

# HOUSE BILL No. 4642

April 13, 1989, Introduced by Reps. Weeks, DeMars, Stupak, Pridnia, Rocca, Webb, Bartnik, Gnodtke, Hoffman, Hart, Wartner, Strand, Pitoniak, Miller, Nye, Emmons, Middaugh, Hoekman, Bender, Stopczynski, DeLange, Stacey, London, Porreca, Oxender, Ouwinga, Jaye, Martin, Trim, Owen, Gilmer, Van Regenmorter, Munsell, Saunders, Dolan, Sikkema, Camp, Bankes, Fitzgerald, Bandstra, Krause, Maynard and Van Singel and referred to the Committee on Judiciary.

A bill to amend the title and sections 2, 3, 4, 5, 7, 8, and 10 of Act No. 343 of the Public Acts of 1984, entitled

"An act to define and prohibit the possession or dissemination of obscene material under certain circumstances; to prohibit conduct related thereto; to provide penalties; to prohibit local units of government from enacting or enforcing any law, ordinance, or rule pertaining to matters under this act; and to repeal certain acts and parts of acts,"

being sections 752.362, 752.363, 752.364, 752.365, 752.367, 752.368, and 752.370 of the Michigan Compiled Laws; to add sections 5a, 6a, 6b, 6c, 7a, and 10a; and to repeal certain parts of the act.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. The title and sections 2, 3, 4, 5, 7, 8, and 10  
2 of Act No. 343 of the Public Acts of 1984, being sections  
3 752.362, 752.363, 752.364, 752.365, 752.367, 752.368, and 752.370

1 of the Michigan Compiled Laws, are amended and sections 5a, 6a,  
2 6b, 6c, 7a, and 10a are added to read as follows:

3 TITLE

4 An act to define and prohibit the possession or dissemina-  
5 tion of HARD-CORE MATERIAL, obscene material, AND SEXUAL DEVICES  
6 under certain circumstances; to prohibit conduct related thereto;  
7 TO PROHIBIT CERTAIN HARD-CORE PERFORMANCES AND OBSCENE PER-  
8 FORMANCES; TO REGULATE THE INTRODUCTION OF CERTAIN EVIDENCE; to  
9 provide penalties; TO ESTABLISH CIVIL LIABILITY UNDER CERTAIN  
10 CIRCUMSTANCES; to ~~prohibit~~ ALLOW local units of government  
11 ~~from enacting or enforcing any law, ordinance, or rule pertain-~~  
12 ~~ing to matters under this act~~ TO ENACT AND ENFORCE CERTAIN  
13 ORDINANCES; TO REPEAL CERTAIN PARTS OF THIS ACT; and to repeal  
14 certain acts and parts of acts.

15 Sec. 2. (1) "Contemporary community standards" means the  
16 customary limits of candor and decency in ~~this state at or near~~  
17 ~~the time of the alleged~~ THE VICINAGE FROM WHICH THE JURY IS  
18 DRAWN FOR THE violation of this act.

19 (2) "Disseminate" means to manufacture OR TO PUBLISH, OR TO  
20 sell, GIVE AWAY, lend, rent, ~~publish,~~ exhibit, or lease ~~—~~ to  
21 the public, ~~for commercial gain,~~ or to offer to or agree to  
22 ~~any of the foregoing~~ MANUFACTURE OR TO PUBLISH, OR TO SELL,  
23 GIVE AWAY, LEND, RENT, EXHIBIT, OR LEASE TO THE PUBLIC.

24 (3) "HARD-CORE MATERIAL" MEANS MATERIAL THAT THE REASONABLE  
25 INDIVIDUAL WOULD FIND, TAKEN AS A WHOLE, LACKS SERIOUS LITERARY,  
26 ARTISTIC, POLITICAL, OR SCIENTIFIC VALUE, AND THAT IS 1 OR MORE  
27 OF THE FOLLOWING:

1 (A) MATERIAL THAT DEPICTS ACTUAL ANAL, ORAL, OR GENITAL  
2 SEXUAL INTERCOURSE BETWEEN INDIVIDUALS OF THE SAME SEX, OR  
3 BETWEEN INDIVIDUALS OF THE OPPOSITE SEX, IF PENETRATION IS  
4 VISIBLE.

