DISSEMINATING, EXHIBITING, OR DISPLAYING SEXUALLY EXPLICIT MATTER TO MINORS
Act 33 of 1978

AN ACT to prohibit the dissemination, exhibiting, or displaying of certain sexually explicit matter and ultra-violent explicit video games to minors; to prohibit certain misrepresentations facilitating the dissemination of sexually explicit matter and ultra-violent explicit video games to minors; to provide penalties and sanctions; 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 acts and parts of acts.

History: 1978, Act 33, Eff. June 1, 1978;—Am. 2005, Act 108, Eff. Dec. 1, 2005.

The People of the State of Michigan enact:

PART I
SEXUALLY EXPLICIT MATTER

722.671 Definitions generally.

Sec. 1. As used in this part:

(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.

History: 1978, Act 33, Eff. June 1, 1978;—Am. 2003, Act 192, Eff. Jan. 1, 2004;—Am. 2005, Act 108, Eff. Dec. 1, 2005.

722.671a Repealed. 2003, Act 192, Eff. Jan. 1, 2004.

Compiler's note: The repealed section pertained to definitions; “C” to “I.”

722.672 Additional definitions.

Sec. 2. As used in this part:

(a) "Nudity" means the lewd display of the human male or female genitals or pubic area.

(b) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(c) "Erotic fondling" means touching a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breasts, for the purpose of sexual gratification or stimulation.

(d) "Sadomasochistic abuse" means either of the following:

(*i*) Flagellation, or torture, for sexual stimulation or gratification, by or upon a person who is nude or clad only in undergarments or in a revealing or bizarre costume.

(*ii*) The condition of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification, of a person who is nude or clad only in undergarments or in a revealing or bizarre costume.

(e) "Sexual intercourse" means intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between a human and an animal.

History: 1978, Act 33, Eff. June 1, 1978;—Am. 2005, Act 108, Eff. Dec. 1, 2005.

722.673 Definitions.

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Sec. 3. As used in this part:

(a) "Computer" means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.

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

(c) "Computer program" means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

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

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

(f) "Sexually explicit matter" means sexually explicit visual material, sexually explicit verbal material, or sexually explicit performance.

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

(h) "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.

(i) "Sexually explicit visual material" means a picture, photograph, drawing, sculpture, motion picture film, video game, 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.

(j) "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.

History: 1978, Act 33, Eff. June 1, 1978;—Am. 1999, Act 33, Eff. Aug. 1, 1999;—Am. 2003, Act 192, Eff. Jan. 1, 2004;—Am. 2005, Act 104, Eff. Dec. 1, 2005;—Am. 2005, Act 107, Eff. Dec. 1, 2005.

Constitutionality: Act 33 of 1999 violates the First Amendment and the Dormant Commerce Clause of the US Constitution. Defendants are permanently restrained and enjoined from enforcing any provisions of 1999 PA 33. Cyberspace Communications, Inc v Engler, 142 F Supp 2d 827 (ED Mich, 2001).

722.674 Additional definitions.

Sec. 4. As used in this part:

(a) "Harmful to minors" means sexually explicit matter that meets all of the following criteria:

(*i*) Considered as a whole, it appeals to the prurient interest of minors as determined by contemporary local community standards.

(*ii*) It is patently offensive to contemporary local community standards of adults as to what is suitable for minors.

(*iii*) Considered as a whole, it lacks serious literary, artistic, political, educational, and scientific value for minors.

(b) "Local community" means the county in which the matter was disseminated.

(c) "Prurient interest" means a lustful interest in sexual stimulation or gratification. In determining whether sexually explicit matter appeals to the prurient interest, the matter shall be judged with reference to average 17-year-old minors. If it appears from the character of the matter that it is designed to appeal to the prurient interest of a particular group of persons, including, but not limited to, homosexuals or sadomasochists, then the matter shall be judged with reference to average 17-year-old minors within the particular group for which it appears to be designed.

History: 1978, Act 33, Eff. June 1, 1978;—Am. 2005, Act 108, Eff. Dec. 1, 2005.

