

SUBSTITUTE FOR

SENATE BILL NO. 416

(As amended, May 12, 2005)

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 the title and sections 1, 2, and 4 (MCL 722.671, 722.672, and 722.674), section 1 as amended by 2003

PA 192, and by adding part II and a heading for part I; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

TITLE

2

An act to prohibit the dissemination, ~~exhibiting, or~~

3

~~displaying~~ **EXHIBITION, OR DISPLAY** of certain sexually explicit

1 matter, **ULTRA-VIOLENT EXPLICIT MATTER, AND ULTRA-VIOLENT EXPLICIT**
2 **VIDEO GAMES** to minors; to prohibit certain misrepresentations
3 facilitating the dissemination of sexually explicit matter **AND**
4 **ULTRA-VIOLENT EXPLICIT MATTER** to minors; to provide penalties; to
5 provide for declaratory judgments and injunctive relief in certain
6 instances; to impose certain duties upon prosecuting attorneys and
7 the circuit court; to preempt local units of government from
8 proscribing certain conduct; and to repeal ~~certain~~ acts and parts
9 of acts.

10 **PART I**

11 **SEXUALLY EXPLICIT MATTER**

12 Sec. 1. As used in this ~~act~~ **PART**:

13 (a) "Display" means to put or set out to view or to make
14 visible.

15 (b) "Disseminate" means to sell, lend, give, exhibit, show, or
16 allow to examine or to offer or agree to do the same.

17 (c) "Exhibit" means to do 1 or more of the following:

18 (i) Present a performance.

19 (ii) Sell, give, or offer to agree to sell or give a ticket to
20 a performance.

21 (iii) Admit a minor to premises where a performance is being
22 presented or is about to be presented.

23 (d) "Minor" means a person less than 18 years of age.

24 (e) "Restricted area" means any of the following:

25 (i) An area where sexually explicit matter is displayed only in
26 a manner that prevents public view of the lower 2/3 of the matter's
27 cover or exterior.

1 (ii) A building, or a distinct and enclosed area or room within
2 a building, if access by minors is prohibited, notice of the
3 prohibition is prominently displayed, and access is monitored to
4 prevent minors from entering.

5 (iii) An area with at least 75% of its perimeter surrounded by
6 walls or solid, nontransparent dividers that are sufficiently high
7 to prevent a minor in a nonrestricted area from viewing sexually
8 explicit matter within the perimeter if the point of access
9 provides prominent notice that access to minors is prohibited.

10 Sec. 2. As used in this ~~act~~ **PART**:

11 (a) "Nudity" means the lewd display of the human male or
12 female genitals or pubic area.

13 (b) "Sexual excitement" means the condition of human male or
14 female genitals when in a state of sexual stimulation or arousal.

15 (c) "Erotic fondling" means touching a person's clothed or
16 unclothed genitals, pubic area, buttocks, or, if the person is
17 female, breasts, for the purpose of sexual gratification or
18 stimulation.

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

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

23 (ii) The condition of being fettered, bound, or otherwise
24 physically restrained for sexual stimulation or gratification, of a
25 person who is nude or clad only in undergarments or in a revealing
26 or bizarre costume.

27 (e) "Sexual intercourse" means intercourse, real or simulated,

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1 whether genital-genital, oral-genital, anal-genital, or oral-anal,
2 whether between persons of the same or opposite sex or between a
3 human and an animal.

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26 Sec. 4. As used in this ~~act~~ **PART**:

27 (a) "Harmful to minors" means sexually explicit matter ~~which~~

1 **THAT** meets all of the following criteria:

2 (i) Considered as a whole, it appeals to the prurient interest
3 of minors as determined by contemporary local community standards.

4 (ii) It is patently offensive to contemporary local community
5 standards of adults as to what is suitable for minors.

6 (iii) Considered as a whole, it lacks serious literary,
7 artistic, political, educational, and scientific value for minors.

8 (b) "Local community" means the county in which the matter was
9 disseminated.

