

**SUBSTITUTE FOR
HOUSE BILL NO. 4360**

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, 3, 5, 6, and 7 (MCL 722.671, 722.673, 722.675, 722.676, and 722.677), sections 3, 5, 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.

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) ~~(e)~~ "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 where sexually explicit matter is displayed only
13 in a manner that prevents public view of the lower 2/3 of the
14 matter's cover or exterior.

15 (ii) A building, or a distinct and enclosed area or room
16 within a building, if access by minors is prohibited, notice of
17 the prohibition is prominently displayed, and access is monitored
18 to prevent minors from entering.

19 (iii) An area with at least 75% of its perimeter surrounded
20 by walls or solid, nontransparent dividers that are sufficiently
21 high to prevent a minor in a nonrestricted area from seeing
22 sexually explicit matter within the perimeter if the point of
23 access provides prominent notice that access to minors is
24 prohibited.

25 Sec. 3. As used in this act:

26 (a) "Sexually explicit matter" means sexually explicit
27 visual material, sexually explicit verbal material, or sexually

1 explicit performance.

2 (b) "Sexually explicit performance" means a motion picture,
3 exhibition, show, representation, or other presentation that, in
4 whole or in part, depicts nudity, sexual excitement, erotic
5 fondling, sexual intercourse, or sadomasochistic abuse.

6 ~~Sexually explicit performance includes, but is not limited to,~~
7 ~~any performance described in this subdivision communicated,~~
8 ~~transmitted, displayed, or otherwise made available by means of~~
9 ~~the internet or a computer, computer program, computer system, or~~
10 ~~computer network.~~

11 (c) "Sexually explicit verbal material" means a book,
12 pamphlet, magazine, printed matter reproduced in any manner, or
13 sound recording that contains an explicit and detailed verbal
14 description or narrative account of sexual excitement, erotic
15 fondling, sexual intercourse, or sadomasochistic abuse.

16 ~~Sexually explicit verbal material includes, but is not limited~~
17 ~~to, any verbal material described in this subdivision~~
18 ~~communicated, transmitted, displayed, or otherwise made available~~
19 ~~by means of the internet or a computer, computer program,~~
20 ~~computer system, or computer network.~~

21 (d) "Sexually explicit visual material" means a picture,
22 photograph, drawing, sculpture, motion picture film, or similar
23 visual representation that depicts nudity, sexual excitement,
24 erotic fondling, sexual intercourse, or sadomasochistic abuse, or
25 a book, magazine, or pamphlet that contains such a visual
26 representation. An undeveloped photograph, mold, or similar
27 visual material may be sexually explicit material notwithstanding

1 that processing or other acts may be required to make its
2 sexually explicit content apparent. ~~Sexually explicit visual~~
3 ~~material includes, but is not limited to, any visual material~~
4 ~~described in this subdivision communicated, transmitted,~~
5 ~~displayed, or otherwise made available by means of the internet~~
6 ~~or a computer, computer program, computer system, or computer~~
7 ~~network.~~

8 Sec. 5. (1) A person is guilty of disseminating sexually
9 explicit matter to a minor if that person does either of the
10 following:

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

13 (b) Knowingly exhibits to a minor a sexually explicit
14 performance that is harmful to minors.

15 (2) A person knowingly disseminates sexually explicit matter
16 to a minor if the person knows both the nature of the matter and
17 the status of the minor to whom the matter is disseminated.

18 (3) ~~Except as provided in subsection (6), a~~ A person knows
19 the nature of matter if the person either is aware of its
20 character and content or recklessly disregards circumstances
21 suggesting its character and content.

22 (4) ~~Except as provided in subsection (6), a~~ A person knows
23 the status of a minor if the person either is aware that the
24 person to whom the dissemination is made is under 18 years of age
25 or recklessly disregards a substantial risk that the person to
26 whom the dissemination is made is under 18 years of age.

27 (5) Disseminating sexually explicit matter to a minor is a

1 felony punishable by imprisonment for not more than 2 years or a
2 fine of not more than \$10,000.00, or both. In imposing the fine,
3 the court shall consider the scope of the defendant's commercial
4 activity in disseminating sexually explicit matter to minors.

5 ~~(6) Subsections (3) and (4) do not apply to an internet or~~
6 ~~computer network service provider who in good faith, and without~~
7 ~~knowledge of the nature of a sexually explicit matter or the~~
8 ~~status of a minor, provides the medium for disseminating a~~
9 ~~sexually explicit matter to the minor.~~

10 ~~—— (7) This section does not apply if a person disseminates~~
11 ~~sexually explicit matter to a minor by means of the internet or a~~
12 ~~computer network unless 1 or both of the following apply:~~

13 ~~—— (a) The matter is obscene as that term is defined in~~
14 ~~section 2 of 1984 PA 343, MCL 752.362.~~

15 ~~—— (b) The prosecuting attorney proves that the person~~
16 ~~disseminated the matter to 1 or more specific minors and knew his~~
17 ~~or her status as a minor.~~

18 ~~—— (8) A violation or attempted violation of this section~~
19 ~~involving the internet or a computer, computer program, computer~~
20 ~~system, or computer network occurs if the violation originates,~~
21 ~~terminates, or both originates and terminates in this state.~~

22 ~~—— (9) A violation or attempted violation of this section~~
23 ~~involving the internet or a computer, computer program, computer~~
24 ~~system, or computer network may be prosecuted in any jurisdiction~~
25 ~~in which the violation originated or terminated.~~

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

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
4 elementary or secondary school that complies with the revised
5 school code, 1976 PA 451, MCL 380.1 to 380.1852, and who
6 disseminates sexually explicit matter to a student as part of a
7 school program permitted by law.

8 (c) A licensed physician or licensed psychologist who
9 disseminates 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 person who disseminates sexually explicit matter to a**
26 **minor by means of a computer network or the internet.**

27 Sec. 7. (1) A person is guilty of displaying sexually

1 explicit matter to a minor if that person possesses managerial
2 responsibility for a business enterprise selling ~~visual matter~~
3 **sexually explicit visual material** that **visually** depicts sexual
4 intercourse or sadomasochistic abuse and is harmful to minors,
5 and that person ~~knowingly~~ **does either of the following:**

6 **(a) Knowingly** permits a minor who is not accompanied by a
7 parent or guardian to examine that matter.

8 **(b) Displays that matter knowing its nature, unless the**
9 **person 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 (3) A person knows the nature of the matter if the person
16 either is aware of its character and content or recklessly
17 disregards circumstances suggesting its character and content.

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

23 (5) ~~Displaying sexually explicit matter to a minor is~~ **A**
24 **person who violates subsection (1) is guilty of** a misdemeanor
25 punishable by imprisonment for not more than 90 days or a fine of
26 not more than \$5,000.00, or both.

27 (6) This section does not apply if a person displays sexually

1 explicit matter to a minor by means of the internet or a computer
2 network. ~~unless 1 or both of the following apply:~~

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

5 ~~—— (b) The prosecuting attorney proves that the person displayed
6 the matter to 1 or more specific minors and knew his or her
7 status as a minor.~~