722.675 Disseminating sexually explicit matter to minor; felony; penalty.

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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.

History: 1978, Act 33, Eff. June 1, 1978;—Am. 1999, Act 33, Eff. Aug. 1, 1999;—Am. 2003, Act 192, Eff. Jan. 1, 2004.

Constitutionality: Act 33 of 1999 violates the First Amendment and the Dormant Commerce Clause of the US Constitution. Defendants are permanently restrained and enjoined from enforcing any provisions of 1999 PA 33. Cyberspace Communications, Inc v Engler, 142 F Supp 2d 827 (ED Mich, 2001).

722.676 Persons excepted from MCL 722.675.

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 unless the dissemination is for the sexual gratification of the parent or guardian.

(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.

History: 1978, Act 33, Eff. June 1, 1978;—Am. 1999, Act 33, Eff. Aug. 1, 1999;—Am. 2003, Act 192, Eff. Jan. 1, 2004;—Am. 2005, Act 245, Eff. Feb. 1, 2006.

Constitutionality: Act 33 of 1999 violates the First Amendment and the Dormant Commerce Clause of the US Constitution. Defendants are permanently restrained and enjoined from enforcing any provisions of 1999 PA 33. Cyberspace Communications, Inc v Engler, 142 F Supp 2d 827 (ED Mich, 2001).

722.677 Displaying sexually explicit matter to minor; misdemeanor; penalty.

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.

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(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.

History: 1978, Act 33, Eff. June 1, 1978;—Am. 1999, Act 33, Eff. Aug. 1, 1999;—Am. 2003, Act 192, Eff. Jan. 1, 2004.

Constitutionality: Act 33 of 1999 violates the First Amendment and the Dormant Commerce Clause of the US Constitution. Defendants are permanently restrained and enjoined from enforcing any provisions of 1999 PA 33. Cyberspace Communications, Inc v Engler, 142 F Supp 2d 827 (ED Mich, 2001).

722.678 Facilitative misrepresentation; misdemeanor; penalty.

Sec. 8. (1) A person is guilty of facilitative misrepresentation when that person knowingly makes a false representation that he or she 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 to the minor of sexually explicit matter that is harmful to minors.

(2) A person knowingly makes a false representation as to the age of a minor or as to the status of being the parent or guardian of a minor if the person either is aware that the representation is false or recklessly disregards a substantial risk that the representation is false.

(3) Facilitative misrepresentation is a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than $5,000.00, or both.

History: 1978, Act 33, Eff. June 1, 1978.

722.679 Injunction.

Sec. 9. A prosecuting attorney may commence an action in the circuit court against a person, other than a person described in section 6, to enjoin that person from disseminating to a minor sexually explicit matter that is harmful to minors.

History: 1978, Act 33, Eff. June 1, 1978.

722.680 Advisory opinion as to legality of disseminating sexually explicit matter to minor; action for declaratory judgment; prosecuting attorney as defendant; counterclaim for injunctive relief; dismissal of action.

Sec. 10. (1) A person intending to disseminate to a minor matter that may be considered sexually explicit may request, from the prosecuting attorney of the county in which the dissemination is intended, an advisory opinion as to the legality of that dissemination. The request for an advisory opinion shall be in writing and shall be accompanied by a reasonable and timely opportunity for the prosecuting attorney to examine the matter. Not more than 5 business days after receipt of a proper request, the prosecuting attorney shall issue to the person making the request an advisory opinion, or a refusal to issue an advisory opinion, in writing. The advisory opinion shall state in unequivocal terms whether knowing dissemination of the matter to a minor would be considered by the prosecuting attorney to violate section 5.

(2) A person who has requested an advisory opinion may commence an action for a declaratory judgment in the circuit court in the same county to obtain an adjudication of the legality of the intended dissemination if either of the following conditions exist:

(a) The action is commenced more than 5 business days after submission of a proper request, and the prosecuting attorney has failed to issue an advisory opinion.