5 (B) MATERIAL THAT DEPICTS ACTUAL PENETRATION OF AN  
6 INDIVIDUAL'S VAGINA OR RECTUM WITH A SEXUAL DEVICE OR ANY OTHER  
7 OBJECT, FOR PURPOSES OF SEXUAL GRATIFICATION FOR ANY INDIVIDUAL,  
8 IF PENETRATION IS VISIBLE.

9 (C) MATERIAL THAT DEPICTS ACTUAL BESTIALITY, IF PENETRATION  
10 IS VISIBLE.

11 (D) MATERIAL THAT DEPICTS ACTUAL MASTURBATION OR MANIPULA-  
12 TION OF THE GENITALS, IF THE GENITALS ARE VISIBLE, OR THAT  
13 DEPICTS ACTUAL EJACULATION.

14 (4) "HARD-CORE PERFORMANCE" MEANS A PERFORMANCE THAT THE  
15 REASONABLE INDIVIDUAL WOULD FIND, TAKEN AS A WHOLE, LACKS SERIOUS  
16 LITERARY, ARTISTIC, POLITICAL, OR SCIENTIFIC VALUE, AND THAT IS 1  
17 OR MORE OF THE FOLLOWING:

18 (A) A PERFORMANCE THAT DEPICTS ACTUAL ANAL, ORAL, OR GENITAL  
19 SEXUAL INTERCOURSE BETWEEN INDIVIDUALS OF THE SAME SEX, OR  
20 BETWEEN INDIVIDUALS OF THE OPPOSITE SEX, IF PENETRATION IS  
21 VISIBLE.

22 (B) A PERFORMANCE THAT DEPICTS ACTUAL PENETRATION OF AN  
23 INDIVIDUAL'S VAGINA OR RECTUM WITH A SEXUAL DEVICE OR ANY OTHER  
24 OBJECT, FOR PURPOSES OF SEXUAL GRATIFICATION FOR ANY INDIVIDUAL,  
25 IF PENETRATION IS VISIBLE.

26 (C) A PERFORMANCE THAT DEPICTS ACTUAL BESTIALITY, IF  
27 PENETRATION IS VISIBLE.

1 (D) A PERFORMANCE THAT DEPICTS ACTUAL MASTURBATION OR  
2 MANIPULATION OF THE GENITALS, IF THE GENITALS ARE VISIBLE, OR  
3 THAT DEPICTS ACTUAL EJACULATION.

4 (5) ~~(3)~~ "Knowledge of content and character" means having  
5 general knowledge ~~or reason to know, or a belief or ground for~~  
6 ~~belief which warrants further inspection or inquiry,~~ of the  
7 nature and character of the material. ~~involved. A person has~~  
8 ~~such knowledge when he or she knows or is aware that the material~~  
9 ~~contains, depicts, or describes sexual conduct whether or not~~  
10 ~~such person has precise knowledge of the specific contents of the~~  
11 ~~material. Such knowledge~~ KNOWLEDGE OF CONTENT AND CHARACTER  
12 may be proven by direct or circumstantial evidence, or both.

