

SENATE BILL No. 338

April 18, 1989, Introduced by Senators DILLINGHAM, MILLER, SHINKLE, CROUSEY, FESSLER, CARL, WELBORN, DINGELL, GEAKE, BINSFELD, POSTHUMUS, FAUST, ARTHURHULTZ, SCHWARZ, GEO. HART, IRWIN, J. HART, DI NELLO, EHLERS, GAST, DE GROW, N. SMITH, CRUCE, POLLACK, O'BRIEN and ENGLER and referred to the Committee on Local Government and Veterans.

A bill to amend 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 752.361 to 752.374 of the Michigan Compiled Laws,
by adding sections 5b, 5c, and 5d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Act No. 343 of the Public Acts of 1984, being
2 sections 752.361 to 752.374 of the Michigan Compiled Laws, is
3 amended by adding sections 5b, 5c, and 5d to read as follows:

4 SEC. 5B. IF A PERSON IS CONVICTED OF VIOLATING SECTION 5,
5 OR A CORRESPONDING SECTION OF A LOCAL ORDINANCE ENACTED UNDER
6 SECTION 10, THE PROSECUTING ATTORNEY MAY FILE A CIVIL COMPLAINT

1 WITH THE CIRCUIT COURT TO CLOSE A BUSINESS OR A THEATER,
2 BUILDING, STRUCTURE, ROOM, PLACE, OR COMMERCIAL ESTABLISHMENT
3 UNDER SECTION 5D.

4 SEC. 5C. (1) THE COURT SHALL ORDER A BUSINESS CLOSED UNDER
5 SECTION 5D FOR A VIOLATION OF SECTION 5(1)(A) OR (B) OR A CORRE-
6 SPONDING SECTION OF A LOCAL ORDINANCE ENACTED UNDER SECTION 10,
7 IF THE COURT DETERMINES BY A PREPONDERANCE OF THE EVIDENCE THAT
8 ALL OF THE FOLLOWING CIRCUMSTANCES EXIST:

9 (A) THE PERSON CONVICTED WAS, AT THE TIME THE VIOLATION
10 OCCURRED, AN OWNER, AGENT, OR EMPLOYEE OF A BUSINESS IN WHICH
11 HARD-CORE MATERIAL OR OBSCENE MATERIAL WAS, OR SEXUAL DEVICES
12 WERE, AT THE TIME THE VIOLATION OCCURRED, A PART OF THE TRADE OF
13 THAT BUSINESS AT THAT PARTICULAR THEATER, BUILDING, STRUCTURE,
14 ROOM, PLACE, OR COMMERCIAL ESTABLISHMENT.

15 (B) THE VIOLATION AROSE OUT OF, AND OCCURRED IN THE COURSE
16 OF, THE COMMERCIAL ACTIVITIES OF THAT BUSINESS AT THAT PARTICULAR
17 THEATER, BUILDING, STRUCTURE, ROOM, PLACE, OR COMMERCIAL
18 ESTABLISHMENT.

19 (2) THE COURT SHALL ORDER A THEATER, BUILDING, STRUCTURE,
20 ROOM, PLACE, OR COMMERCIAL ESTABLISHMENT CLOSED UNDER SECTION 5D
21 FOR A VIOLATION OF SECTION 5(1)(A) OR (B) OR A CORRESPONDING SEC-
22 TION OF A LOCAL ORDINANCE ENACTED UNDER SECTION 10, IF THE COURT
23 DETERMINES BY A PREPONDERANCE OF THE EVIDENCE THAT ALL OF THE
24 FOLLOWING CIRCUMSTANCES EXIST:

25 (A) ALL OF THE CIRCUMSTANCES ENUMERATED IN SUBSECTION (1)
26 EXIST.

1 (B) AN OWNER OF THAT THEATER, BUILDING, STRUCTURE, ROOM,
2 PLACE, OR COMMERCIAL ESTABLISHMENT KNEW, OR HAD REASON TO KNOW,
3 THAT THE THEATER, BUILDING, STRUCTURE, ROOM, PLACE, OR COMMERCIAL
4 ESTABLISHMENT WAS USED, OR WAS INTENDED TO BE USED, FOR THE DIS-
5 SEMINATION OF HARD-CORE MATERIAL OR OBSCENE MATERIAL OR SEXUAL
6 DEVICES.