10 (c) "Prurient interest" means a lustful interest in sexual
11 stimulation or gratification. In determining whether sexually
12 explicit matter appeals to the prurient interest, the matter shall
13 be judged with reference to average 17-year-old minors. If it
14 appears from the character of the matter that it is designed to
15 appeal to the prurient interest of a particular group of persons,
16 including, but not limited to, homosexuals or sadomasochists, then
17 the matter shall be judged with reference to average 17-year-old
18 minors within the particular group for which it appears to be
19 designed.

20 **PART II**

21 **ULTRA-VIOLENT EXPLICIT MATTER**

22 **SEC. 15. THE LEGISLATURE FINDS ALL OF THE FOLLOWING:**

23 (A) MINORS WHO PLAY OR WATCH ULTRA-VIOLENT EXPLICIT MATTER ARE
24 MORE LIKELY TO EXHIBIT VIOLENT, ASOCIAL, OR AGGRESSIVE BEHAVIOR,
25 HAVE FEELINGS OF AGGRESSION, AND EXPERIENCE A REDUCTION OF ACTIVITY
26 IN THE FRONTAL LOBES OF THE BRAIN, WHICH ARE RESPONSIBLE FOR
27 CONTROLLING BEHAVIOR.

1 (B) WHILE THE VIDEO GAME AND MOTION PICTURE INDUSTRIES HAVE
2 ADOPTED THEIR OWN VOLUNTARY STANDARDS DESCRIBING WHICH GAMES ARE
3 APPROPRIATE FOR MINORS, THOSE STANDARDS ARE NOT ADEQUATELY
4 ENFORCED.

5 (C) MINORS ARE CAPABLE OF PURCHASING AND DO PURCHASE VIOLENT
6 MOVIES AND VIDEO GAMES.

7 (D) THE STATE HAS A COMPELLING INTEREST IN ASSISTING PARENTS
8 IN PROTECTING THEIR MINOR CHILDREN FROM ULTRA-VIOLENT EXPLICIT
9 MATTER.

10 (E) THE STATE HAS A COMPELLING INTEREST IN PREVENTING VIOLENT,
11 AGGRESSIVE, AND ASOCIAL BEHAVIOR FROM MANIFESTING ITSELF IN MINORS.

12 (F) THE STATE HAS A COMPELLING INTEREST IN PREVENTING
13 PSYCHOLOGICAL HARM TO MINORS WHO PLAY OR VIEW ULTRA-VIOLENT
14 EXPLICIT MATTER.

15 (G) THE STATE HAS A COMPELLING INTEREST IN ELIMINATING ANY
16 SOCIETAL FACTORS THAT MAY INHIBIT THE PHYSIOLOGICAL AND
17 NEUROLOGICAL DEVELOPMENT OF ITS YOUTH.

18 (H) THE STATE HAS A COMPELLING INTEREST IN FACILITATING THE
19 MATURATION OF MICHIGAN CHILDREN INTO LAW-ABIDING, PRODUCTIVE ADULT
20 CITIZENS.

21 SEC. 16. AS USED IN THIS PART:

22 (A) "COMPUTER" MEANS ANY CONNECTED, DIRECTLY INTEROPERABLE OR
23 INTERACTIVE DEVICE, EQUIPMENT, OR FACILITY THAT USES A COMPUTER
24 PROGRAM OR OTHER INSTRUCTIONS TO PERFORM SPECIFIC OPERATIONS
25 INCLUDING LOGICAL, ARITHMETIC, OR MEMORY FUNCTIONS WITH OR ON
26 COMPUTER DATA OR A COMPUTER PROGRAM AND THAT CAN STORE, RETRIEVE,
27 ALTER, OR COMMUNICATE THE RESULTS OF THE OPERATIONS TO A PERSON,

1 COMPUTER PROGRAM, COMPUTER, COMPUTER SYSTEM, OR COMPUTER NETWORK.

2 (B) "COMPUTER NETWORK" MEANS THE INTERCONNECTION OF HARDWARE
3 OR WIRELESS COMMUNICATION LINES WITH A COMPUTER THROUGH REMOTE
4 TERMINALS, OR A COMPLEX CONSISTING OF 2 OR MORE INTERCONNECTED
5 COMPUTERS.