(b) The prosecuting attorney has issued an advisory opinion and that opinion fails to state in unequivocal terms that knowing dissemination of the matter to a minor would not be considered by the prosecuting attorney to violate section 5.

(3) The prosecuting attorney shall be made the defendant to an action commenced pursuant to subsection (2). In responding to the complaint, the prosecuting attorney may join a counterclaim for the injunctive relief permitted under section 9.

(4) If the prosecuting attorney, after commencement of the action, issues an advisory opinion stating in unequivocal terms that knowing dissemination of the matter to a minor would not be considered by the prosecuting attorney to violate section 5, the action shall be dismissed.

History: 1978, Act 33, Eff. June 1, 1978.

722.681 Provisions applicable to actions commenced pursuant to MCL 722.679 or MCL 722.680.

Sec. 11. The following provisions apply in an action commenced pursuant to section 9 or 10:

(a) The prosecuting attorney shall bear the burden of proving, by clear and convincing evidence, that knowing dissemination of the specified matter to a minor would violate section 5.

(b) Upon appropriate motion of the prosecuting attorney or order to show cause, the court may grant a preliminary injunction or ex parte restraining order. A person enjoined under this subdivision is entitled to a

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trial on the legality of the intended dissemination within 1 day after joinder of issue, and a decision shall be rendered by the court within 2 days after the conclusion of the trial.

(c) The prosecuting attorney shall not be required to file any security before the granting of a preliminary injunction or restraining order, shall not be liable for costs, and shall not be liable for damages sustained by reason of the preliminary injunction or restraining order.

(d) The proceedings are equitable in nature.

History: 1978, Act 33, Eff. June 1, 1978.

722.682 Effect of MCL 722.679 to 722.681 on prosecutions under other laws; declaratory judgment or denial of injunction as defense; withdrawing opinion and obtaining injunction as conditions for prosecution under MCL 722.675; applicability of declaratory judgment or injunction.

Sec. 12. (1) Except as provided in this section, sections 9 to 11 shall not preclude or impair prosecution for violation of any law of this state.

(2) If a declaratory judgment has been obtained pursuant to sections 10 and 11, or an application for an injunction pursuant to section 9 has been denied, on the ground that the knowing dissemination to a minor of specified matter does not violate section 5, that determination is a complete defense for a person against a prosecution under section 5 based upon the dissemination of that specified matter and against a prosecution for violation of a preliminary injunction or restraining order granted pursuant to section 11.

(3) If a prosecuting attorney issues an advisory opinion stating in unequivocal terms that knowing dissemination of specified matter to a minor is not considered by the prosecuting attorney to violate section 5, then the recipient of the opinion may be prosecuted under section 5 for the dissemination of that specified matter only after the prosecutor has both withdrawn the opinion and obtained an injunction pursuant to section 9 against the dissemination of that specified material by that person.

(4) A declaratory judgment or injunction shall apply only to the county in which the prosecuting attorney serves.

History: 1978, Act 33, Eff. June 1, 1978.

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722.682a Exceptions.

Sec. 12a. This part does not apply to any of the following:

(a) A medium of communication to the extent regulated by the federal communications commission.

(b) 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. As used in this section, "internet service provider" means a person who provides a service that enables users to access content, information, electronic mail, or other services offered over the internet or a computer network.

(c) A person providing a subscription multichannel video service under terms of service that require the subscriber to meet both of the following conditions:

(*i*) The subscriber is not less than 18 years of age at the time of the subscription.

(*ii*) The subscriber proves that he or she is not less than 18 years of age through the use of a credit card, through the presentation of government-issued identification, or by other reasonable means of verifying the subscriber's age.

History: Add. 2005, Act 108, Eff. Dec. 1, 2005.

722.683 Repeal of MCL 750.343e.

Sec. 13. Section 343e of Act No. 328 of the Public Acts of 1931, being section 750.343e of the Compiled Laws of 1970, is repealed.

History: 1978, Act 33, Eff. June 1, 1978.

722.684 Effective date.

Sec. 14. This act shall not take effect until June 1, 1978.

History: 1978, Act 33, Eff. June 1, 1978.