13 (6) ~~(4)~~ "Material" means ~~anything tangible which is~~  
14 ~~capable of being used or adapted to arouse prurient interest,~~  
15 ~~whether through the medium of reading, observation, sound, or in~~  
16 ~~any other manner, including but not limited to, anything printed~~  
17 ~~or written,~~ any OF THE FOLLOWING:

18 (A) A book, magazine, newspaper, pamphlet, picture, drawing,  
19 OR pictorial representation. —

20 (B) A motion picture, photograph, video tape, video disk,  
21 AUDIO TAPE, AUDIO DISK, film, transparency, OR slide. —, ~~or any~~  
22 ~~other medium used to electronically produce or reproduce images~~  
23 ~~on a screen, or any mechanical, chemical, or electronic~~  
24 ~~reproduction. Material includes~~

25 (C) AN undeveloped ~~photographs, molds, printing plates,~~  
26 ~~and~~ PHOTOGRAPH, OR A MOLD, PRINTING PLATE, OR other latent  
27 representational ~~objects notwithstanding that~~ OBJECT, WHETHER

1 OR NOT processing or other acts may be required to make ~~its~~ THE  
2 content OF THE PHOTOGRAPH, MOLD, PRINTING PLATE, OR OTHER LATENT  
3 REPRESENTATIONAL OBJECT apparent.

4 (D) A COMPUTER DISK, TAPE, CARD, CARTRIDGE, OR OTHER COM-  
5 PUTER STORAGE MEDIA.

6 (E) A COMPUTER PROGRAM, INCLUDING DOCUMENTATION OF THAT  
7 PROGRAM.

8 (7) ~~(5)~~ "Obscene MATERIAL" means ~~any~~ material ~~which~~  
9 THAT meets all of the following criteria:

10 (a) ~~That the~~ THE average individual, applying contemporary  
11 community standards, would find that the material, taken as a  
12 whole, appeals to the prurient interest.

13 (b) ~~That the~~ THE REASONABLE INDIVIDUAL WOULD FIND THAT THE  
14 material, taken as a whole, lacks serious literary, artistic,  
15 political, or scientific value.

16 (c) ~~That the~~ THE AVERAGE INDIVIDUAL APPLYING CONTEMPORARY  
17 COMMUNITY STANDARDS WOULD FIND THAT THE material depicts or  
18 describes ~~—~~ SEXUAL CONDUCT in a patently offensive way. ~~—~~  
19 ~~sexual conduct.~~

20 Sec. 3. (1) "OBSCENE PERFORMANCE" MEANS A PERFORMANCE THAT  
21 MEETS ALL OF THE FOLLOWING CRITERIA:

22 (A) THE AVERAGE INDIVIDUAL, APPLYING CONTEMPORARY COMMUNITY  
23 STANDARDS, WOULD FIND THAT THE PERFORMANCE, TAKEN AS A WHOLE,  
24 APPEALS TO THE PRURIENT INTEREST.

25 (B) THE REASONABLE INDIVIDUAL WOULD FIND THAT THE PER-  
26 FORMANCE, TAKEN AS A WHOLE, LACKS SERIOUS LITERARY, ARTISTIC,  
27 POLITICAL, OR SCIENTIFIC VALUE.

1 (C) THE AVERAGE INDIVIDUAL, APPLYING CONTEMPORARY COMMUNITY  
2 STANDARDS, WOULD FIND THAT THE PERFORMANCE DEPICTS OR DESCRIBES  
3 SEXUAL CONDUCT IN A PATENTLY OFFENSIVE WAY.

4 (2) "PERFORMANCE" MEANS A LIVE OR RECORDED THEATRICAL PLAY,  
5 DANCE, ACT, SHOW, DEMONSTRATION, OR EXHIBITION, DISPLAYED OR PER-  
6 FORMED BEFORE 1 OR MORE INDIVIDUALS.

7 (3) ~~(1)~~ "Person" means an individual, ~~or a~~ sole proprie-  
8 torship, partnership, corporation, association, or other legal  
9 entity, or an agent or servant of an individual, ~~or~~ SOLE PRO-  
10 PRIETORSHIP, PARTNERSHIP, CORPORATION, OR OTHER legal entity.

11 (4) ~~(2)~~ "Prurient interest" means a shameful, ~~or~~ morbid,  
12 LASCIVIOUS, UNHEALTHY, OR UNWHOLESOME interest in nudity ~~, sex,~~  
13 ~~or excretion~~ OR SEXUAL CONDUCT.

