

Act No. 33
Public Acts of 1999
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STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 1999

Introduced by Senators Hammerstrom, Shugars, Sikkema, Rogers, Gougeon, Bennett, Jaye, North, McCotter, McManus, Byrum, Emmons, V. Smith, Schuette, Koivisto, Murphy, Steil and Goschka

ENROLLED SENATE BILL No. 117

AN ACT 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 3, 5, 6, and 7 (MCL 722.673, 722.675, 722.676, and 722.677) and by adding section 1a.

The People of the State of Michigan enact:

Sec. 1a. As used in this act:

(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 hardware 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) "Internet" means that term as defined in section 230 of title II of the communications act of 1934, chapter 652, 110 Stat. 137, 47 U.S.C. 230.

Sec. 3. As used in this act:

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

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

Sexually explicit performance includes, but is not limited to, any performance described in this subdivision communicated, transmitted, displayed, or otherwise made available by means of the internet or a computer, computer program, computer system, or computer network.

(c) "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. Sexually explicit verbal material includes, but is not limited to, any verbal material described in this subdivision communicated, transmitted, displayed, or otherwise made available by means of the internet or a computer, computer program, computer system, or computer network.

(d) "Sexually explicit visual material" means a picture, photograph, drawing, sculpture, motion picture film, 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. Sexually explicit visual material includes, but is not limited to, any visual material described in this subdivision communicated, transmitted, displayed, or otherwise made available by means of the internet or a computer, computer program, computer system, or computer network.

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) Except as provided in subsection (6), 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) Except as provided in subsection (6), 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.

(6) Subsections (3) and (4) do not apply to an internet or computer network service provider who in good faith, and without knowledge of the nature of a sexually explicit matter or the status of a minor, provides the medium for disseminating a sexually explicit matter to the minor.

(7) This section does not apply if a person disseminates sexually explicit matter to a minor by means of the internet or a computer network unless 1 or both of the following apply:

(a) The matter is obscene as that term is defined in section 2 of 1984 PA 343, MCL 752.362.

(b) The prosecuting attorney proves that the person disseminated the matter to 1 or more specific minors and knew his or her status as a minor.

(8) A violation or attempted violation of this section involving the internet or a computer, computer program, computer system, or computer network occurs if the violation originates, terminates, or both originates and terminates in this state.

(9) A violation or attempted violation of this section involving the internet or a computer, computer program, computer system, or computer network may be prosecuted in any jurisdiction in which the violation originated or terminated.

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.

(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.

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 visual matter that depicts sexual intercourse or sadomasochistic abuse and is harmful to minors, and that person knowingly permits a minor who is not accompanied by a parent or guardian to examine that matter.

(2) A person knowingly permits a minor to examine 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 examine the matter is under 18 years of age or recklessly disregards a substantial risk that the person who is permitted to examine the matter is under 18 years of age.

(5) Displaying sexually explicit matter to a minor is a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$5,000.00, or both.

(6) This section does not apply if a person displays sexually explicit matter to a minor by means of the internet or a computer network unless 1 or both of the following apply:

(a) The matter is obscene as that term is defined in section 2 of 1984 PA 343, MCL 752.362.

(b) The prosecuting attorney proves that the person displayed the matter to 1 or more specific minors and knew his or her status as a minor.

Enacting section 1. This amendatory act takes effect August 1, 1999.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Jay E. Randall

Clerk of the House of Representatives.

Approved _____

Governor.