6 (C) "COMPUTER PROGRAM" MEANS A SERIES OF INTERNAL OR EXTERNAL
7 INSTRUCTIONS COMMUNICATED IN A FORM ACCEPTABLE TO A COMPUTER THAT
8 DIRECTS THE FUNCTIONING OF A COMPUTER, COMPUTER SYSTEM, OR COMPUTER
9 NETWORK IN A MANNER DESIGNED TO PROVIDE OR PRODUCE PRODUCTS OR
10 RESULTS FROM THE COMPUTER, COMPUTER SYSTEM, OR COMPUTER NETWORK.

11 (D) "COMPUTER SYSTEM" MEANS A SET OF RELATED, CONNECTED OR
12 UNCONNECTED, COMPUTER EQUIPMENT, DEVICES, SOFTWARE, OR HARDWARE.

13 (E) "DEVICE" INCLUDES, BUT IS NOT LIMITED TO, AN ELECTRONIC,
14 MAGNETIC, ELECTROCHEMICAL, BIOCHEMICAL, HYDRAULIC, OPTICAL, OR
15 ORGANIC OBJECT THAT PERFORMS INPUT, OUTPUT, OR STORAGE FUNCTIONS BY
16 THE MANIPULATION OF ELECTRONIC, MAGNETIC, OR OTHER IMPULSES.

17 (F) "DISPLAY" MEANS TO PUT OR SET OUT TO VIEW OR MAKE VISIBLE.

18 (G) "DISSEMINATE" MEANS TO SELL, LEND, GIVE, EXHIBIT, SHOW, OR
19 ALLOW TO EXAMINE OR TO OFFER OR AGREE TO DO THE SAME.

20 (H) "EXHIBIT" MEANS TO DO 1 OR MORE OF THE FOLLOWING:

21 (i) PRESENT A PERFORMANCE.

22 (ii) SELL, GIVE, OR OFFER TO AGREE TO SELL OR GIVE A TICKET TO
23 A PERFORMANCE.

24 (iii) ADMIT A MINOR TO PREMISES WHERE A PERFORMANCE IS BEING
25 PRESENTED OR IS ABOUT TO BE PRESENTED.

26 (I) "EXTREME AND LOATHSOME VIOLENCE" MEANS AGGRESSIVE ACTS OF
27 REAL OR SIMULATED REALISTIC GRAPHIC DEPICTIONS OF PHYSICAL INJURIES

1 OR PHYSICAL VIOLENCE AGAINST PARTIES WHO REALISTICALLY APPEAR TO BE
2 HUMAN BEINGS, INCLUDING ACTIONS CAUSING DEATH, INFLECTING CRUELTY,
3 DISMEMBERMENT, DECAPITATION, MAIMING, DISFIGUREMENT, OR OTHER
4 MUTILATION OF BODY PARTS, MURDER, CRIMINAL SEXUAL CONDUCT, OR
5 TORTURE IN A MANNER THAT IS ESPECIALLY HEINOUS OR ATROCIOUS.

6 (J) "HARMFUL TO MINORS" MEANS HAVING ALL OF THE FOLLOWING
7 CHARACTERISTICS:

8 (i) CONSIDERED AS A WHOLE, APPEALS TO THE MORBID INTEREST IN
9 ASOCIAL, AGGRESSIVE BEHAVIOR OF MINORS AS DETERMINED BY
10 CONTEMPORARY LOCAL COMMUNITY STANDARDS.

11 (ii) IS PATENTLY OFFENSIVE TO CONTEMPORARY LOCAL COMMUNITY
12 STANDARDS OF ADULTS AS TO WHAT IS SUITABLE FOR MINORS.

13 (iii) CONSIDERED AS A WHOLE, LACKS SERIOUS LITERARY, ARTISTIC,
14 POLITICAL, EDUCATIONAL, OR SCIENTIFIC VALUE FOR MINORS.

15 (K) "LOCAL COMMUNITY" MEANS THE COUNTY IN WHICH THE MATTER WAS
16 DISSEMINATED.

17 (L) "MINOR" MEANS A PERSON LESS THAN 17 YEARS OF AGE.

