

SENATE BILL No. 416

April 21, 2005, Introduced by Senator CROPSEY and referred to the Committee on Judiciary.

A bill to prohibit the dissemination, exhibiting, or displaying of certain ultra-violent explicit matter to minors; to prohibit certain misrepresentations facilitating the dissemination of ultra-violent explicit matter to minors; to provide penalties; to provide for declaratory judgments and injunctive relief in certain instances; and to impose certain duties upon prosecuting attorneys and the circuit court.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1. The legislature finds all of the following:
- 2 (a) Minors who play or watch ultra-violent explicit matter are
- 3 more likely to exhibit violent, asocial, or aggressive behavior,
- 4 have feelings of aggression, and experience a reduction of activity
- 5 in the frontal lobes of the brain, which are responsible for

1 controlling behavior.

2 (b) While the video game and motion picture industries have
3 adopted their own voluntary standards describing which games are
4 appropriate for minors, those standards are not adequately
5 enforced.

6 (c) Minors are capable of purchasing and do purchase violent
7 movies and video games.

8 (d) The state has a compelling interest in assisting parents
9 in protecting their minor children from ultra-violent explicit
10 matter.

11 (e) The state has a compelling interest in preventing violent,
12 aggressive, and asocial behavior from manifesting itself in minors.

13 (f) The state has a compelling interest in preventing
14 psychological harm to minors who play or view ultra-violent
15 explicit matter.

16 (g) The state has a compelling interest in eliminating any
17 societal factors that may inhibit the physiological and
18 neurological development of its youth.

19 (h) The state has a compelling interest in facilitating the
20 maturation of Michigan children into law-abiding, productive adult
21 citizens.

22 Sec. 2. As used in this act:

23 (a) "Computer" means any connected, directly interoperable or
24 interactive device, equipment, or facility that uses a computer
25 program or other instructions to perform specific operations
26 including logical, arithmetic, or memory functions with or on
27 computer data or a computer program and that can store, retrieve,

1 alter, or communicate the results of the operations to a person,
2 computer program, computer, computer system, or computer network.

3 (b) "Computer network" means the interconnection of hardware
4 or wireless communication lines with a computer through remote
5 terminals, or a complex consisting of 2 or more interconnected
6 computers.

7 (c) "Computer program" means a series of internal or external
8 instructions communicated in a form acceptable to a computer that
9 directs the functioning of a computer, computer system, or computer
10 network in a manner designed to provide or produce products or
11 results from the computer, computer system, or computer network.

12 (d) "Computer system" means a set of related, connected or
13 unconnected, computer equipment, devices, software, or hardware.

14 (e) "Device" includes, but is not limited to, an electronic,
15 magnetic, electrochemical, biochemical, hydraulic, optical, or
16 organic object that performs input, output, or storage functions by
17 the manipulation of electronic, magnetic, or other impulses.

18 (f) "Display" means to put or set out to view or make visible.

19 (g) "Disseminate" means to sell, lend, give, exhibit, show, or
20 allow to examine or to offer or agree to do the same.

21 (h) "Exhibit" means to do 1 or more of the following:

22 (i) Present a performance.

23 (ii) Sell, give, or offer to agree to sell or give a ticket to
24 a performance.

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

27 (i) "Extreme and loathsome violence" means aggressive acts of

1 real or simulated depictions of real physical violence against
2 nonaggressive or otherwise innocent parties who realistically
3 appear to be human beings, including actions causing death,
4 inflicting cruelty, dismemberment, decapitation, maiming,
5 disfigurement, or other mutilation of body parts, murder, criminal
6 sexual conduct, or torture.

7 (j) "Harmful to minors" means ultra-violent explicit matter
8 which meets all of the following criteria:

9 (i) Considered as a whole, it appeals to the morbid interest in
10 asocial, aggressive behavior of minors as determined by
11 contemporary local community standards.

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

14 (iii) Considered as a whole, it lacks serious literary,
15 artistic, political, educational, or scientific value for minors.

16 (k) "Local community" means the county in which the matter was
17 disseminated.

18 (l) "Minor" means a person less than 17 years of age.

19 (m) "Morbid interest in asocial, aggressive behavior" means a
20 morbid interest in committing uncontrolled aggression against a
21 nonaggressive individual. In determining whether ultra-violent
22 explicit matter appeals to this interest, the matter shall be
23 judged with reference to average 16-year-old minors. If it appears
24 from the character of the matter that it is designed to appeal to
25 this interest of a particular group of persons, then the matter
26 shall be judged with reference to average 16-year-old minors within
27 the particular group for which it appears to be designed.

