

# HOUSE BILL No. 6150

September 22, 1998, Introduced by Rep. Law and referred to the Committee on Advanced Technology and Computer Development.

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 and 5 (MCL 722.671 and 722.675).

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. As used in this act:

2       (a) "Exhibit" means to do 1 or more of the following:

3       (i) ~~(i)~~ Present a performance.

4       (ii) ~~(ii)~~ Sell, give, or offer to agree to sell or give a  
5 ticket to a performance.

6       (iii) ~~(iii)~~ Admit a minor to premises where a performance  
7 is being presented or is about to be presented.

1 (b) "Disseminate" means to sell, lend, give, exhibit, or  
2 show, OR TRANSMIT BY COMPUTER, or to offer or agree to ~~do the~~  
3 ~~same~~ SELL, LEND, GIVE, EXHIBIT, OR SHOW, OR TRANSMIT BY  
4 COMPUTER.

5 (c) "Minor" means a person under 18 years of age.

6 Sec. 5. (1) A person is guilty of distributing obscene  
7 matter to a minor if that person does either of the following:

8 (a) Knowingly disseminates to a minor sexually explicit  
9 visual or verbal material that is harmful to minors.

10 (b) Knowingly exhibits to a minor a sexually explicit per-  
11 formance that is harmful to minors.

12 (2) A person knowingly disseminates sexually explicit matter  
13 to a minor when the person knows both the nature of the matter  
14 and the status of the minor to whom the matter is disseminated.

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

19 (4) A person knows the status of a minor if the person  
20 either is aware that the person to whom the dissemination is made  
21 is under 18 years of age or recklessly disregards a substantial  
22 risk that the person to whom the dissemination is made is under  
23 18 years of age.

24 (5) ~~Distributing~~ EXCEPT AS PROVIDED IN SUBSECTION (6),  
25 DISTRIBUTING obscene matter to a minor is a misdemeanor ~~—,~~ pun-  
26 ishable by imprisonment for not more than 2 years or a fine of  
27 not more than \$10,000.00, or both.

1           (6) A PERSON WHO DISTRIBUTES OBSCENE MATTER TO A MINOR BY A  
2 COMPUTER TRANSMISSION TO INVITE OR INDUCE THAT MINOR OR ANY OTHER  
3 MINOR TO ENGAGE IN OR VIEW SEXUAL INTERCOURSE, SANDOMASOCHISTIC  
4 ABUSE, OR EROTIC FONDLING IS GUILTY OF A FELONY PUNISHABLE BY  
5 IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A FINE OF NOT MORE THAN  
6 \$20,000.00, OR BOTH. THIS SUBSECTION DOES NOT PROHIBIT THE  
7 PERSON FROM BEING CHARGED WITH, CONVICTED OF, OR PUNISHED FOR ANY  
8 OTHER VIOLATION OF LAW ARISING OUT OF THE SAME TRANSACTION AS THE  
9 VIOLATION OF THIS SUBSECTION. A TERM OF IMPRISONMENT IMPOSED FOR  
10 VIOLATING THIS SUBSECTION MAY RUN CONSECUTIVELY TO ANY TERM OF  
11 IMPRISONMENT IMPOSED FOR ANY OTHER VIOLATION ARISING FROM THE  
12 SAME TRANSACTION. THIS SUBSECTION DOES NOT APPLY IF ANY OF THE  
13 FOLLOWING APPLY:

14           (A) THE PERSON MADE A REASONABLE EFFORT TO DETERMINE THE  
15 TRUE AGE OF THE MINOR AND WAS UNABLE TO DO SO AS A RESULT OF  
16 ACTIONS TAKEN BY THE MINOR.

17           (B) THE PERSON TOOK REASONABLE, EFFECTIVE, AND APPROPRIATE  
18 ACTIONS UNDER THE CIRCUMSTANCES TO RESTRICT OR PREVENT ACCESS TO  
19 THE TRANSMISSION BY MINORS.

20           (C) THE PERSON RESTRICTED ACCESS TO THE TRANSMISSION BY  
21 REQUIRING USE OF A VERIFIED CREDIT CARD, DEBIT ACCOUNT, ADULT  
22 ACCESS CODE, OR ADULT PERSONAL IDENTIFICATION NUMBER.

23           (D) THE DEFENDANT IN GOOD FAITH ESTABLISHED A MECHANISM TO  
24 ALLOW THE TRANSMISSION TO BE AUTOMATICALLY BLOCKED OR SCREENED BY  
25 SOFTWARE OR OTHER CAPABILITIES REASONABLY AVAILABLE TO RESPONSIB-  
26 BLE ADULTS WISHING TO BLOCK THE TRANSMISSION AND DID NOT SOLICIT  
27 MINORS TO CIRCUMVENT THE BLOCKING AND DID NOT NOT SOLICIT MINORS

1 NOT SUBJECT TO THOSE BLOCKING CAPABILITIES TO ACCESS THE  
2 TRANSMISSION.

3 (7) In imposing the fine authorized ~~for this offense~~ UNDER  
4 SUBSECTIONS (5) AND (6), the court shall consider the scope of  
5 the defendant's commercial activity in distributing obscene  
6 matter to minors.