

# HOUSE BILL No. 5605

February 19, 1998, Introduced by Reps. Baade, Hammerstrom, Goschka, Lowe, Walberg, McBryde, Jansen, Olshove, Harder, Curtis and Voorhees and referred to the Committee on Corrections.

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, 5, and 7 (MCL 722.671, 722.675, and 722.677).

## 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.

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 OR  
14 VERBAL MATERIAL IS DISPLAYED ONLY IN DEVICES THAT PREVENT PUBLIC  
15 VIEW OF THE 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, IF ACCESS BY MINORS IS PROHIBITED, NOTICE OF  
18 THE PROHIBITION IS PROMINENTLY DISPLAYED, AND ACCESS IS MONITORED  
19 TO PREVENT MINORS FROM ENTERING.

20 (iii) AN AREA WITH AT LEAST 75% OF ITS PERIMETER SURROUNDED  
21 BY WALLS OR SOLID, NONTRANSPARENT DIVIDERS THAT ARE SUFFICIENTLY  
22 HIGH TO PREVENT A MINOR IN A NONRESTRICTED AREA FROM SEEING SEXU-  
23 ALLY EXPLICIT VISUAL OR VERBAL MATERIAL WITHIN THE PERIMETER IF  
24 THE POINT OF ACCESS PROVIDES PROMINENT NOTICE THAT ACCESS TO  
25 MINORS IS PROHIBITED.

1       Sec. 5. (1) A person ~~is guilty of distributing obscene~~  
2 ~~matter to a minor if that person does~~ SHALL NOT DO either of the  
3 following:

4       (a) Knowingly ~~disseminates~~ DISSEMINATE to a minor sexually  
5 explicit visual or verbal material that is harmful to minors.

6       (b) Knowingly ~~exhibits~~ EXHIBIT to a minor a sexually  
7 explicit performance that is harmful to minors.

8       (2) A person knowingly disseminates sexually explicit matter  
9 to a minor ~~when~~ IF the person knows both the nature of the  
10 matter and the status of the minor to whom the matter is  
11 disseminated.

12       (3) A person knows the nature of matter if the person either  
13 is aware of ~~the~~ ITS character and content ~~of the matter~~ or  
14 recklessly disregards circumstances suggesting ~~the~~ ITS charac-  
15 ter and content. ~~of the matter.~~

16       (4) A person knows the status of a minor if the person  
17 either is aware that the person to whom the dissemination is made  
18 is under 18 years of age or recklessly disregards a substantial  
19 risk that the person to whom the dissemination is made is under  
20 18 years of age.

21       (5) ~~Distributing obscene matter to a minor~~ A PERSON WHO  
22 VIOLATES SUBSECTION (1) is GUILTY OF a misdemeanor ~~—~~ punishable  
23 by imprisonment for not more than 2 years or a fine of not more  
24 than \$10,000.00, or both. In imposing the fine, ~~authorized for~~  
25 ~~this offense,~~ the court shall consider the scope of the  
26 defendant's commercial activity in ~~distributing obscene~~  
27 DISSEMINATING SEXUALLY EXPLICIT matter to minors.

1       Sec. 7. (1) A person ~~is guilty of displaying obscene~~  
2 ~~matter to a minor if that person~~ WHO possesses managerial  
3 responsibility for a business enterprise selling SEXUALLY  
4 EXPLICIT visual ~~matter which depicts sexual intercourse or sado-~~  
5 ~~masochistic abuse and which is harmful to minors, and that person~~  
6 ~~knowingly permits a minor who is not accompanied by a parent or~~  
7 ~~guardian to examine that matter~~ OR VERBAL MATERIAL SHALL NOT  
8 DISPLAY THAT MATERIAL KNOWING ITS NATURE UNLESS THE PERSON DOES  
9 SO IN A RESTRICTED AREA.

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

15       (2) ~~-(3)-~~ A person knows the nature of the ~~matter~~ MATERIAL  
16 if the person either is aware of ~~the~~ ITS character and content  
17 ~~of the matter~~ or recklessly disregards circumstances suggesting  
18 ~~the~~ ITS character and content. ~~of the matter.~~

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

24       (3) ~~-(5) Displaying obscene matter to a minor~~ A PERSON WHO  
25 VIOLATES SUBSECTION (1) is GUILTY OF a misdemeanor ~~—~~ punishable  
26 by imprisonment for not more than 90 days ~~—~~ or a fine of not  
27 more than \$5,000.00, or both.