1 (n) "Restricted area" means any of the following:

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

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 sexually
12 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 material or an ultra-violent explicit performance.

16 (p) "Ultra-violent explicit performance" means a motion
17 picture, video game, exhibition, show, representation, or other
18 presentation that, in whole or in part, continually and
19 repetitively depicts extreme and loathsome violence.

20 (q) "Ultra-violent explicit visual material" means a picture,
21 photograph, drawing, sculpture, motion picture film, video game, or
22 similar visual representation that continually and repetitively
23 depicts extreme and loathsome violence, or a book, magazine, or
24 pamphlet that contains such visual representations. An undeveloped
25 photograph, mold, or similar visual material may be ultra-violent
26 explicit material even if processing or other acts are required to
27 make its ultra-violent explicit content apparent.

1 (r) "Video game" means a computer or other device or program
2 that stores or receives data or instructions generated by a person
3 using the device or program and, by processing the data or
4 instructions, creates an interactive game capable of being played,
5 viewed, or otherwise experienced by an individual.

6 Sec. 3. (1) A person is guilty of disseminating ultra-violent
7 explicit matter to a minor if that person does either of the
8 following:

9 (a) Knowingly disseminates to a minor ultra-violent explicit
10 visual material that is harmful to minors.

11 (b) Knowingly exhibits to a minor an ultra-violent explicit
12 performance that is harmful to minors.

13 (2) A person knowingly disseminates ultra-violent explicit
14 matter to a minor if the person knows both the nature of the matter
15 and the status of the minor to whom the matter is disseminated.

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

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

23 (5) A first violation of disseminating ultra-violent explicit
24 matter to a minor is a civil infraction with a fine of not more
25 than \$5,000.00.

26 (6) A second violation of disseminating ultra-violent explicit
27 matter to a minor is a misdemeanor punishable by imprisonment for

1 not more than 91 days or a fine of not more than \$15,000.00, or
2 both.

3 (7) A third or subsequent violation of disseminating ultra-
4 violent explicit matter to a minor is a felony punishable by
5 imprisonment for not more than 2 years or a fine of not more than
6 \$40,000.00, or both. In imposing the fine, the court shall consider
7 the scope of the defendant's commercial activity in disseminating
8 ultra-violent or sexually explicit matter to minors.

9 Sec. 4. Section 3 does not apply to the dissemination of
10 ultra-violent explicit matter to a minor by a parent or guardian
11 who disseminates ultra-violent explicit matter to his or her child
12 or ward or any other person who disseminates ultra-violent explicit
13 matter for a legitimate medical, scientific, governmental, or
14 judicial purpose.

15 Sec. 5. (1) A person is guilty of facilitative
16 misrepresentation if the person knowingly makes a false
17 representation that he or she is the parent or guardian of a minor,
18 or that a minor is 17 years of age or older, with the intent to
19 facilitate the dissemination to the minor of ultra-violent explicit
20 matter that is harmful to minors.

21 (2) A person knowingly makes a false representation as to the
22 age of a minor or as to the status of being the parent or guardian
23 of a minor if the person either is aware that the representation is
24 false or recklessly disregards a substantial risk that the
25 representation is false.

26 (3) Facilitative misrepresentation is a misdemeanor punishable
27 by imprisonment for not more than 90 days or a fine of not more

1 than \$15,000.00, or both.

2 Sec. 6. (1) A person is guilty of displaying ultra-violent
3 explicit matter to a minor if the person possesses managerial
4 responsibility for a business enterprise selling ultra-violent
5 explicit matter that visually depicts ultra-violent visual material
6 and is harmful to minors, and does either of the following:

7 (a) Knowingly permits a minor who is not accompanied by a
8 parent or guardian to view that matter.

9 (b) Displays that matter knowing its nature, unless the person
10 does so in a restricted area.

11 (2) A person knowingly permits a minor to view visual matter
12 that depicts ultra-violent explicit visual material and is harmful
13 to minors if the person knows both the nature of the matter and the
14 status of the minor permitted to examine the matter.

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

18 (4) A person knows the status of a minor if the person either
19 is aware that the person who is permitted to view the matter is a
20 minor or recklessly disregards a substantial risk that the person
21 who is permitted to view the matter is a minor.

22 (5) A person who violates subsection (1) is guilty of a
23 misdemeanor punishable by imprisonment for not more than 93 days or
24 a fine of not more than \$25,000.00, or both.

25 Sec. 7. A prosecuting attorney may commence an action in the
26 circuit court against a person, other than a person described in
27 section 4, to enjoin that person from disseminating to a minor

1 ultra-violent explicit matter that is harmful to minors.

