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SFA



BILL ANALYSIS

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Senate Bill 1100 (Substitute S-1 as reported)
Sponsor: Senator Dale L. Shugars
Committee: Families, Mental Health and Human Services

Date Completed: 6-1-98

RATIONALE

In April 1997, the Michigan Senate adopted Senate Resolution 53, which resolved that, "...entertainment venues in Michigan should voluntarily prohibit attendance by minors under 18 years of age who are not accompanied by parents or guardians at musical performances of artists whose recordings carry parental advisory labels...". The impetus for this resolution was a concert held in Kalamazoo by a group called Marilyn Manson, which reportedly promotes violence and illegal drug use, and simulates sexual activity and self-mutilation on stage. Apparently, some 10,000 Kalamazoo-area residents had signed petitions against the concert, but their attempt to prevent the performance was unsuccessful. It appears now that the Senate resolution has not been effective in encouraging music venues to restrict the attendance of minors at performances that could be harmful to them. Thus, it has been suggested that local units of government should have the authority to decide which performances would be harmful to minors, and to require music venues to exclude minors from those performances unless they are accompanied by an adult.

CONTENT

The bill would create a new act to allow local units of government to restrict the attendance of minors at concerts determined to be "harmful to minors"; require advertisements for such performances to indicate that minors would not be admitted without an adult; and prescribe penalties for violations of those regulations. The bill would take effect upon the expiration of 60 days after its enactment.

"Harmful to minors" would mean any material that met all of the following:

- The average adult person, applying contemporary community standards, would find that the material, when considered as a

whole, appealed to the prurient interests of minors.

- The material depicted or described, in an explicit and patently offensive manner by prevailing standards in the adult community with respect to what was suitable for minors, any of the following: ultimate sexual acts, normal or perverted, actual or simulated; masturbation, fellatio, cunnilingus, bestiality, excretory functions, lewd exhibition of the genitals or genital area, sexually explicit conduct, sexual excitement, or sexually explicit nudity; or acts that were violent or destructive, including but not limited to human or animal mutilation, dismemberment, murder, suicide, rape, torture, or illegal use of drugs.
- When considered as a whole, and in the context for which it was used, the material lacked serious literary, artistic, political, or scientific value for minors.

The governing board of a city, village, or township could, by resolution, determine that a live performance at a music venue within the city, village, or township was harmful to minors. The determination would have to be based on the performer's past performances or recordings. The governing board could not approve a resolution, however, if the owner or operator of the music venue or the performer submitted to the board evidence of a contract between the owner or operator and the performer in which the performer agreed not to perform any material that was harmful to minors.

If the owner or operator of a music venue objected to a resolution approved under these provisions, the owner or operator could demand that the dispute be submitted to arbitration under the commercial arbitration rules of the American Arbitration Association. To initiate arbitration, the owner or operator would have to submit a notice of

his or her intention to arbitrate to the governing board of the city, village, or township and to the American Arbitration Association, within 14 business days after the resolution was approved. An arbitration hearing would have to be conducted within 10 business days from the date the Association received the demand. The arbitrator's decision would have to be issued within 10 business days from the date the final hearing concluded.

If a local unit's governing board approved a resolution determining that a performance was harmful to minors and notified the owner or operator of the music venue a reasonable time period before the date of the performance, the owner or operator would have to comply with all of the following:

- A minor could not be admitted to the performance unless accompanied by an adult at least 21 years old.
- Tickets that were sold for the performance would have to contain a notice on them that minors would not be admitted unless accompanied by an adult at least 21 years old.
- Print advertisements for the performance would have to contain a notice that minors would not be admitted unless accompanied by an adult at least 21 years old.
- Electronic advertisements would have to include a statement that minors would not be admitted unless accompanied by an adult at least 21 years old.

A violation of the bill would be a misdemeanor, punishable by up to 90 days' imprisonment, a maximum fine of \$5,000, or both.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Marilyn Manson concert in Kalamazoo is an example of why this bill is needed: Community residents may be helpless in preventing a performance that they consider highly offensive, potentially dangerous, and clearly unsuitable for children, and music venues cannot be relied upon to restrict attendance voluntarily. Although Marilyn Manson might be the latest fad among certain audiences, there undoubtedly are or will be other performers who are equally harmful to vulnerable young people. As Senate Resolution 53 pointed out, "Some of today's music stars have found a

lucrative market niche with recordings, stage performances and public personas which celebrate sex, violence, despair and suicide. Much of this recorded music carries parental advisories regarding its content, but concerts featuring such artists are often open to all ages...". Allowing minors to attend concerts that promote illegal, if not immoral, activities undermines the efforts of parents and government to make schools safer and more challenging, to make streets safe from crime and drugs, to keep those who prey on young people behind bars, and to create a future of opportunity and hope. Rather than censor these concerts, the bill would give local units of government the authority to determine, based on a performer's past performances or recordings, that a performance would be harmful to minors. If a local unit made this determination, the concert could still go on, but minors could not be admitted without an adult and advertisements would have to state that attendance would be restricted. Thus, the bill would ensure that parents knew about the nature of a performance and could make an informed decision about their children's attendance.

