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Senate Bill 416 (as enrolled)
Senate Bill 463 (as enrolled)
House Bills 4702 and 4703 (as enrolled)
Sponsor: Senator Alan L. Cropsey (S.B. 416)
Senator Gerald Van Woerkom (S.B. 463)
Representative Phil Pavlov (H.B. 4702)
Representative Tom Pearce (H.B. 4703)
Senate Committee: Judiciary
House Committee: Judiciary

PUBLIC ACT 108 of 2005
PUBLIC ACT 107 of 2005
PUBLIC ACTS 104 & 105 of 2005

Date Completed: 4-11-07

CONTENT

Senate Bills 416 and 463 and House Bill 4702 amended Public Act 33 of 1978, which prohibits disseminating, exhibiting, or displaying sexually explicit matter to minors, to add Part II (Ultra Violent Explicit Video Games), prohibiting the dissemination of ultra-violent explicit video games to minors, and defining relevant terms.

The bill also designated the previously existing Act as "Part I" and provides that Part I does not apply to certain entities.

House Bill 4703 amended the Michigan Penal Code to require a video game retailer to post a sign providing information about a rating system or notifying consumers that a rating system is available.

The bills took effect on December 1, 2005. Senate Bills 416 and 463 were tie-barred to each other and to House Bills 4702 and 4703.

(On March 31, 2006, in *Entertainment Software Association, et al. v Granholm, et al.* (Case No. 05-73634), the U.S. District Court for the Eastern District of Michigan ruled that Part II of Public Act 33, enacted by Senate Bill 416, was unconstitutional under the First and Fourteenth Amendments to the U.S. Constitution. The Court issued a permanent injunction against the

enforcement of Part II. The Court's ruling did not apply to the amendments to Part I, and the Court did not address the amendments enacted by the other bills, which were not challenged in the lawsuit.)

Senate Bill 416

Part II: Video Games

The bill added Part II (Ultra-Violent Explicit Video Games) to Public Act 33 of 1978. The bill prohibited a person from knowingly disseminating to a minor (a person under 17 years of age) an ultra-violent explicit video game that was harmful to minors. A violation was a State civil infraction subject to a maximum civil fine of \$5,000. If the violator had one prior determination of responsibility for that State civil infraction, he or she was subject to a civil fine of up to \$15,000. If the violator had two or more prior determinations of responsibility, the maximum civil fine was \$40,000.

The dissemination prohibition did not apply to the dissemination of an ultra-violent video game to a minor by any of the following:

- A parent or guardian who disseminated the game to his or her child or ward.
- An immediate family member of the minor who disseminated an ultra-violent explicit video game to the minor in the immediate family member's residence or the minor's residence.

- An individual who disseminated an ultra-violent video game to a minor who was a guest in the individual's residence.
- An individual who disseminated an ultra-violent explicit video game for a legitimate medical, scientific, governmental, or judicial purpose.

The bill also prohibited a person from knowingly making a false representation that he or she was the parent or guardian of a minor, or that a minor was 17 or older, with the intent to facilitate the dissemination to the minor of an ultra-violent explicit video game that was harmful to minors. A violation was a misdemeanor punishable by up to 93 days' imprisonment, a maximum fine of \$15,000, or both.

In addition, under the bill, a person who possessed managerial responsibility for a business enterprise renting or selling ultra-violent explicit video games harmful to minors was prohibited from knowingly permitting a minor who was not accompanied by a parent or guardian to play or view the playing of an ultra-violent explicit video game harmful to minors. A violation was a misdemeanor punishable by up to 93 days' imprisonment, a maximum fine of \$25,000, or both.

The bill included several legislative findings regarding the effects of ultra-violent video games, connections between media violence and aggressive behavior in some children, and the State's "legitimate and compelling interest in directly and substantially alleviating the real-life harms perpetrated by minors who play ultra-violent explicit video games".

Part I: Exemptions

The bill specifies that Part I of the Act (Sexually Explicit Matter) does not apply to a medium of communication to the extent regulated by the Federal Communications Commission (FCC), or an internet service provider or computer network service provider that is not selling the sexually explicit matter being communicated but that provides the medium for communication of the matter.

The bill also exempts from Part I a person providing a subscription multichannel video service under terms of service that require

the subscriber to meet both of the following conditions:

- The subscriber is at least 18 years old at the time of the subscription.
- The subscriber proves that he or she is at least 18 through the use of a credit card, through presentation of government-issued identification, or by other reasonable means of verifying the subscriber's age.

Senate Bill 463 and House Bill 4702

The bills extended to video games that depict sexually explicit material the prohibition in Public Act 33 against disseminating, exhibiting, or displaying sexually explicit matter to minors.

The Act defines "sexually explicit matter" as a sexually explicit performance, sexually explicit visual material, or sexually explicit verbal material. The bills include in the Act's definitions of "sexually explicit performance" and "sexually explicit visual material" a video game that depicts nudity, sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse. "Video game" means an object or device that stores recorded data or instructions generated by a person who uses it and, by processing the data or instructions, creates an interactive game capable of being played, viewed, or experienced on or through a computer, gaming system, game console, or other technology.

Senate Bill 463 also added definitions of "computer", "computer network", "computer program", and "computer system". Under the Act, disseminating sexually explicit matter to a minor is a felony punishable by up to two years' imprisonment and/or a maximum fine of \$10,000. Displaying sexually explicit matter to a minor is a misdemeanor punishable by up to 93 days' imprisonment and/or a maximum fine of \$5,000. Facilitative misrepresentation (knowingly making a false representation that a person is a minor's parent or guardian, or that a minor is at least 18, with the intent to facilitate the dissemination of sexually explicit matter to a minor) is a misdemeanor punishable by up to 90 days' imprisonment and/or a maximum fine of \$5,000.

House Bill 4703

The bill requires a video game retailer to post in a prominent area within the retail establishment a sign that provides information about a rating system or notifies consumers that a rating system is available to aid in the selection of a game. The retailer also must make available to consumers, upon request, information explaining the video game rating system. A video game retailer who violates the bill is responsible for a State civil infraction and may be ordered to pay a civil fine of up to \$1,000.

Under the bill, "video game retailer" means a person who sells or rents video games to the public. "Video game" means an object or device that stores recorded data or instructions generated by a person who uses it, and by processing the data or instructions, creates an interactive game capable of being played, viewed, or experienced on or through a computer, gaming system, game console, or other technology. "Rating system" means any video game rating system shown on the exterior packaging of a video game when it is sold or rented.

MCL 722.671 et al. (S.B. 416)
722.673 (S.B. 463)
722.673 (H.B. 4702)
750.143a (H.B. 4703)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills will have no fiscal impact on State and local government due to a court-ordered permanent injunction against the enforcement of Part II of Public Act 33 of 1978.

Fiscal Analyst: Lindsay Hollander

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.