

Act No. 192
Public Acts of 2003
Approved by the Governor
November 5, 2003
Filed with the Secretary of State
November 5, 2003
EFFECTIVE DATE: January 1, 2004

**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2003**

Introduced by Reps. Reeves, Adamini, Cheeks, Vagnozzi, Dennis, Bieda, Voorhees, Vander Veen, Hager, Pappageorge, Daniels, Hardman, McConico, Woronchak, Plakas, Anderson, Stewart, O'Neil, Rocca, Phillips, Rick Johnson, DeRossett, Richardville, Spade, Bisbee, Murphy, Kooiman, Julian, Hummel, Howell, Palmer, Hunter, Farrah, Paletko, Pastor, LaJoy, Brandenburg, Wojno, Acciavatti, Clack, DeRoche, Taub, Accavitti, Garfield, Hune, Gleason, Robertson, Milosch, Hoogendyk, Ward, Emmons, Sak, Stahl, Sheen, Huizenga, Farhat and Casperson

ENROLLED HOUSE BILL No. 4360

AN ACT 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; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 1. As used in this act:

- (a) "Display" means to put or set out to view or to make visible.
- (b) "Disseminate" means to sell, lend, give, exhibit, show, or allow to examine or to offer or agree to do the same.
- (c) "Exhibit" means to do 1 or more of the following:
 - (i) Present a performance.
 - (ii) Sell, give, or offer to agree to sell or give a ticket to a performance.
 - (iii) Admit a minor to premises where a performance is being presented or is about to be presented.
- (d) "Minor" means a person less than 18 years of age.
- (e) "Restricted area" means any of the following:
 - (i) An area where sexually explicit matter is displayed only in a manner that prevents public view of the lower 2/3 of the matter's cover or exterior.
 - (ii) 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.
 - (iii) An area with at least 75% of its perimeter surrounded by walls or solid, nontransparent dividers that are sufficiently high to prevent a minor in a nonrestricted area from viewing sexually explicit matter within the perimeter if the point of access provides prominent notice that access to minors is prohibited.

Sec. 3. As used in this act:

(a) “Sexually explicit matter” means sexually explicit visual material, sexually explicit verbal material, or sexually explicit performance.

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

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

(d) “Sexually explicit visual material” means 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.

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

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

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

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

(3) A person knows the nature of matter if the person either is aware of its character and content or recklessly disregards circumstances suggesting its character and content.

(4) A person knows the status of a minor if the person either is aware that the person to whom the dissemination is made is under 18 years of age or recklessly disregards a substantial risk that the person to whom the dissemination is made is under 18 years of age.

(5) Disseminating sexually explicit matter to a minor is a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$10,000.00, or both. In imposing the fine, the court shall consider the scope of the defendant’s commercial activity in disseminating sexually explicit matter to minors.

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

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

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

(c) A licensed physician or licensed psychologist who disseminates sexually explicit matter in the treatment of a patient.

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

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

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

Sec. 7. (1) 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 view that matter.

(b) Displays that matter knowing its nature, unless the person does so in a restricted area.

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

(3) A person knows the nature of the matter if the person either is aware of its character and content or recklessly disregards circumstances suggesting its character and content.

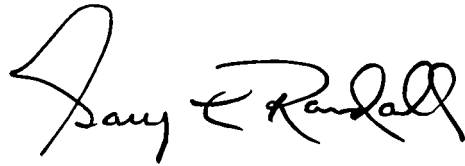
(4) A person knows the status of a minor if the person either is aware that the person who is permitted to view the matter is under 18 years of age or recklessly disregards a substantial risk that the person who is permitted to view the matter is under 18 years of age.

(5) A person who violates subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$5,000.00, or both.

Enacting section 1. Section 1a of 1978 PA 33, MCL 722.671a, is repealed.

Enacting section 2. This amendatory act takes effect January 1, 2004.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor