materials in areas frequented by minors. The bill would require such materials to be in a restricted area or to be two-thirds covered. The bill would also provide a definition of “display”, which has been missing from the current act. While the bill in its current form does not do all that its supporters would like, it does provide useful protections for minors. Courts recognize that the state has a compelling interest in protecting minors, including protecting them from exposure to materials that are obscene.

#### ***Against:***

Does this bill, as it would appear, require a retailer to keep out of the sight of minors magazines and videos that have unobjectionable covers but whose contents contain visual depictions of sexual intercourse (or sadomasochistic abuse) harmful to minors? If so, is this necessary? Since the merchants could not sell these materials to minors or let minors examine their contents under current law, the requirement that they be segregated from other matter or that only the top one-third be showing seems excessive. Also, will retailers know what is expected of them under these new provisions, or are the act’s definitions so vague

as to impose an unreasonable burden? (Would the manager of a bookstore, newsagent, drug store, gas station, or party store have to examine or be familiar with the contents of all he or she sells?) This is a complicated area of law: the last time the legislature amended this act, in 1999, a federal court enjoined the enforcement of the new provisions (dealing with the Internet). It would be best to proceed slowly and carefully to be sure that the bill both accomplishes what its supporters want and will survive legal challenges; perhaps the entire act should be re-examined.

***POSITIONS:***

The Michigan Family Forum supports the bill. (6-30-03)

The Recording Industry Association of America has no official position at this time. (6-30-03)

The American Civil Liberties Union is opposed to the bill. (6-30-03)

Analyst: C. Couch

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■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.