

# Legislative Analysis

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## LIMIT ACCESS TO VIDEO GAMES

Mitchell Bean, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 4702 (Substitute H-1)**  
**Sponsor: Rep. Phil Pavlov**

**House Bill 4703 (Substitute H-1)**  
**Sponsor: Rep. Tom Pearce**  
**Committee: Judiciary**

### First Analysis (5-9-05)

**BRIEF SUMMARY:** House Bill 4702 would add video games to the obscenity laws, and House Bill 4703 would require information regarding a video game rating system to be posted where video games are sold or rented.

**FISCAL IMPACT:** The bills would have an indeterminate fiscal impact on the state and local units of government. (Additional information on the distribution of revenues and costs is found later in the analysis.)

### THE APPARENT PROBLEM:

Some video games contain violent and/or sexually explicit images that are not suitable for young children. Though some studies reveal benefits to game players such as increased eye-hand coordination and better spatial and visual skills, other studies have noted increased aggression in behavior in children and adults who played violent video games. In addition to concern with the long-term effects on children and adolescents from violent video games is a growing concern regarding nudity and lewd acts that are being portrayed in some games.

Most if not all video games are rated based on the suitability of the content for different age groups. A game rated M for Mature, according to the rating system by the Entertainment Software Rating Board (ESRB), may be suitable for persons ages 17 or older; M-rated games may contain mature sexual themes which can include mild to moderate sexual references and/or depictions – including partial nudity. The Adults Only (AO) rating by the ESRB (and ratings such as an NC-17 by other organizations) are suitable only for adults and contain graphic depictions of sex and/or violence.

Parents can use the ratings to decide whether a particular game is appropriate for their children. However, especially in the case of adolescents, a parent is not always with a child who is buying or renting a video game. Despite many parents' efforts, these games continue to fall into the hands of even young children. For example, a May 4, 2005 press release by Governor Granholm reported that an undercover investigation in six counties found that children as young as nine years old were able to purchase video games rated M or NC-17 at 26 of 58 stores.

Several bills have been introduced in the House of Representatives and the Senate to address the issues of access to violent and sexually explicit video games.

### ***THE CONTENT OF THE BILLS:***

The bills would amend two different laws to address video games. House Bill 4702 pertains to video games that contain sexually explicit performances and visual representations, and House Bill 4703 would require retailers to post information regarding a video game rating system.

"Video game" would be defined in the bills to mean an object or device that stores recorded data or instructions generated by a person who used it, and, by processing that data or instruction, creates an interactive game capable of being played, viewed, or experienced on or through a computer, gaming system, game console, or other technology. Specifically, the bills would do the following:

House Bill 4702 would amend Public Act 33 of 1978 (MCL 722.673), which pertains to disseminating, exhibiting, or displaying sexually explicit matter to minors. "Sexually explicit matter" is defined under the act to mean sexually explicit visual material, sexually explicit verbal material, or sexually explicit performance. The bill would add video games to the list of presentations in the definition of "sexually explicit performance" and the list of visual representations in the definition of "sexually explicit visual material" that depict nudity, sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse.

[Under the act, disseminating sexually explicit matter to a minor is a felony punishable by imprisonment for not more than two years and/or a fine of not more than \$10,000. Facilitative misrepresentation, which involves knowingly making a false representation that a person is the parent or guardian of a minor, or that a minor is 18 years of age or older, with the intent to facilitate the dissemination of sexually explicit matter to that minor, is a misdemeanor punishable by up to 93 days imprisonment and/or a fine of not more than \$5,000.]

House Bill 4703 would add a new section to the Michigan Penal Code (MCL 750.143a) to require a video game retailer (a person who sold or rented video games to the public) to post a sign in a prominent area within his or her retail establishment. The sign would have to provide information about a rating system or notify consumers that a rating system is available to aid in the selection of a game. The retailer would have to make information explaining the video game rating system available to consumers on request. A violation of the bill would be a state civil infraction. The retailer could be ordered to pay a fine of not more than \$1,000.

The bill would define "rating system" to mean any video game rating system shown on the exterior packaging of a video game when it was sold or rented. In addition, the bill would amend the title of the act to include in the title summary that the act also prescribes remedies. The bill would take effect July 1, 2005.