18 (M) "MORBID INTEREST IN ASOCIAL, AGGRESSIVE BEHAVIOR" MEANS A
19 MORBID INTEREST IN COMMITTING UNCONTROLLED AGGRESSION AGAINST AN
20 INDIVIDUAL. IN DETERMINING WHETHER ULTRA-VIOLENT EXPLICIT MATTER
21 APPEALS TO THIS INTEREST, THE MATTER SHALL BE JUDGED WITH REFERENCE
22 TO AVERAGE 16-YEAR-OLD MINORS. IF IT APPEARS FROM THE CHARACTER OF
23 THE MATTER THAT IT IS DESIGNED TO APPEAL TO THIS INTEREST OF A
24 PARTICULAR GROUP OF PERSONS, THEN THE MATTER SHALL BE JUDGED WITH
25 REFERENCE TO AVERAGE 16-YEAR-OLD MINORS WITHIN THE PARTICULAR GROUP
26 FOR WHICH IT APPEARS TO BE DESIGNED.

27 (N) "RESTRICTED AREA" MEANS ANY OF THE FOLLOWING:

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1 (i) AN AREA WHERE ULTRA-VIOLENT EXPLICIT MATTER IS DISPLAYED
2 ONLY IN A MANNER THAT PREVENTS PUBLIC VIEW OF THE LOWER 2/3 OF THE
3 MATTER'S COVER OR EXTERIOR, IF THE COVER OR EXTERIOR ITSELF
4 CONTAINS ULTRA-VIOLENT EXPLICIT VISUAL MATTTTER.

5 (ii) A BUILDING, OR A DISTINCT AND ENCLOSED AREA OR ROOM WITHIN
6 A BUILDING, IF ACCESS BY MINORS IS PROHIBITED, NOTICE OF THE
7 PROHIBITION IS PROMINENTLY DISPLAYED, AND ACCESS IS MONITORED TO
8 PREVENT MINORS FROM ENTERING.

9 (iii) AN AREA WITH AT LEAST 75% OF ITS PERIMETER SURROUNDED BY
10 WALLS OR SOLID, NONTRANSPARENT DIVIDERS THAT ARE SUFFICIENTLY HIGH
11 TO PREVENT A MINOR IN A NONRESTRICTED AREA FROM VIEWING ULTRA-
12 VIOLENT EXPLICIT MATTER WITHIN THE PERIMETER IF THE POINT OF ACCESS
13 PROVIDES PROMINENT NOTICE THAT ACCESS TO MINORS IS PROHIBITED.

14 (O) "ULTRA-VIOLENT EXPLICIT MATTER" MEANS ULTRA-VIOLENT
15 EXPLICIT VISUAL MATTER, ULTRA-VIOLENT EXPLICIT VIDEO GAME, OR AN
16 ULTRA-VIOLENT EXPLICIT PERFORMANCE.

17 (P) "ULTRA-VIOLENT EXPLICIT PERFORMANCE" MEANS A MOTION
18 PICTURE, EXHIBITION, SHOW, REPRESENTATION, OR OTHER PRESENTATION
19 THAT, IN WHOLE OR IN PART, CONTINUALLY AND REPETITIVELY DEPICTS
20 EXTREME AND LOATHSOME VIOLENCE.

21 (Q) "ULTRA-VIOLENT EXPLICIT VIDEO GAME" MEANS A VIDEO GAME
22 THAT CONTINUALLY AND REPETITIVELY DEPICTS EXTREME AND LOATHSOME
23 VIOLENCE.

24 (R) "ULTRA-VIOLENT EXPLICIT VISUAL MATTER" MEANS A PICTURE,
25 PHOTOGRAPH, DRAWING, <<OR>> SCULPTURE, <<THAT DEPICTS EXTREME AND
LOATHSOME VIOLENCE, OR A>> MOTION PICTURE FILM, OR SIMILAR
26 VISUAL REPRESENTATION THAT CONTINUALLY AND REPETITIVELY DEPICTS
27 EXTREME AND LOATHSOME VIOLENCE, OR A BOOK, MAGAZINE, OR PAMPHLET

1 THAT CONTAINS SUCH VISUAL REPRESENTATIONS. AN UNDEVELOPED
2 PHOTOGRAPH, MOLD, OR SIMILAR VISUAL MATTER MAY BE ULTRA-VIOLENT
3 EXPLICIT MATTER EVEN IF PROCESSING OR OTHER ACTS ARE REQUIRED TO
4 MAKE ITS ULTRA-VIOLENT EXPLICIT CONTENT APPARENT.

