

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4327**

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, 1a, 3, 5, 6, and 7 (MCL 722.671, 722.671a, 722.673, 722.675, 722.676, and 722.677), section 1a as added and 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.

HB 4327, As Passed Senate, November 29, 2000

House Bill No. 4327

2

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) ~~(c)~~ "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 BEHIND A COUNTER IF ACCESS IS LIMITED ONLY TO
13 EMPLOYEES WHO ARE NOT MINORS AND SEXUALLY EXPLICIT VISUAL MATE-
14 RIAL IS DISPLAYED ONLY IN DEVICES THAT PREVENT PUBLIC VIEW OF THE
15 LOWER 2/3 OF THE MATERIAL'S COVER OR EXTERIOR.

16 (ii) A BUILDING, OR A DISTINCT AND ENCLOSED AREA OR ROOM
17 WITHIN A BUILDING DESIGNED TO PREVENT A MINOR IN A NONRESTRICTED
18 AREA FROM SEEING INTO THE ENCLOSED AREA OR ROOM, IF ACCESS BY
19 MINORS IS PROHIBITED, NOTICE OF THE PROHIBITION IS PROMINENTLY
20 DISPLAYED, AND ACCESS IS MONITORED TO PREVENT MINORS FROM
21 ENTERING.

22 Sec. 1a. As used in this act:

23 (a) "Computer" means any connected, directly interoperable
24 or interactive device, equipment, or facility that uses a com-
25 puter program or other instructions to perform specific opera-
26 tions including logical, arithmetic, or memory functions with or
27 on computer data or a computer program and that can store,

HB 4327, As Passed Senate, November 29, 2000

House Bill No. 4327

3

1 retrieve, alter, or communicate the results of the operations to
2 a person, computer program, computer, computer system, or com-
3 puter network.

4 (b) "Computer network" means the interconnection of hardwire
5 or wireless communication lines with a computer through remote
6 terminals, or a complex consisting of 2 or more interconnected
7 computers.

8 (c) "Computer program" means a series of internal or exter-
9 nal instructions communicated in a form acceptable to a computer
10 that directs the functioning of a computer, computer system, or
11 computer network in a manner designed to provide or produce pro-
12 ducts or results from the computer, computer system, or computer
13 network.

14 (d) "Computer system" means a set of related, connected or
15 unconnected, computer equipment, devices, software, or hardware.

16 (e) "Device" includes, but is not limited to, an electronic,
17 magnetic, electrochemical, biochemical, hydraulic, optical, or
18 organic object that performs input, output, or storage functions
19 by the manipulation of electronic, magnetic, or other impulses.

20 ~~-(f) "Internet" means that term as defined in section 230 of~~
21 ~~title II of the communications act of 1934, chapter 652, 110~~
22 ~~Stat. 137, 47 U.S.C. 230.~~

23 Sec. 3. As used in this act:

24 (a) "Sexually explicit matter" means sexually explicit
25 visual material, sexually explicit verbal material, or sexually
26 explicit performance.

HB 4327, As Passed Senate, November 29, 2000

House Bill No. 4327

4

1 (b) "Sexually explicit performance" means a motion picture,
2 exhibition, show, representation, or other presentation that IS
3 CHARACTERIZED BY AN EMPHASIS ON SPECIFIC SEXUAL ACTIVITY OR THAT,
4 in whole or in part, depicts nudity, sexual excitement, erotic
5 fondling, sexual intercourse, or sadomasochistic abuse. Sexually
6 explicit performance includes, but is not limited to, any per-
7 formance described in this subdivision ~~communicated,~~
8 ~~transmitted,~~ displayed ~~,~~ or otherwise made available by means
9 of ~~the internet or~~ a computer ~~,~~ computer program, computer
10 system, or computer network TERMINAL.

11 (c) "Sexually explicit verbal material" means a book, pam-
12 phlet, 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. Sexually
16 explicit verbal material includes, but is not limited to, any
17 verbal material described in this subdivision ~~communicated,~~
18 ~~transmitted,~~ displayed ~~,~~ or otherwise made available by means
19 of ~~the internet or~~ a computer ~~,~~ computer program, computer
20 system, or computer network TERMINAL.

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

HB 4327, As Passed Senate, November 29, 2000

House Bill No. 4327

5

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, dis-~~
5 ~~played , or otherwise made available~~ by means of ~~the internet~~
6 ~~or a computer , computer program, computer system, or computer~~
7 ~~network~~ TERMINAL.

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 per-
14 formance 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 charac-
20 ter and content or recklessly disregards circumstances suggesting
21 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.