14 Sec. 4. (1) ~~"Sexual conduct" means 1 or more of the~~  
15 ~~following.~~ "SADOMASOCHISTIC ABUSE" MEANS ACTUAL OR SIMULATED  
16 RESTRAINT, PUNISHMENT, FLAGELLATION, TORTURE, OR PHYSICAL INJURY,  
17 OF AN INDIVIDUAL, BY THAT INDIVIDUAL OR BY ANOTHER INDIVIDUAL,  
18 FOR PURPOSES OF SEXUAL GRATIFICATION FOR ANY INDIVIDUAL.

19 ~~(a) Representations or descriptions of ultimate sexual~~  
20 ~~acts, normal or perverted, actual or simulated.~~

21 ~~(b) Representations or descriptions of masturbation, excre-~~  
22 ~~tory functions, or a lewd exhibition of the genitals.~~

23 (2) "SEXUAL CONDUCT" MEANS ANY OF THE FOLLOWING:

24 (A) ACTUAL OR SIMULATED ANAL, ORAL, OR GENITAL SEXUAL INTER-  
25 COURSE BETWEEN INDIVIDUALS OF THE SAME SEX, OR BETWEEN INDIVIDU-  
26 ALS OF THE OPPOSITE SEX.

1 (B) ACTUAL OR SIMULATED PENETRATION OF AN INDIVIDUAL'S  
2 VAGINA OR RECTUM WITH A SEXUAL DEVICE OR ANY OTHER OBJECT, FOR  
3 PURPOSES OF SEXUAL GRATIFICATION FOR ANY INDIVIDUAL.

4 (C) ACTUAL OR SIMULATED BESTIALITY.

5 (D) ACTUAL OR SIMULATED MASTURBATION.

6 (E) SADOMASOCHISTIC ABUSE.

7 (F) A LEWD EXHIBITION OF THE GENITALS OR RECTUM OF AN  
8 INDIVIDUAL.

9 (G) DEFECATION OR URINATION FOR PURPOSES OF SEXUAL GRATIFI-  
10 CATION FOR ANY INDIVIDUAL.

11 (3) "SEXUAL DEVICE" MEANS AN ARTIFICIAL PENIS, ARTIFICIAL  
12 VAGINA, OR ARTIFICIAL RECTUM, USED OR INTENDED TO BE USED PRIMAR-  
13 ILY FOR THE SEXUAL STIMULATION OF HUMAN GENITAL ORGANS.

14 (4) ~~(2)~~ "Simulated" means the explicit depiction or  
15 description of any of the types of conduct set forth in the defi-  
16 nition of sexual conduct under subsection ~~(1)~~ (2), ~~which~~ THAT  
17 creates the appearance of ~~such~~ THAT conduct.

18 ~~(3) "Ultimate sexual acts" means sexual intercourse, fella-~~  
19 ~~tio, cunnilingus, anal intercourse, or any other intrusion, how-~~  
20 ~~ever slight, of any part of a person's body or of any object into~~  
21 ~~the genital or anal openings of another person's body, or depic-~~  
22 ~~tions or descriptions of sexual bestiality, sadomasochism, mas-~~  
23 ~~turbation, or excretory functions.~~

24 Sec. 5. (1) A person is guilty of obscenity ~~in the first~~  
25 ~~degree when, knowing~~ IF ANY OF THE FOLLOWING CIRCUMSTANCES  
26 EXIST:

1 (A) WITH KNOWLEDGE OF CONTENT AND CHARACTER, THE PERSON  
2 DISSEMINATES OR POSSESSES WITH INTENT TO DISSEMINATE, ANY  
3 HARD-CORE MATERIAL.

