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BILL ANALYSIS

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Senate Bill 463 (as introduced 5-5-05)  
Sponsor: Senator Gerald Van Woerkom  
Committee: Judiciary

Date Completed: 5-9-05

### **CONTENT**

**The bill would amend Public Act 33 of 1978, which prohibits disseminating, exhibiting, or displaying sexually explicit matter to minors, to include video games in the Act's definitions of "sexually explicit performance" and "sexually explicit visual material".** The bill would take effect December 1, 2005.

Under Public Act 33, a person is guilty of disseminating sexually explicit matter to a minor if he or she knowingly either disseminates to a minor sexually explicit visual or verbal material that is harmful to minors, or exhibits to a minor a sexually explicit performance that is harmful to minors. A violation is a felony punishable by up to two years' imprisonment and/or a maximum fine of \$10,000.

("Harmful to minors" means sexually explicit matter that, considered as a whole, appeals to the prurient interest of minors as determined by contemporary local community standards; that is patently offensive to contemporary local community standards of adults as to what is suitable for minors; and that, considered as a whole, lacks serious literary, artistic, political, educational, and scientific value for minors.)

Currently, "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. "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. The bill would include in those definitions a video game that depicted nudity, sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse.

Under the bill, "video game" would mean a computer or other electronic device or computer program that stores or receives data or instructions generated by a person using the device or program, and by processing the data or instructions, creates an interactive game capable of being played, viewed, or otherwise experienced by an individual. The bill also would define "computer", "computer network", "computer program", "computer system", and "device".

MCL 722.673

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on State and local government. According to the Department of Corrections Statistical Report, in 2002, five offenders were convicted of felony distribution of sexually explicit matter; there are no statewide data available for similar misdemeanors. Of those five felony offenders, two received prison sentences, one received a jail sentence, and two received probation. There are no data to indicate the extent to which the number of either felony or misdemeanor dispositions would change if video games were included as sexually explicit matter.

Local units would incur any increased costs for misdemeanor probation and incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an average annual cost of \$2,000 per offender, as well as the cost of incarceration in a State facility at an average annual cost of \$28,000 per offender. Public libraries would benefit from any additional penal fine revenue.

Fiscal Analyst: Bethany Wicksall

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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.