5 (S) "VIDEO GAME" MEANS A COMPUTER OR OTHER DEVICE OR PROGRAM
6 THAT STORES OR RECEIVES DATA OR INSTRUCTIONS GENERATED BY A PERSON
7 USING THE DEVICE OR PROGRAM AND, BY PROCESSING THE DATA OR
8 INSTRUCTIONS, CREATES AN INTERACTIVE GAME CAPABLE OF BEING PLAYED,
9 VIEWED, OR OTHERWISE EXPERIENCED BY AN INDIVIDUAL.

10 SEC. 17. (1) A PERSON SHALL NOT KNOWINGLY DISSEMINATE TO A
11 MINOR ULTRA-VIOLENT EXPLICIT VISUAL MATTER THAT IS HARMFUL TO
12 MINORS OR KNOWINGLY EXHIBIT TO A MINOR AN ULTRA-VIOLENT EXPLICIT
13 PERFORMANCE THAT IS HARMFUL TO MINORS. EXCEPT AS PROVIDED IN
14 SUBSECTIONS (2) AND (3), A PERSON WHO VIOLATES THIS SUBSECTION IS
15 RESPONSIBLE FOR A CIVIL INFRACTION WITH A FINE OF NOT MORE THAN
16 \$5,000.00.

17 (2) A PERSON WHO VIOLATES SUBSECTION (1) AND WHO HAS 1 PRIOR
18 CONVICTION OF THIS SECTION OR SECTION 18 IS GUILTY OF A MISDEMEANOR
19 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF
20 NOT MORE THAN \$15,000.00, OR BOTH.

21 (3) A PERSON WHO VIOLATES SUBSECTION (1) AND WHO HAS 2 OR MORE
22 PRIOR CONVICTIONS OF THIS SECTION OR SECTION 18 IS GUILTY OF A
23 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 2 YEARS OR A
24 FINE OF NOT MORE THAN \$40,000.00, OR BOTH. IN IMPOSING A FINE
25 UNDER THIS SUBSECTION, THE COURT SHALL CONSIDER THE SCOPE OF THE
26 DEFENDANT'S COMMERCIAL ACTIVITY IN DISSEMINATING ULTRA-VIOLENT
27 EXPLICIT MATTER OR SEXUALLY EXPLICIT MATTER TO MINORS.

1 SEC. 18. (1) A PERSON SHALL NOT KNOWINGLY DISSEMINATE TO A
2 MINOR AN ULTRA-VIOLENT EXPLICIT VIDEO GAME THAT IS HARMFUL TO
3 MINORS. EXCEPT AS PROVIDED IN SUBSECTIONS (2) AND (3), A PERSON WHO
4 VIOLATES THIS SUBSECTION IS RESPONSIBLE FOR A CIVIL INFRACTION WITH
5 A FINE OF NOT MORE THAN \$5,000.00.

6 (2) A PERSON WHO VIOLATES SUBSECTION (1) AND WHO HAS 1 PRIOR
7 CONVICTION OF THIS SECTION OR SECTION 17 IS GUILTY OF A MISDEMEANOR
8 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF
9 NOT MORE THAN \$15,000.00, OR BOTH.

10 (3) A PERSON WHO VIOLATES SUBSECTION (1) AND WHO HAS 2 OR MORE
11 PRIOR CONVICTIONS OF THIS SECTION OR SECTION 17 IS GUILTY OF A
12 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 2 YEARS OR A
13 FINE OF NOT MORE THAN \$40,000.00, OR BOTH. IN IMPOSING A FINE
14 UNDER THIS SUBSECTION, THE COURT SHALL CONSIDER THE SCOPE OF THE
15 DEFENDANT'S COMMERCIAL ACTIVITY IN DISSEMINATING ULTRA-VIOLENT
16 EXPLICIT MATTER OR SEXUALLY EXPLICIT MATTER TO MINORS.