PART II
ULTRA-VIOLENT EXPLICIT VIDEO GAMES

722.685 Legislative findings.

Sec. 15. In light of section 51 of article IV of the state constitution of 1963, which directs that "The public health and general welfare of the people of the state are hereby declared to be matters of primary public concern. The legislature shall pass suitable laws for the protection and promotion of the public health.", and

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after hearing from expert witnesses and law enforcement officials, considering the testimony of expert witnesses before other legislative bodies, and reviewing dozens of studies and metastudies of hundreds of studies, the legislature finds all of the following:

(a) Published research overwhelmingly finds that ultra-violent explicit video games are harmful to minors because minors who play ultra-violent explicit video games are consistently more likely to exhibit violent, asocial, or aggressive behavior and have feelings of aggression.

(b) Spokespersons for not less than 6 major national health associations have concluded and testified that after reviewing more than 1,000 studies, the studies "point overwhelmingly to a causal connection between media violence and aggressive behavior in some children", concluding that the effects of media violence on minors "are measurable and long-lasting".

(c) Law enforcement officers testified that recent statewide targeted enforcement efforts reveal that minors are capable of purchasing, and do purchase, ultra-violent explicit video games.

(d) Law enforcement officers testified about cases of minors acting out ultra-violent explicit video game behaviors by victimizing other citizens.

(e) The state has a legitimate and compelling interest in safeguarding both the physical and psychological well-being of minors.

(f) The state has a legitimate and compelling interest in preventing violent, aggressive, and asocial behavior from manifesting itself in minors.

(g) The state has a legitimate and compelling interest in directly and substantially alleviating the real-life harms perpetrated by minors who play ultra-violent explicit video games.

History: Add. 2005, Act 108, Eff. Dec. 1, 2005.

Constitutionality: In *Entertainment Software Association v Granholm*, F Supp (2006), the United States district court for the Eastern District of Michigan, Southern Division, permanently enjoined enforcement of an act regulating sexually explicit and ultra-violent video games as violating free speech rights and the due process requirement that a law be sufficiently definite to provide notice of the conduct prohibited that are granted in the First and Fourteenth Amendments to the United States Constitution.

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722.686 Definitions.

Sec. 16. As used in this part:

(a) "Computer" means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.

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

(c) "Computer program" means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

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

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

(f) "Disseminate" means to sell, lend, give, exhibit, show, or allow to examine or to offer or agree to do the same.

(g) "Extreme and loathsome violence" means real or simulated graphic depictions of physical injuries or physical violence against parties who realistically appear to be human beings, including actions causing death, inflicting cruelty, dismemberment, decapitation, maiming, disfigurement, or other mutilation of body parts, murder, criminal sexual conduct, or torture.

(h) "Harmful to minors" means having all of the following characteristics:

(*i*) Considered as a whole, appeals to the morbid interest in asocial, aggressive behavior of minors as determined by contemporary local community standards.

(*ii*) Is patently offensive to contemporary local community standards of adults as to what is suitable for minors.

(*iii*) Considered as a whole, lacks serious literary, artistic, political, educational, or scientific value for minors.

(i) "Local community" means the county in which the video game was disseminated.

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(j) "Minor" means a person less than 17 years of age.

(k) "Morbid interest in asocial, aggressive behavior" means a morbid interest in committing uncontrolled aggression against an individual. In determining whether an ultra-violent explicit video game appeals to this interest, the video game shall be judged with reference to average 16-year-old minors. If it appears from the character of the video game that it is designed to appeal to this interest of a particular group of persons, then the video game shall be judged with reference to average 16-year-old minors within the particular group for which it appears to be designed.

(*l*) "Ultra-violent explicit video game" means a video game that continually and repetitively depicts extreme and loathsome violence.

(m) "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.

History: Add. 2005, Act 108, Eff. Dec. 1, 2005.