4 (B) WITH KNOWLEDGE OF the content and character, ~~of the~~  
5 ~~material,~~ the person disseminates ~~,~~ or possesses with intent  
6 to disseminate ~~,~~ any obscene material OR ANY SEXUAL DEVICE. ~~if~~  
7 ~~dissemination of obscene material is a predominant and regular~~  
8 ~~part of the person's business at a particular theater, store,~~  
9 ~~warehouse, or other establishment and if obscene materials are a~~  
10 ~~principal or substantial part of the stock in trade at that the-~~  
11 ~~ater, store, warehouse, or other establishment.~~

12 (C) WITH KNOWLEDGE OF CONTENT AND CHARACTER, THE PERSON  
13 PRESENTS OR PARTICIPATES IN PRESENTING, A HARD-CORE PERFORMANCE.

14 (D) WITH KNOWLEDGE OF CONTENT AND CHARACTER, THE PERSON  
15 PRESENTS OR PARTICIPATES IN PRESENTING, AN OBSCENE PERFORMANCE.

16 (E) THE PERSON OWNS, LEASES, OR MANAGES ANY THEATER, BUILD-  
17 ING, STRUCTURE, ROOM, PLACE, OR COMMERCIAL ESTABLISHMENT, AND  
18 KNOWINGLY LEASES OR KNOWINGLY PERMITS THE THEATER, BUILDING,  
19 STRUCTURE, ROOM, PLACE, OR COMMERCIAL ESTABLISHMENT TO BE USED  
20 FOR THE PURPOSE OF DISSEMINATING ANY HARD-CORE MATERIAL OR  
21 OBSCENE MATERIAL, OR FOR THE PURPOSE OF DISSEMINATING A SEXUAL  
22 DEVICE, OR FOR THE PRESENTATION OF A HARD-CORE PERFORMANCE OR  
23 OBSCENE PERFORMANCE.

24 (2) ~~Obscenity in the first degree is a misdemeanor~~ A  
25 PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY, punish-  
26 able by imprisonment for not more than ~~1 year~~ 4 YEARS, or by a  
27 fine of not more than \$100,000.00, or both.



1       (3) A ~~person who is convicted of a~~ second or subsequent  
2 ~~offense under~~ VIOLATION OF this section is ~~guilty of a misde-~~  
3 ~~meanor and may be imprisoned~~ A FELONY, PUNISHABLE BY  
4 IMPRISONMENT for not more than ~~1 year, and shall be fined~~ 8  
5 YEARS, OR BY A FINE OF not less than \$50,000.00 ~~and not~~ NOR  
6 more than \$5,000,000.00, OR BOTH. For purposes of this section,  
7 an offense is considered a second or subsequent offense if the  
8 defendant has previously been convicted under this section, or  
9 ~~under any~~ A similar ~~statute~~ LAW of the United States, or  
10 ~~any~~ OF ANOTHER state.

11       SEC. 5A. A PERSON WHO DISSEMINATES HARD-CORE MATERIAL IN  
12 VIOLATION OF SECTION 5(1)(A), OR OBSCENE MATERIAL OR A SEXUAL  
13 DEVICE IN VIOLATION OF SECTION 5(1)(B), OR WHO PRESENTS OR PAR-  
14 TICIPATES IN PRESENTING A HARD-CORE PERFORMANCE IN VIOLATION OF  
15 SECTION 5(1)(C) OR AN OBSCENE PERFORMANCE IN VIOLATION OF SECTION  
16 5(1)(D), IS CIVILLY LIABLE FOR INJURIES PROXIMATELY CAUSED BY THE  
17 DISSEMINATION OF THAT HARD-CORE MATERIAL OR OBSCENE MATERIAL OR  
18 SEXUAL DEVICE, OR BY THE PRESENTATION OF THAT HARD-CORE PER-  
19 FORMANCE OR OBSCENE PERFORMANCE.

20       SEC. 6A. EXPERT TESTIMONY OR OTHER ANCILLARY EVIDENCE IS  
21 NOT REQUIRED TO DETERMINE WHETHER SPECIFIC MATERIAL IS OBSCENE IF  
22 THE ALLEGEDLY OBSCENE MATERIAL HAS BEEN PLACED INTO EVIDENCE.  
23 THE MATERIAL ITSELF IS THE BEST EVIDENCE OF WHAT IT REPRESENTS.

