

**SUBSTITUTE FOR
SENATE BILL NO. 131**

A bill to prohibit publicly displaying sexually explicit material; and to provide penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Display" means to exhibit, hold up, present, project,
3 show, put or set out to view, or make visible.

4 (b) "Erotic fondling" means touching a person's clothed or
5 unclothed genitals, pubic area, buttocks, or, if the person is
6 female, breasts, for the purpose of sexual gratification or
7 stimulation.

8 (c) "Nudity" means the lewd and lascivious display of the
9 female breasts, human male or female genitals, or pubic area.

10 (d) "Sadomasochistic abuse" means either of the following:

1 (i) Flagellation, or torture, for sexual stimulation or
2 gratification, by or upon a person who is nude or clad only in
3 undergarments or in a revealing or bizarre costume.

4 (ii) The condition of being fettered, bound, or otherwise
5 physically restrained for sexual stimulation or gratification, of a
6 person who is nude or clad only in undergarments or in a revealing
7 or bizarre costume.

8 (e) "Sexual excitement" means the condition of human male or
9 female genitals when in a state of sexual stimulation or arousal.

10 (f) "Sexual intercourse" means intercourse, real or simulated,
11 whether genital-genital, oral-genital, anal-genital, or oral-anal,
12 whether between persons of the same or opposite sex or between a
13 human and an animal.

14 (g) "Vehicle" means that term as it is defined in section 79
15 of the Michigan vehicle code, 1949 PA 300, MCL 257.79.

16 Sec. 2. As used in this act:

17 (a) "Sexually explicit audible material" means a sound
18 recording that contains an explicit and detailed verbal description
19 or aural representation of sexual excitement, erotic fondling,
20 sexual intercourse, or sadomasochistic abuse.

21 (b) "Sexually explicit material" means sexually explicit
22 visual material or sexually explicit visual material and sexually
23 explicit audible material.

24 (c) "Sexually explicit visual material" means a picture,
25 photograph, drawing, sculpture, motion picture film, videotape,
26 compact disc, digital video, or versatile disc or similar form of
27 visual representation through any technological means that depicts

1 nudity, sexual excitement, erotic fondling, sexual intercourse, or
2 sadomasochistic abuse, or a book, magazine, or pamphlet that
3 contains such a photograph, drawing, or other form of visual
4 representation.

5 Sec. 3. (1) A person is guilty of publicly displaying sexually
6 explicit material if that person, knowing the nature of the
7 material, recklessly displays sexually explicit visual material in
8 a vehicle on a street, highway, or other place open to the general
9 public or generally accessible to motor vehicles, including an area
10 designated for the parking of vehicles, when the displaying of that
11 material is visible to members of the general public outside the
12 vehicle, either as pedestrians or as individuals in other vehicles
13 within the line of sight of an average individual, but not more
14 than 100 feet from the vehicle if all of the following conditions
15 apply:

16 (a) A member of the general public is or would be made to
17 unwillingly observe the material.

18 (b) A member of the general public is or would be incapable of
19 taking reasonable action to avoid exposure to the material so that
20 the exposure to the material would constitute more than a remote
21 and fleeting glimpse of the material.

22 (c) The person displaying the material does nothing to stop
23 the displaying of that material upon having reason to know that a
24 member of the general public is or would be exposed to the
25 material.

26 (2) A person knows the nature of material if the person either
27 is aware of its character and content or recklessly disregards

1 circumstances suggesting its character and content.

2 (3) A person is guilty of publicly displaying sexually
3 explicit material under subsection (1) whether or not any
4 individual member of the public in particular actually views the
5 material being displayed, if the displaying of the material occurs
6 under circumstances in which an individual might reasonably be
7 expected to observe the material.

8 (4) A person who violates this act is responsible or guilty as
9 follows:

10 (a) For a first violation, the person is responsible for a
11 civil infraction and shall be ordered to pay a fine of not more
12 than \$1,500.00.

13 (b) For a second violation, the person is responsible for a
14 civil infraction and shall be ordered to pay a fine of not more
15 than \$5,000.00.

16 (c) For a third or subsequent violation, the person is guilty
17 of a misdemeanor punishable by imprisonment for not more than 93
18 days or a fine of not more than \$10,000.00, or both.

19 Sec. 4. If section 3 or part of section 3 is determined by the
20 court to be unconstitutional, a person is responsible or liable, as
21 appropriate, for a violation of this act if the person, in a manner
22 described in section 3, publicly displays material to which 1 or
23 both of the following apply:

24 (a) The material is obscene as that term is defined in section
25 2 of 1984 PA 343, MCL 752.362.

26 (b) The material is harmful to minors, as defined in section 4
27 of 1978 PA 33, MCL 722.674, and the person knows a minor is

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1 observing the material or that there is a substantial and imminent
2 likelihood that a minor could reasonably be expected to be
3 unwillingly exposed to the material and the person does nothing to
4 stop the displaying of the material. A person knows the status of
5 a minor if the person either is aware that the person who views the
6 material is less than 18 years of age or recklessly disregards a
7 substantial risk that a person who is able to view the material is
8 under 18 years of age.

<<Sec. 5. Section 3 does not apply to a radio station or
television station licensed and regulated by the federal communications
commission.>>

9 Enacting section 1. This amendatory act takes effect 90 days
10 after it is enacted into law.