17 SEC. 19. SECTIONS 17 AND 18 DO NOT APPLY TO THE DISSEMINATION
18 OF ULTRA-VIOLENT EXPLICIT MATTER TO A MINOR BY A PARENT OR GUARDIAN
19 WHO DISSEMINATES ULTRA-VIOLENT EXPLICIT MATTER TO HIS OR HER CHILD
20 OR WARD OR ANY OTHER PERSON WHO DISSEMINATES ULTRA-VIOLENT EXPLICIT
21 MATTER FOR A LEGITIMATE MEDICAL, SCIENTIFIC, GOVERNMENTAL, OR
22 JUDICIAL PURPOSE.

23 SEC. 20. (1) A PERSON SHALL NOT KNOWINGLY MAKE A FALSE
24 REPRESENTATION THAT HE OR SHE IS THE PARENT OR GUARDIAN OF A MINOR,
25 OR THAT A MINOR IS 17 YEARS OF AGE OR OLDER, WITH THE INTENT TO
26 FACILITATE THE DISSEMINATION TO THE MINOR OF ULTRA-VIOLENT EXPLICIT
27 MATTER THAT IS HARMFUL TO MINORS. A PERSON KNOWINGLY MAKES A FALSE

1 REPRESENTATION AS TO THE AGE OF A MINOR OR AS TO THE STATUS OF
2 BEING THE PARENT OR GUARDIAN OF A MINOR IF THE PERSON EITHER IS
3 AWARE THAT THE REPRESENTATION IS FALSE OR RECKLESSLY DISREGARDS A
4 SUBSTANTIAL RISK THAT THE REPRESENTATION IS FALSE.

5 (2) A PERSON WHO VIOLATES SUBSECTION (1) IS GUILTY OF A
6 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR
7 A FINE OF NOT MORE THAN \$15,000.00, OR BOTH.

8 SEC. 21. A PERSON WHO POSSESSES MANAGERIAL RESPONSIBILITY FOR
9 A BUSINESS ENTERPRISE RENTING OR SELLING ULTRA-VIOLENT EXPLICIT
10 VISUAL MATTER THAT IS HARMFUL TO MINORS OR AN ULTRA-VIOLENT
11 EXPLICIT PERFORMANCE THAT IS HARMFUL TO MINORS SHALL NOT KNOWINGLY
12 PERMIT A MINOR WHO IS NOT ACCOMPANIED BY A PARENT OR GUARDIAN TO
13 VIEW THAT ULTRA-VIOLENT EXPLICIT VISUAL MATTER OR ULTRA-VIOLENT
14 EXPLICIT PERFORMANCE OR, EXCEPT IN A RESTRICTED AREA, KNOWINGLY
15 DISPLAY THAT ULTRA-VIOLENT EXPLICIT VISUAL MATTER OR ULTRA-VIOLENT
16 EXPLICIT PERFORMANCE. A PERSON WHO VIOLATES THIS SECTION IS GUILTY
17 OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93
18 DAYS OR A FINE OF NOT MORE THAN \$25,000.00, OR BOTH.

19 SEC. 22. A PERSON WHO POSSESSES MANAGERIAL RESPONSIBILITY FOR
20 A BUSINESS ENTERPRISE RENTING OR SELLING ULTRA-VIOLENT EXPLICIT
21 VIDEO GAMES THAT ARE HARMFUL TO MINORS SHALL NOT KNOWINGLY PERMIT A
22 MINOR WHO IS NOT ACCOMPANIED BY A PARENT OR GUARDIAN TO PLAY OR
23 VIEW THE PLAYING OF AN ULTRA-VIOLENT EXPLICIT VIDEO GAME THAT IS
24 HARMFUL TO MINORS OR, EXCEPT IN A RESTRICTED AREA, KNOWINGLY PERMIT
25 A MINOR TO PLAY OR VIEW THE PLAYING OF AN ULTRA-VIOLENT EXPLICIT
26 VIDEO GAME THAT IS HARMFUL TO MINORS. A PERSON WHO VIOLATES THIS
27 SECTION IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR

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1 NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN \$25,000.00, OR
2 BOTH.