24       SEC. 6B. THE FACT THAT SEXUALLY EXPLICIT MATERIAL IS DIS-  
25 TRIBUTED IN THE COMMUNITY IS NOT ADMISSIBLE AS EVIDENCE OF THE  
26 LOCAL CONTEMPORARY STANDARDS IN THAT COMMUNITY, UNLESS BOTH OF  
27 THE FOLLOWING CIRCUMSTANCES EXIST:

1 (A) THE MATERIAL IS SUBSTANTIALLY SIMILAR TO THE ALLEGEDLY  
2 OBSCENE MATERIAL. IN DETERMINING WHETHER A MATERIAL IS SUBSTAN-  
3 Tially SIMILAR TO THE ALLEGEDLY OBSCENE MATERIAL, THE COURT SHALL  
4 CONSIDER ALL OF THE FOLLOWING:

5 (i) THE MEDIA IN WHICH THE MATERIAL AND THE ALLEGEDLY  
6 OBSCENE MATERIAL ARE PRESENTED.

7 (ii) THE TYPE OF SEXUAL CONDUCT OR ACTIVITY DEPICTED BY THE  
8 MATERIAL AND BY THE ALLEGEDLY OBSCENE MATERIAL.

9 (iii) THE SEXUAL EXPLICITNESS OF THE MATERIAL AND THE  
10 ALLEGEDLY OBSCENE MATERIAL.

11 (B) THE MATERIAL ENJOYS A REASONABLE DEGREE OF ACCEPTANCE IN  
12 THE COMMUNITY.

13 SEC. 6C. EVIDENCE REGARDING THE MANNER IN WHICH ALLEGED  
14 HARD-CARE MATERIAL OR ALLEGED OBSCENE MATERIAL IS PRODUCED, PACK-  
15 AGED, SOLD, EDITED, ADVERTISED, OR DISPLAYED THAT IS OTHERWISE  
16 ADMISSIBLE, AND EVIDENCE REGARDING THE MANNER IN WHICH AN ALLEGED  
17 HARD-CORE PERFORMANCE OR ALLEGED OBSCENE PERFORMANCE IS ADVER-  
18 TISED OR PRESENTED THAT IS OTHERWISE ADMISSIBLE, IS ADMISSIBLE TO  
19 PROVE OR DISPROVE THAT THE MATERIAL OR PERFORMANCE MEETS ANY OF  
20 THE CRITERIA UNDER SECTION 2(3), (4), OR (7), OR SECTION 3(1).

21 Sec. 7. ~~Sections 5 and 6 do~~ SECTION 5 DOES not apply to  
22 the dissemination of HARD-CORE MATERIAL OR obscene material by  
23 ~~any of the following: (a) An~~ AN individual who disseminates  
24 HARD-CORE MATERIAL OR obscene material in the course of ~~the~~  
25 ~~individual's~~ HIS OR HER employment, ~~and~~ IF THE INDIVIDUAL is  
26 employed by any of the following:

1 (i) A public or private college, university, or vocational  
2 school.

3 (ii) A library ~~which is~~ established by ~~the~~ THIS state,  
4 ~~OR BY A LIBRARY ESTABLISHED BY~~ a county, city, township, vil-  
5 lage, or other local unit of government or authority, or BY A  
6 combination of local units of governments and authorities, ~~OR~~ or  
7 BY A LIBRARY ESTABLISHED BY a community college district, OR BY A  
8 PUBLIC ART MUSEUM, OR PUBLIC INSTITUTE OF ART.