7 (3) THE COURT SHALL ORDER A BUSINESS CLOSED UNDER SECTION 5D
8 FOR A VIOLATION OF SECTION 5(1)(C) OR (D) OR A CORRESPONDING SEC-
9 TION OF A LOCAL ORDINANCE ENACTED UNDER SECTION 10, IF THE COURT
10 DETERMINES BY A PREPONDERANCE OF THE EVIDENCE THAT ALL OF THE
11 FOLLOWING CIRCUMSTANCES EXIST:

12 (A) THE PERSON CONVICTED WAS, AT THE TIME THE VIOLATION
13 OCCURRED, AN OWNER, AGENT, OR EMPLOYEE OF THAT BUSINESS, OR AN
14 INDEPENDENT CONTRACTOR HIRED BY AN OWNER, AGENT, OR EMPLOYEE OF
15 THAT BUSINESS.

16 (B) THE VIOLATION AROSE OUT OF, AND OCCURRED IN THE COURSE
17 OF, THE COMMERCIAL ACTIVITIES OF THAT BUSINESS AT THAT PARTICULAR
18 THEATER, BUILDING, STRUCTURE, ROOM, PLACE, OR COMMERCIAL
19 ESTABLISHMENT.

20 (4) THE COURT SHALL ORDER A THEATER, BUILDING, STRUCTURE,
21 ROOM, PLACE, OR COMMERCIAL ESTABLISHMENT CLOSED UNDER SECTION 5D
22 FOR A VIOLATION OF SECTION 5(1)(C) OR (D) OR A CORRESPONDING SEC-
23 TION OF A LOCAL ORDINANCE ENACTED UNDER SECTION 10, IF THE COURT
24 DETERMINES BY A PREPONDERANCE OF THE EVIDENCE THAT ALL OF THE
25 FOLLOWING CIRCUMSTANCES EXIST:

26 (A) ALL OF THE CIRCUMSTANCES ENUMERATED IN SUBSECTION (3)
27 EXIST.

1 (B) AN OWNER OF THAT THEATER, BUILDING, STRUCTURE, ROOM,
2 PLACE, OR COMMERCIAL ESTABLISHMENT KNEW, OR HAD REASON TO KNOW,
3 THAT THE THEATER, BUILDING, STRUCTURE, ROOM, PLACE, OR COMMERCIAL
4 ESTABLISHMENT WAS USED, OR WAS INTENDED TO BE USED, FOR THE PRE-
5 SENTATION OF HARD-CORE PERFORMANCES OR OBSCENE PERFORMANCES.

6 (5) THE COURT SHALL ORDER A THEATER, BUILDING, STRUCTURE,
7 ROOM, PLACE, OR COMMERCIAL ESTABLISHMENT CLOSED UNDER SECTION 5D
8 IF AN OWNER, LESSOR, OR MANAGER OF THAT THEATER, BUILDING, STRUC-
9 TURE, ROOM, PLACE, OR COMMERCIAL ESTABLISHMENT IS CONVICTED OF
10 VIOLATING SECTION 5(1)(E) OR A CORRESPONDING SECTION OF A LOCAL
11 ORDINANCE ENACTED UNDER SECTION 10.

12 SEC. 5D. THE COURT SHALL ORDER A BUSINESS, OR A THEATER,
13 BUILDING, STRUCTURE, ROOM, PLACE, OR COMMERCIAL ESTABLISHMENT
14 CLOSED FOR A VIOLATION OF SECTION 5(1) OR A CORRESPONDING SECTION
15 OF A LOCAL ORDINANCE ENACTED UNDER SECTION 10, AS DETERMINED
16 UNDER SECTION 5C, AS FOLLOWS:

17 (A) FOR NOT LESS THAN 30 DAYS OR MORE THAN 60 DAYS IF ANY OF
18 THE FOLLOWING CIRCUMSTANCES EXIST:

19 (i) THE VIOLATION IS THE FIRST VIOLATION OF SECTION 5(1)(A),
20 (B), (C), OR (D) OR A CORRESPONDING SECTION OF A LOCAL ORDINANCE
21 ENACTED UNDER SECTION 10 THAT AROSE OUT OF, AND OCCURRED IN THE
22 COURSE OF, THE COMMERCIAL ACTIVITIES OF THAT BUSINESS.