Constitutionality: In *Entertainment Software Association v Granholm*, F Supp (2006), the United States district court for the Eastern District of Michigan, Southern Division, permanently enjoined enforcement of an act regulating sexually explicit and ultra-violent video games as violating free speech rights and the due process requirement that a law be sufficiently definite to provide notice of the conduct prohibited that are granted in the First and Fourteenth Amendments to the United States Constitution.

722.687 Dissemination of ultra-violent explicit video game to minor; prohibition; violation; penalties.

Sec. 17. (1) A person shall not knowingly disseminate to a minor an ultra-violent explicit video game that is harmful to minors. Except as provided in subsections (2) and (3), a person who violates this subsection is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $5,000.00.

(2) A person who violates subsection (1) and who has 1 prior determination of responsibility under this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $15,000.00.

(3) A person who violates subsection (1) and who has 2 or more prior determinations of responsibility under this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $40,000.00. In imposing a fine under this subsection, the court shall consider the scope of the defendant's commercial activity in disseminating ultra-violent explicit video games to minors.

History: Add. 2005, Act 108, Eff. Dec. 1, 2005.

Constitutionality: In *Entertainment Software Association v Granholm*, F Supp (2006), the United States district court for the Eastern District of Michigan, Southern Division, permanently enjoined enforcement of an act regulating sexually explicit and ultra-violent video games as violating free speech rights and the due process requirement that a law be sufficiently definite to provide notice of the conduct prohibited that are granted in the First and Fourteenth Amendments to the United States Constitution.

722.688 Exceptions.

Sec. 18. Section 17 does not apply to the dissemination of an ultra-violent explicit video game to a minor by any of the following:

(a) A parent or guardian who disseminates an ultra-violent explicit video game to his or her child or ward.

(b) An immediate family member of the minor who disseminates an ultra-violent explicit video game to the minor in the immediate family member's residence or the minor's residence.

(c) An individual who disseminates an ultra-violent video game to a minor who is a guest in the individual's residence.

(d) An individual who disseminates an ultra-violent explicit video game for a legitimate medical, scientific, governmental, or judicial purpose.

History: Add. 2005, Act 108, Eff. Dec. 1, 2005.

Constitutionality: In *Entertainment Software Association v Granholm*, F Supp (2006), the United States district court for the Eastern District of Michigan, Southern Division, permanently enjoined enforcement of an act regulating sexually explicit and ultra-violent video games as violating free speech rights and the due process requirement that a law be sufficiently definite to provide notice of the conduct prohibited that are granted in the First and Fourteenth Amendments to the United States Constitution.

722.689 False representation as to age or status as parent or guardian; violation; penalty.

Sec. 19. (1) A person shall not knowingly make a false representation that he or she is the parent or guardian of a minor, or that a minor is 17 years of age or older, with the intent to facilitate the dissemination to the minor of an ultra-violent explicit video game that is harmful to minors. A person knowingly makes a false representation as to the age of a minor or as to the status of being the parent or guardian of a minor if the person either is aware that the representation is false or recklessly disregards a substantial risk that the representation is false.

(2) A person who violates subsection (1) is guilty of a misdemeanor punishable by imprisonment for not

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more than 93 days or a fine of not more than $15,000.00, or both.

History: Add. 2005, Act 108, Eff. Dec. 1, 2005.

Constitutionality: In *Entertainment Software Association v Granholm*, F Supp (2006), the United States district court for the Eastern District of Michigan, Southern Division, permanently enjoined enforcement of an act regulating sexually explicit and ultra-violent video games as violating free speech rights and the due process requirement that a law be sufficiently definite to provide notice of the conduct prohibited that are granted in the First and Fourteenth Amendments to the United States Constitution.

722.690 Manager of business enterprise renting or selling ultra-violent explicit video games; permitting minor to play or view prohibited; violation; penalty.

Sec. 20. A person who possesses managerial responsibility for a business enterprise renting or selling ultra-violent explicit video games that are harmful to minors shall not knowingly permit a minor who is not accompanied by a parent or guardian to play or view the playing of an ultra-violent explicit video game that is harmful to minors. A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $25,000.00, or both.

History: Add. 2005, Act 108, Eff. Dec. 1, 2005.

