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BILL ANALYSIS

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Senate Bill 131 (Substitute S-2 as reported by the Committee of the Whole)
Sponsor: Senator Alan Sanborn
Committee: Judiciary

CONTENT

The bill would create a new act to prescribe criminal penalties for publicly displaying sexually explicit material, which would include recklessly displaying the material in a vehicle so that it could be seen by members of the general public outside the vehicle. A first or second violation would be a civil infraction. The maximum fine would be \$1,500 for a first violation and \$5,000 for a second. A third or subsequent violation would be a misdemeanor punishable by up to 93 days' imprisonment and/or a maximum fine of \$10,000. These provisions would not apply to a radio or television station licensed and regulated by the Federal Communications Commission.

A person would be guilty of the offense if the person, knowing the nature of the material, recklessly displayed sexually explicit visual material in a vehicle on a street, highway, or other place open to the general public or generally accessible to motor vehicles, when the material was visible outside the vehicle to pedestrians or individuals in other vehicles, within the line of sight of an average individual, but not more than 100 feet from the vehicle. The offense would occur only if a member of the general public was, or would be, made to observe the material unwillingly and incapable of taking reasonable action to avoid exposure to it; and the person displaying the material did nothing to stop displaying it upon having reason to know that a member of the general public was, or would be, exposed to the material. A person would be guilty of the offense regardless of whether any individual member of the general public in particular actually viewed the material being displayed, if the displaying occurred under circumstances in which an individual could reasonably be expected to observe the material.

If the section containing the prohibition, or part of it, were determined to be unconstitutional, a person would be responsible or liable for a violation of the proposed act if he or she publicly displayed material in a vehicle and the material were "obscene" as that term is defined in Public Act 343 of 1984, or "harmful to minors" as defined in Public Act 33 of 1978, and the person knew a minor was observing the material or that there was a substantial and imminent likelihood that a minor could reasonably be expected to be unwillingly exposed to the material and the person did nothing to stop displaying it.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be found responsible for or convicted of a violation. Local units would incur the costs of misdemeanor probation or incarceration in a local facility, which vary by county. Public libraries would benefit from penal fine revenue.

Date Completed: 5-5-05

Fiscal Analyst: Bethany Wicksall

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Analysis available @ <http://www.michiganlegislature.org>

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.