9 ~~(b) An individual who disseminates obscene material in the~~  
10 ~~course of the individual's employment and does not have discre-~~  
11 ~~tion with regard to that dissemination or is not involved in the~~  
12 ~~management of the employer.~~

13 SEC. 7A. SECTION 5 DOES NOT APPLY TO THE DISSEMINATION OF  
14 SEXUAL DEVICES FOR LEGITIMATE THERAPEUTIC PURPOSES BY A PERSON  
15 LICENSED UNDER THE PUBLIC HEALTH CODE, ACT NO. 368 OF THE PUBLIC  
16 ACTS OF 1978, BEING SECTIONS 333.1101 TO 333.25211 OF THE  
17 MICHIGAN COMPILED LAWS.

18 Sec. 8. (1) A person shall not:

19 (a) ~~As~~ REQUIRE OR DEMAND THAT A PURCHASER OR CONSIGNEE  
20 RECEIVE HARD-CORE MATERIAL, OBSCENE MATERIAL, OR SEXUAL DEVICES  
21 FOR RESALE OR FURTHER COMMERCIAL DISTRIBUTION AS a condition to a  
22 sale, allocation, consignment, or delivery for ~~the~~ resale of  
23 ~~any~~ A paper, magazine, periodical, book, publication, or other  
24 merchandise. ~~, require or demand that the purchaser or con-~~  
25 ~~signee receive for resale or further commercial distribution any~~  
26 ~~obscene material.~~

1 (b) Deny, revoke, or threaten to deny or revoke a franchise,  
 2 or impose or threaten to impose ~~any~~ A penalty, financial or  
 3 otherwise, ~~because of the failure or refusal~~ FOR FAILING OR  
 4 REFUSING to accept HARD-CORE MATERIAL, obscene material, OR  
 5 SEXUAL DEVICES, or material reasonably believed by the purchaser  
 6 or consignee to be HARD-CORE MATERIAL, obscene MATERIAL, OR  
 7 SEXUAL DEVICES.

8 (2) A violation of this section is a misdemeanor, punishable  
 9 by imprisonment for not more than ~~1 year~~ 2 YEARS, or a fine of  
 10 not more than ~~\$500.00~~ \$100,000.00, or both.

11 (3) A SECOND OR SUBSEQUENT VIOLATION OF THIS SECTION IS A  
 12 FELONY, PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN ~~8 YEARS~~, OR  
 13 BY A FINE OF NOT LESS THAN \$50,000.00 NOR MORE THAN  
 14 \$5,000,000.00, OR BOTH. FOR PURPOSES OF THIS SECTION, AN OFFENSE  
 15 IS CONSIDERED A SECOND OR SUBSEQUENT OFFENSE IF THE DEFENDANT HAS  
 16 PREVIOUSLY BEEN CONVICTED UNDER THIS SECTION, OR A SIMILAR LAW OF  
 17 THE UNITED STATES OR OF ANOTHER STATE.

18 Sec. 10. ~~(1)~~ A municipality, township, village, OR city,  
 19 or an instrumentality ~~thereof shall not~~ OF A MUNICIPALITY,  
 20 TOWNSHIP, VILLAGE, OR CITY, MAY enact ~~or~~ AND enforce ~~any law,~~  
 21 THIS ACT AS AN ordinance. ~~, or rule which regulates, or intends~~  
 22 ~~to regulate, any matter covered by this act.~~

23 ~~(2) Subsection (1) does not apply to a zoning law, zoning~~  
 24 ~~ordinance, or zoning rule.~~

25 SEC. 10A. IF ANY PART OF THIS ACT OR ANY APPLICATION OF  
 26 THIS ACT IS FOUND BY A COURT TO BE INVALID, THE COURT SHALL SEVER  
 27 THAT PART OF THIS ACT OR THAT APPLICATION OF THIS ACT AS PROVIDED

1 UNDER SECTION 5 OF CHAPTER 1 OF THE REVISED STATUTES OF 1846,  
2 BEING SECTION 8.5 OF THE MICHIGAN COMPILED LAWS.

3       Section 2. Sections 6, 11, 12, and 13 of Act No. 343 of the  
4 Public Acts of 1984, being sections 752.366, 752.371, 752.372,  
5 and 752.373 of the Michigan Compiled Laws, are repealed.