Constitutionality: In *Entertainment Software Association v Granholm*, F Supp (2006), the United States district court for the Eastern District of Michigan, Southern Division, permanently enjoined enforcement of an act regulating sexually explicit and ultra-violent video games as violating free speech rights and the due process requirement that a law be sufficiently definite to provide notice of the conduct prohibited that are granted in the First and Fourteenth Amendments to the United States Constitution.

722.691 Knowingly disseminating ultra-violent explicit video game.

Sec. 21. (1) A person knowingly disseminates an ultra-violent explicit video game to a minor if the person knows both the nature of the video game and the status of the minor to whom the video game is disseminated.

(2) A person knows the nature of the ultra-violent explicit video game if the person either is aware of its character and content or recklessly disregards circumstances suggesting its character and content.

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

History: Add. 2005, Act 108, Eff. Dec. 1, 2005.

Constitutionality: In *Entertainment Software Association v Granholm*, F Supp (2006), the United States district court for the Eastern District of Michigan, Southern Division, permanently enjoined enforcement of an act regulating sexually explicit and ultra-violent video games as violating free speech rights and the due process requirement that a law be sufficiently definite to provide notice of the conduct prohibited that are granted in the First and Fourteenth Amendments to the United States Constitution.

722.692 Violation arising from same transaction.

Sec. 22. A conviction, sentence, or determination of responsibility for a violation of this part does not preclude a conviction, sentence, or determination of responsibility for a violation of any other law of this state arising from the same transaction.

History: Add. 2005, Act 108, Eff. Dec. 1, 2005.

Constitutionality: In *Entertainment Software Association v Granholm*, F Supp (2006), the United States district court for the Eastern District of Michigan, Southern Division, permanently enjoined enforcement of an act regulating sexually explicit and ultra-violent video games as violating free speech rights and the due process requirement that a law be sufficiently definite to provide notice of the conduct prohibited that are granted in the First and Fourteenth Amendments to the United States Constitution.

722.693 Good faith as defense.

Sec. 23. (1) It is an affirmative defense to an alleged violation under this part that the person acted in good faith. Except as provided in subsection (2), good faith exists if at the time the alleged violation occurs all of the following conditions are satisfied:

(a) The minor shows the person identification that appears to be valid and that contains a photograph and a date of birth purporting to show that the minor is 17 years of age or older, or the service terms of the internet provider of a seller or rental enterprise that sells or rents ultra-violent explicit video games over the internet require a purchaser or renter to be 17 years of age or older if all of the following conditions are met:

(*i*) The ultra-violent explicit video game is purchased or rented over the internet.

(*ii*) The ultra-violent explicit video game is sent to the purchaser's or renter's home or place of residence or otherwise made directly available through the internet to the purchaser or renter.

(*iii*) The purchaser or renter of the ultra-violent explicit video game uses a credit card to purchase or rent the ultra-violent explicit video game.

(b) The person does not have independent knowledge that the minor is under 17 years of age.

(c) Relying upon information described in subdivisions (a) and (b), the person complies with a rating system established by the pertinent entertainment industry that does not conflict with this part.

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(2) If the person possesses managerial responsibility for a business enterprise, good faith exists if at the time the alleged violation occurs the business enterprise satisfies all of the following conditions:

(a) The business enterprise has in existence a policy that its employees are required to comply with a rating system established by the pertinent entertainment industry that does not conflict with this part.

(b) The business enterprise trains its employees to follow the policy described in subdivision (a).

(c) The business enterprise enforces the policy described in subdivision (a).

History: Add. 2005, Act 108, Eff. Dec. 1, 2005.

Constitutionality: In *Entertainment Software Association v Granholm*, F Supp (2006), the United States district court for the Eastern District of Michigan, Southern Division, permanently enjoined enforcement of an act regulating sexually explicit and ultra-violent video games as violating free speech rights and the due process requirement that a law be sufficiently definite to provide notice of the conduct prohibited that are granted in the First and Fourteenth Amendments to the United States Constitution.

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