3 SEC. 23. (1) A PERSON KNOWINGLY DISSEMINATES ULTRA-VIOLENT
4 EXPLICIT MATTER TO A MINOR IF THE PERSON KNOWS BOTH THE NATURE OF
5 THE MATTER AND THE STATUS OF THE MINOR TO WHOM THE MATTER IS
6 DISSEMINATED.

7 (2) A PERSON KNOWS THE NATURE OF THE MATTER IF THE PERSON
8 EITHER IS AWARE OF ITS CHARACTER AND CONTENT OR RECKLESSLY
9 DISREGARDS CIRCUMSTANCES SUGGESTING ITS CHARACTER AND CONTENT.

10 (3) A PERSON KNOWS THE STATUS OF A MINOR IF THE PERSON EITHER
11 IS AWARE THAT THE PERSON TO WHOM THE DISSEMINATION IS MADE IS A
12 MINOR OR RECKLESSLY DISREGARDS A SUBSTANTIAL RISK THAT THE PERSON
13 TO WHOM THE DISSEMINATION IS MADE IS A MINOR.

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<<SEC. 24.>> A CONVICTION OR SENTENCE IMPOSED FOR A VIOLATION OF THIS PART DOES NOT PRECLUDE A CONVICTION OR SENTENCE FOR A VIOLATION OF ANY OTHER LAW OF THIS STATE ARISING FROM THE SAME TRANSACTION.

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<<SEC. 25.>> (1) IT IS AN AFFIRMATIVE DEFENSE TO A CHARGE UNDER THIS PART THAT THE PERSON ACTED IN GOOD FAITH. EXCEPT AS PROVIDED IN SUBSECTION (2), GOOD FAITH EXISTS IF AT THE TIME THE CHARGED OFFENSE OCCURS ALL OF THE FOLLOWING CONDITIONS ARE SATISFIED:

(A) THE MINOR SHOWS THE PERSON IDENTIFICATION THAT APPEARS TO BE VALID AND THAT CONTAINS A PHOTOGRAPH AND A DATE OF BIRTH PURPORTING TO SHOW THAT THE MINOR IS 17 YEARS OF AGE OR OLDER<<, OR THE SERVICE TERMS OF THE INTERNET PROVIDER OF A SELLER OR RENTAL ENTERPRISE THAT SELLS OR RENTS ULTRA-VIOLENT EXPLICIT MATTER OVER THE INTERNET REQUIRE A PURCHASER OR RENTER TO BE 17 YEARS OF AGE OR OLDER IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

(i) THE ULTRA-VIOLENT EXPLICIT MATTER IS PURCHASED OR RENTED OVER THE INTERNET.

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(ii) THE ULTRA-VIOLENT EXPLICIT MATTER IS SENT TO THE PURCHASER'S OR RENTER'S HOME OR PLACE OF RESIDENCE <<OR OTHERWISE MADE DIRECTLY AVAILABLE THROUGH THE INTERNET TO THE PURCHASER OR RENTER>>.

(iii) THE PURCHASER OR RENTER OF THE ULTRA-VIOLENT EXPLICIT MATTER USES A CREDIT CARD TO PURCHASE OR RENT THE ULTRA-VIOLENT EXPLICIT MATTER>>.

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1 (B) THE PERSON DOES NOT HAVE INDEPENDENT KNOWLEDGE THAT THE
2 MINOR IS UNDER 17 YEARS OF AGE.

3 (C) RELYING UPON INFORMATION DESCRIBED IN SUBDIVISIONS (A) AND
4 (B), THE PERSON COMPLIES WITH A RATING SYSTEM ESTABLISHED BY THE
5 PERTINENT ENTERTAINMENT INDUSTRY THAT DOES NOT CONFLICT WITH THIS
6 PART, INCLUDING, BUT NOT LIMITED TO, THE RATING SYSTEM FOR VIDEO
7 GAMES CREATED BY THE ENTERTAINMENT SOFTWARE RATING BOARD OR THE
8 RATING SYSTEM FOR MOTION PICTURES CREATED BY THE MOTION PICTURE
9 ASSOCIATION OF AMERICA.