23 (ii) THE VIOLATION IS THE FIRST VIOLATION OF SECTION
24 5(1)(A), (B), (C), OR (D) OR A CORRESPONDING SECTION OF A LOCAL
25 ORDINANCE THAT OCCURRED IN THAT THEATER, BUILDING, STRUCTURE,
26 ROOM, PLACE, OR COMMERCIAL ESTABLISHMENT.

1 (iii) THE VIOLATION IS THE FIRST VIOLATION OF SECTION
2 5(1)(E) OR A CORRESPONDING SECTION OF A LOCAL ORDINANCE ENACTED
3 UNDER SECTION 10 BY AN OWNER, LESSOR, OR MANAGER OF THAT THEATER,
4 BUILDING, STRUCTURE, ROOM, PLACE, OR COMMERCIAL ESTABLISHMENT
5 THAT CONCERNED THAT THEATER, BUILDING, STRUCTURE, ROOM, PLACE, OR
6 COMMERCIAL ESTABLISHMENT.

7 (B) FOR NOT LESS THAN 60 DAYS OR MORE THAN 90 DAYS IF ANY OF
8 THE FOLLOWING CIRCUMSTANCES EXIST:

9 (i) THE VIOLATION IS THE SECOND VIOLATION OF SECTION
10 5(1)(A), (B), (C), OR (D) OR A CORRESPONDING SECTION OF A LOCAL
11 ORDINANCE ENACTED UNDER SECTION 10 THAT AROSE OUT OF, AND
12 OCCURRED IN THE COURSE OF, THE COMMERCIAL ACTIVITIES OF THAT
13 BUSINESS.

14 (ii) THE VIOLATION IS THE SECOND VIOLATION OF SECTION
15 5(1)(A), (B), (C), OR (D) OR A CORRESPONDING SECTION OF A LOCAL
16 ORDINANCE ENACTED UNDER SECTION 10 THAT OCCURRED IN THAT THEATER,
17 BUILDING, STRUCTURE, ROOM, PLACE, OR COMMERCIAL ESTABLISHMENT.

18 (iii) THE VIOLATION IS THE SECOND VIOLATION OF SECTION
19 5(1)(E) OR A CORRESPONDING SECTION OF A LOCAL ORDINANCE ENACTED
20 UNDER SECTION 10 BY AN OWNER, LESSOR, OR MANAGER OF THAT THEATER,
21 BUILDING, STRUCTURE, ROOM, PLACE, OR COMMERCIAL ESTABLISHMENT
22 THAT CONCERNED THAT THEATER, BUILDING, STRUCTURE, ROOM, PLACE, OR
23 COMMERCIAL ESTABLISHMENT.

24 (C) FOR NOT LESS THAN 90 DAYS OR MORE THAN 1 YEAR IF ANY OF
25 THE FOLLOWING CIRCUMSTANCES EXIST:

26 (i) THE VIOLATION IS THE THIRD OR SUBSEQUENT VIOLATION OF
27 SECTION 5(1)(A), (B), (C), OR (D) OR A CORRESPONDING SECTION OF A

1 LOCAL ORDINANCE ENACTED UNDER SECTION 10 THAT AROSE OUT OF, AND
2 OCCURRED IN THE COURSE OF, THE COMMERCIAL ACTIVITIES OF THAT
3 BUSINESS.

4 (ii) THE VIOLATION IS THE THIRD OR SUBSEQUENT VIOLATION OF
5 SECTION 5(1)(A), (B), (C), OR (D) OR A CORRESPONDING SECTION OF A
6 LOCAL ORDINANCE ENACTED UNDER SECTION 10 THAT OCCURRED IN THAT
7 THEATER, BUILDING, STRUCTURE, ROOM, PLACE, OR COMMERCIAL
8 ESTABLISHMENT.

9 (iii) THE VIOLATION IS THE THIRD OR SUBSEQUENT VIOLATION OF
10 SECTION 5(1)(E) OR A CORRESPONDING SECTION OF A LOCAL ORDINANCE
11 ENACTED UNDER SECTION 10 BY AN OWNER, LESSOR, OR MANAGER OF THAT
12 THEATER, BUILDING, STRUCTURE, ROOM, PLACE, OR COMMERCIAL
13 ESTABLISHMENT.