Response: The Marilyn Manson concert also is an example of why this bill is not needed. The 10,000 people who signed petitions clearly were familiar with the group, and the degree of protest indicates a high level of community awareness.

Opposing Argument

The bill appears to have some constitutional defects. By authorizing local units of government to control what citizens could see and hear, the bill would have a chilling effect upon First Amendment rights to freedom of expression. The bill also would allow prior restraint by permitting the regulation of *future* expression based on *past* expression. Without a crystal ball, one cannot judge whether an entertainer's future actions *might* be harmful to minors based on previous performances. Moreover, a local unit could ban minors from a concert based on previous recordings that would not necessarily be performed at the concert. Recordings with explicit but legal content also could serve as the basis for censorship because of someone's concern about the way in which the content could be conveyed to the audience. In addition, a local unit's determination could be based on hype, innuendo, and untruths, which apparently have been abundant in the case of Marilyn Manson's performances.

Response: Unlike a movie or a recording, which can be viewed or heard in advance, a live performance is an unknown quantity. Previous performances or recordings represent a practical way to evaluate an upcoming performance.

Opposing Argument

The basis upon which a performance could be deemed “harmful to minors” is too vague and ambiguous. For example, the definition of that term includes “acts that are violent or destructive”, which could lead to highly subjective interpretations. Furthermore, local governing board members are not elected to decide what is acceptable entertainment on behalf of their community, let alone elsewhere. Since the audience for a concert may come from many surrounding communities or the entire State, a single governing board should not be empowered to impose its own entertainment standards on all of those locations.

Response: The definition of “harmful to minors” includes many of the same criteria that the United States Supreme Court established in 1973 for defining obscenity (*Miller v California*, 413 US 15). Moreover, local governing boards already make many decisions that could be based on personal judgment, such as whether to grant zoning variances, regulate billboards, or prohibit nude entertainment.

Opposing Argument

Rather than promoting parental decision-making, the bill would take power away from parents. Parents already have the authority to decide that their children may not attend a particular performance. Under the bill, however, if a parent chose to let his or her child attend a concert deemed harmful to minors, the parent either would have to accompany the child or find a person at least 21 to do so. There is a considerable difference between giving parents knowledge about a concert and preventing minors from attending it. In addition, the bill would not give parents any recourse to challenge a local unit’s determination of harmfulness.

Opposing Argument

The bill could have a negative impact on the entertainment industry in Michigan. If a local unit determined that a concert would be harmful to minors, the music venue might have to issue refunds for tickets sold to minors in advance, and probably could not resell those tickets. Nevertheless, the venue still would have to pay the amount agreed to in its contract with the performer. Alternatively, the performer could cancel the concert and all tickets would have to be refunded. In any event, the music venue would suffer an economic hardship. The industry could suffer, as well, if the bill discouraged entertainers from scheduling performances in this State in the first place. Also, the ability of music venues to enforce an age restriction is questionable. Other than

checking thousands of IDs at the door, a venue would have little way to avoid violating the bill and incurring potential criminal penalties. Without this legislation, it currently is in the best interest of a music venue to book performances that will not lead to destruction and liability. If any laws are broken during a concert, the police already can make arrests.

Response: The bill would require a local unit to notify the owner or operator of a music venue within a reasonable time period before the date of the performance. This would give the venue an opportunity to work with the local unit and the performer and agree upon a performance that would not be harmful. Arguably, if the age restrictions would impose an undue economic hardship on the music venue, the timing of the notice would not be reasonable.

Opposing Argument

If a music venue disagreed with a local unit’s determination that a concert would be harmful to minors, resolving the issue would involve the question of whether that determination violated the First Amendment. It would be highly unusual, if not unprecedented, to ask an arbitration panel to decide constitutional issues.

Opposing Argument

The proposed age restrictions would be excessive. If an 18-year-old has the power to vote and can be sent to fight a war, he or she should be allowed to attend any public concert. In addition, the bill does not address the issue of emancipated minors.

Opposing Argument

By putting the burden of determining harmfulness to minors on a local governing board, the bill could expose local units of government to potential lawsuits. If a concert were allowed without age restrictions but turned out to be harmful to minors, litigation could result.

Legislative Analyst: S. Lowe

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: R. Ross

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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.