2 Sec. 8. (1) A person intending to disseminate to a minor
3 matter that may be considered ultra-violent explicit matter may
4 request, from the prosecuting attorney of the county in which the
5 dissemination is intended, an advisory opinion as to the legality
6 of that dissemination. The request for an advisory opinion shall be
7 in writing and shall be accompanied by a reasonable and timely
8 opportunity for the prosecuting attorney to examine the matter. Not
9 more than 5 business days after receipt of a proper request, the
10 prosecuting attorney shall issue to the person making the request
11 an advisory opinion, or a refusal to issue an advisory opinion, in
12 writing. The advisory opinion shall state in unequivocal terms
13 whether knowing dissemination of the matter to a minor would be
14 considered by the prosecuting attorney to violate section 3.

15 (2) A person who has requested an advisory opinion under
16 subsection (1) may commence an action for a declaratory judgment in
17 the circuit court in the same county to obtain an adjudication of
18 the legality of the intended dissemination if either of the
19 following conditions exists:

20 (a) The action is commenced more than 5 business days after
21 submission of a proper request, and the prosecuting attorney has
22 failed to issue an advisory opinion.

23 (b) The prosecuting attorney has issued an advisory opinion,
24 and that opinion fails to state in unequivocal terms that the
25 prosecuting attorney does not consider the knowing dissemination of
26 the matter to a minor a violation of section 3.

27 (3) The prosecuting attorney is the proper defendant to an

1 action under subsection (2). In responding to the complaint, the
2 prosecuting attorney may join a counterclaim for injunctive relief
3 permitted under section 7.

4 (4) If the prosecuting attorney, after commencement of an
5 action under subsection (2), issues an advisory opinion stating in
6 unequivocal terms that the prosecuting attorney does not consider
7 the knowing dissemination of the matter to a minor a violation of
8 section 3, the action shall be dismissed.

9 Sec. 9. The following apply in an action under section 3, 5,
10 6, 7, or 8:

11 (a) The prosecuting attorney bears the burden of proving by
12 clear and convincing evidence that knowing dissemination of the
13 specified matter to a minor would violate section 3.

14 (b) Upon appropriate motion of the prosecuting attorney or
15 order to show cause, the court may grant a preliminary injunction
16 or ex parte restraining order. A person enjoined under this
17 subdivision is entitled to a trial on the legality of the intended
18 dissemination within 1 day after joinder of issue, and a decision
19 shall be rendered by the court within 2 days after the conclusion
20 of the trial.

21 (c) The prosecuting attorney is not required to file any
22 security before a preliminary injunction or restraining order is
23 granted, is not liable for costs, and is not liable for damages
24 sustained by reason of the preliminary injunction or restraining
25 order.

26 (d) The proceedings are equitable in nature.

27 Sec. 10. (1) A conviction or sentence imposed for a violation

1 of this act does not preclude a conviction or sentence for a
2 violation of any other law of this state arising from the same
3 transaction.

4 (2) If a declaratory judgment has been obtained under sections
5 8 and 9, or an application for an injunction under section 7 has
6 been denied on the ground that the knowing dissemination to a minor
7 of specified matter does not violate section 3, that determination
8 is a complete defense for a person against a prosecution under
9 section 3 based upon the dissemination of that specified matter and
10 against a prosecution for violation of a preliminary injunction or
11 restraining order granted under section 9.

12 (3) If a prosecuting attorney issues an advisory opinion
13 stating in unequivocal terms that knowing dissemination of
14 specified matter to a minor is not considered by the prosecuting
15 attorney to violate section 3, then the recipient of the opinion
16 may be prosecuted under section 3 for the dissemination of that
17 specified matter only after the prosecutor has both withdrawn the
18 opinion and obtained an injunction under section 7 against the
19 dissemination of that specified matter by that person.

20 (4) A declaratory judgment or injunction applies only to the
21 county in which the prosecuting attorney serves.

22 Sec. 11. A person who in good faith disseminates or displays
23 any matter that has been rated under a rating system that prohibits
24 the providing to minors of certain matter deemed suitable for
25 adults but unsuitable for minors, that does not otherwise conflict
26 with this act, including, but not limited to, the rating system for
27 video games created by the entertainment software rating board or

1 the rating system for motion pictures created by the motion picture
2 association of America, to a minor through the use of that rating
3 system is immune from prosecution under this act if he or she
4 abides by that rating system and does not sell to minors matter
5 that is prohibited to be disseminated or displayed to minors under
6 that rating system.

7 Enacting section 1. This act takes effect December 1, 2005.