HB 4327, As Passed Senate, November 29, 2000

House Bill No. 4327

6

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

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

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

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

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

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

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

HB 4327, As Passed Senate, November 29, 2000

House Bill No. 4327

7

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

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

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

10 (c) A licensed physician or licensed psychologist who dis-
11 seminate sexually explicit matter in the treatment of a
12 patient.

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

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

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

HB 4327, As Passed Senate, November 29, 2000

House Bill No. 4327

8

1 (G) A RADIO OR TELEVISION BROADCASTER LICENSED BY THE
2 FEDERAL COMMUNICATIONS COMMISSION.

3 Sec. 7. (1) A person ~~is guilty of displaying sexually~~
4 ~~explicit matter to a minor if that person~~ WHO possesses manage-
5 rial responsibility for a business enterprise selling, RENTING,
6 OR OTHERWISE DISTRIBUTING SEXUALLY EXPLICIT visual ~~matter~~
7 MATERIAL that ~~depicts sexual intercourse or sadomasochistic~~
8 ~~abuse and is harmful to minors~~, and that person knowingly per-
9 mits a minor who is not accompanied by a parent or guardian to
10 examine that matter SHALL NOT DISPLAY THAT MATERIAL KNOWING ITS
11 NATURE UNLESS THE PERSON DOES SO IN A RESTRICTED AREA.

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

17 (2) ~~-(3)~~ A person knows the nature of the ~~matter~~ MATERIAL
18 if the person either is aware of its character and content or
19 recklessly disregards circumstances suggesting its character and
20 content.

21 ~~-(4) A person knows the status of a minor if the person~~
22 ~~either is aware that the person who is permitted to examine the~~
23 ~~matter is under 18 years of age or recklessly disregards a sub-~~
24 ~~stantial risk that the person who is permitted to examine the~~
25 ~~matter is under 18 years of age.~~

26 (3) ~~-(5) Displaying sexually explicit matter to a minor~~ A
27 PERSON WHO VIOLATES SUBSECTION (1) is GUILTY OF a misdemeanor

HB 4327, As Passed Senate, November 29, 2000

House Bill No. 4327

9

1 punishable by imprisonment for not more than 90 days or a fine of
2 not more than \$5,000.00, or both.

3 ~~-(6) This section does not apply if a person displays sexu=~~
4 ~~ally explicit matter to a minor by means of the internet or a~~
5 ~~computer network unless 1 or both of the following apply:~~

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

8 ~~(b) The prosecuting attorney proves that the person dis=~~
9 ~~played the matter to 1 or more specific minors and knew his or~~
10 ~~her status as a minor.~~

11 (4) THIS SECTION DOES NOT APPLY TO A RADIO OR TELEVISION
12 BROADCASTER LICENSED BY THE FEDERAL COMMUNICATIONS COMMISSION.

13 (5) IT IS THE PURPOSE OF THIS SECTION TO REGULATE SEXUALLY
14 ORIENTED BUSINESSES TO PROMOTE THE HEALTH, SAFETY, AND GENERAL
15 WELFARE OF THE CITIZENS OF THIS STATE. THE PROVISIONS OF THIS
16 SECTION HAVE NEITHER THE PURPOSE NOR THE EFFECT OF IMPOSING A
17 LIMITATION OR RESTRICTION ON THE CONTENT OF ANY COMMUNICATIVE
18 MATERIALS, INCLUDING SEXUALLY ORIENTED MATERIALS. SIMILARLY, IT
19 IS NOT THE INTENT OR EFFECT OF THIS SECTION TO RESTRICT OR DENY
20 ACCESS TO ADULTS TO SEXUALLY ORIENTED MATERIALS PROTECTED BY THE
21 FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OR BY
22 ARTICLE I, SECTION 5 OF THE STATE CONSTITUTION OF 1963, OR TO
23 DENY ACCESS BY THE DISTRIBUTORS AND EXHIBITORS OF SEXUALLY ORI-
24 ENTED ENTERTAINMENT TO THEIR INTENDED MARKET. NEITHER IS IT THE
25 INTENT NOR THE EFFECT OF THIS SECTION TO CONDONE OR LEGITIMIZE
26 THE DISTRIBUTION OF OBSCENE MATERIAL.

HB 4327, As Passed Senate, November 29, 2000

House Bill No. 4327 as amended November 29, 2000

10

1 Enacting section 1. This amendatory act takes effect June
2 1, 2001.

3 Enacting section 2. This amendatory act does not take
4 effect unless all of the following bills of the 90th Legislature
5 are enacted into law:

6 (a) Senate Bill No. 1116.

7 (b) Senate Bill No. 1293.

8 (c) Senate Bill No. 1295.

9 (d) Senate Bill No. 1296.

10 (e) Senate Bill No. 1297.

11 (f) House Bill No. 5133.

12 (g) House Bill No. 5134.