## ***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.

The act defines "sexually explicit performance" as 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. 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.

The Entertainment Software Rating Board has created a rating system for video and computer games that is similar to movie ratings. For example, EC (early childhood) could be suitable for ages 3 and older, where T (teen) may be suitable for ages 17 and older; titles rated T could contain mature sexual themes, more intense violence, and/or strong language. A game rated AO (adults only) would be suitable only for adults as it could contain graphic depictions of sex and/or violence. Detailed information on the categories and content descriptors can be found on ESRB's website: [www.ESRB.org](http://www.ESRB.org).

## ***FISCAL INFORMATION:***

The fiscal impact would depend on how the bills affected the numbers of people held responsible for state civil infractions, found guilty of misdemeanors, or found guilty of felonies. The following table shows how the revenues and costs of various penalties would affect the state and local units of government.

<b>Responsible for/Guilty of:</b>	<b>Fine</b>	<b>Court-ordered Costs ("Minimum State Costs")</b>	<b>Costs of Incarceration</b>	<b>Costs of Probation Supervision</b>
<b>State Civil Infraction</b>	To local library	\$10 to state Justice System Fund	Not applicable	Not applicable
<b>Misdemeanor</b>	To local library	\$40 to state Justice System Fund	County jail; costs vary by county	Local
<b>Felony</b>	To local library	\$60 to state Justice System Fund	Can be sentenced to jail or state prison. State prison: average appropriated FY 2004-05 cost of approximately \$29,000 per prisoner per year. Actual cost varies by location and security level.	State. Average FY 2004-05 cost of \$5.42 per probationer per day, or \$1,977 annually.

## **ARGUMENTS:**

### ***For:***

House Bill 4702 addresses the problem of retailers selling or renting video games to minors that contain sexually explicit scenes. It does not address games considered to be violent. By specifically listing "video game" in the definition of sexually explicit performance and sexually explicit visual material, knowingly selling, renting, or lending a video game to a person 17 years of age or younger that contained images deemed as sexually explicit matter harmful to minors would subject a retailer (or anyone else) to the penalties outlined in the act – a felony punishable by up to two years imprisonment and/or a fine of not more than \$10,000. This is a better approach than other bills that would make it a crime to sell or rent games to minors specifically rated Mature or Adult Only; reportedly, that type of approach has raised constitutional questions over the legality of placing a private industry standard in statute.

Passage of the bill won't relieve parents of their responsibility to be aware of the content of the games their children play, but perhaps store owners and their employees will be less likely to sell or rent games containing nudity and sexual themes to children and teens when they realize the penalties that could be incurred.

### ***Response:***

The statute that House Bill 4702 would amend is typically used for controlling the sale and access to magazines and adult videos considered pornographic. Case law has established what constitutes sexually explicit material that is harmful to minors. However, where it is easy for a retailer to flip through a magazine to see if there is objectionable material or to scan a movie to do the same, the content of a video game is not as easy to determine. It can take days or months to complete the various levels in a video game and so retailers may not be aware of a game's content. Plus, there are currently over 800 video game titles with a rating of Mature, most of which would not rise to the level of being sexually explicit and perhaps a couple of dozen (primarily computer games) that would be rated AO and not suitable for persons under 18. And, some privately distributed games are not rated at all. Perhaps the bill could allow, as an affirmative defense, that complying with rating guidelines would constitute compliance with the law.

### ***For:***

House Bill 4703 would require retailers who sell or rent video games to post a sign either with information about industry rating systems or that information on rating systems is available to customers upon request. A similar measure was enacted in California last year. The rating systems reflect the content of the video games and therefore help a parent determine whether a particular game is appropriate for his or her child. Some surveys reveal that only about half of parents understand the rating systems; if information were readily available at the point of sale, parents and children could make informed choices.

***POSITIONS:***

A representative of the Michigan Family Forum testified in support of the bill. (5-4-05)

A representative of Operation Transformation (of St. Clair County) testified in support of the bills. (5-4-05)

A representative of the Michigan Retailers Association indicated a position of neutrality. (5-4-05)

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Marilyn Peterson

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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.