10 (2) IF THE PERSON POSSESSES MANAGERIAL RESPONSIBILITY FOR A
11 BUSINESS ENTERPRISE, GOOD FAITH EXISTS IF AT THE TIME THE CHARGED
12 OFFENSE OCCURS THE BUSINESS ENTERPRISE SATISFIES ALL OF THE
13 FOLLOWING CONDITIONS:

14 (A) THE BUSINESS ENTERPRISE HAS IN EXISTENCE A POLICY THAT ITS
15 EMPLOYEES ARE REQUIRED TO COMPLY WITH A RATING SYSTEM ESTABLISHED
16 BY THE PERTINENT ENTERTAINMENT INDUSTRY THAT DOES NOT CONFLICT WITH
17 THIS PART, INCLUDING, BUT NOT LIMITED TO, THE RATING SYSTEM FOR
18 VIDEO GAMES CREATED BY THE ENTERTAINMENT SOFTWARE RATING BOARD OR
19 THE RATING SYSTEM FOR MOTION PICTURES CREATED BY THE MOTION PICTURE
20 ASSOCIATION OF AMERICA.

21 (B) THE BUSINESS ENTERPRISE TRAINS ITS EMPLOYEES TO FOLLOW THE
22 POLICY DESCRIBED IN SUBDIVISION (A).

23 (C) THE BUSINESS ENTERPRISE ENFORCES THE POLICY DESCRIBED IN
24 SUBDIVISION (A).

25 <<SEC. 26.>> THIS PART DOES NOT APPLY TO <<ANY OF THE FOLLOWING:

26 (A) A MEDIUM OF COMMUNICATION TO THE EXTENT REGULATED BY THE
FEDERAL COMMUNICATIONS COMMISSION.

(B) AN INTERNET SERVICE PROVIDER OR COMPUTER NETWORK SERVICE
PROVIDER WHO IN GOOD FAITH, AND WITHOUT KNOWLEDGE OF THE CONTENT OF THE
MATTER BEING COMMUNICATED, PROVIDES THE MEDIUM FOR COMMUNICATION OF THE
MATTER. AS USED IN THIS SECTION, "INTERNET SERVICE PROVIDER" MEANS A
PERSON WHO PROVIDES A SERVICE THAT ENABLES USERS TO ACCESS CONTENT,
INFORMATION, ELECTRONIC MAIL, OR OTHER SERVICES OFFERED OVER THE INTERNET
OR A COMPUTER NETWORK.

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(C) A PERSON PROVIDING A SUBSCRIPTION MULTICHANNEL VIDEO SERVICE WHOSE TERMS OF SERVICE REQUIRE THAT THE PURCHASER OR RENTER OF THE SERVICE BE AT LEAST 17 YEARS OF AGE OR OLDER AND WHICH SERVICE IS PROVIDED ONLY UPON A SHOWING OF PROPER IDENTIFICATION THROUGH THE PURCHASER'S OR RENTER'S USE OF A CREDIT CARD TO PURCHASE OR RENT THE SERVICE OR BY PROVIDING GOVERNMENT-ISSUED IDENTIFICATION OR OTHER REASONABLE MEANS FOR VERIFICATION OF THE PURCHASER'S OR RENTER'S IDENTITY.>>

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Enacting section 1. Section 14 of 1978 PA 33, MCL 722.684, is

1 repealed.

2 Enacting section 2. This amendatory act takes effect December
3 1, 2005.

4 Enacting section 3. This amendatory act does not take effect
5 unless all of the following bills of the 93rd Legislature are
6 enacted into law:

7 (a) Senate Bill No. 249.

8 (b) Senate Bill No. 463.

9 (c) Senate Bill No. 464.

10 (d) House Bill No. 4702.

11 (e) House Bill No. 4703.