



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 508 and 509 (as enacted)
Sponsor: Senator Steven Bieda (S.B. 508)
 Senator Rick Jones (S.B. 509)
Senate Committee: Judiciary
House Committee: Criminal Justice

PUBLIC ACTS 89 & 90 of 2016

Date Completed: 10-26-16

CONTENT

The bills amended the Michigan Penal Code to do the following:

- **Prohibit a person from intentionally disseminating, on an electronic device or medium of communication, sexually explicit visual material of another person without the other person's consent, under certain circumstances.**
- **Specify exceptions to the prohibition.**
- **Prescribe misdemeanor penalties for a violation and a repeat violation of the prohibition.**

The bills took effect on July 25, 2016.

Senate Bill 508

The bill prohibits a person from intentionally disseminating any sexually explicit visual material of another person, with the intent to threaten, coerce, or intimidate, if all of the following conditions are met:

- The other person is at least 18 years of age.
- The other person is identifiable from the sexually explicit visual material itself or information displayed in connection with it, unless the identifying information is supplied by someone other than the disseminator.
- The person obtains the sexually explicit visual material of the other person under circumstances in which a reasonable person would know or understand that the material was to remain private.
- The person knows or reasonably should know that the other person did not consent to the dissemination of the material.

To the extent content is provided by another person, the prohibition does not apply to a person engaged in providing any of the following:

- An interactive computer service, as defined in 47 USC 230.
- An information service, telecommunications service, or cable service as those terms are defined in 47 USC 153.
- A commercial mobile service as defined in 47 USC 332.
- A direct-to-home satellite service as defined in 47 USC 303(v).
- A video service as defined in the Uniform Video Services Local Franchise Act.

The prohibition also does not apply any of the following:

- A person who disseminates sexually explicit visual material that is part of a news report or commentary or an artistic or expressive work, such as a performance, work of art, literary work, theatrical work, musical work, motion picture, film, or audiovisual work.
- A law enforcement officer, or a corrections officer or guard in a correctional facility or jail, who is engaged in the official performance of his or her duties.
- A person disseminating sexually explicit visual material in the reporting of a crime.

The bill does not prohibit a person from being charged with, convicted of, or punished for another violation of law committed by that person while violating or attempting to violate the bill.

The bill defines "sexually explicit visual material" as a photograph or video that depicts nudity, erotic fondling, sexual intercourse, or sadomasochistic abuse. "Nudity" means displaying a person's genitalia or anus, or a female's nipples or areola.

"Disseminate" means post, distribute, or publish on a computer device, computer network, website, or other electronic device or medium of communication.

(Under 47 USC 230, "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a service or system that provides access to the internet and such systems operated or services offered by libraries or educational institutions.

Under 47 USC 153, "information service" means the offering of a capability of generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service. The same section defines "telecommunications service" as the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. "Cable service" means the one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service.

Under 47 USC 332, "commercial mobile service" means any mobile service that is provided for profit and makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public.

Under 47 USC 303(v), "direct-to-home satellite service" means the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises, without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink processes to the satellite.

The Uniform Video Services Local Franchise Act defines "video service" as video programming, cable services, internet protocol television, or open video system provided through facilities located at least in part in the public rights-of-way without regard to delivery technology, including internet protocol technology. The definition does not include any video programming provided by a commercial mobile service provider or provided solely as part of, and via, a service that enables users to access content information, electronic mail, or other services offered over the public internet.)

Senate Bill 509

Under the bill, a violation of the prohibition enacted by Senate Bill 508 is a misdemeanor punishable by up to 93 days' imprisonment and/or a maximum fine of \$500. A second or

subsequent violation is a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$1,000.

MCL 750.145e (S.B. 508)
750.145f (S.B. 509)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills will have no fiscal impact on the State and a negative, though likely minor, fiscal impact on local governments, the magnitude of which depends on how many cases are prosecuted under the law. An increase in misdemeanor arrests and convictions may increase resource demands on local court systems, law enforcement, and jails. Any associated increase in fine revenue will increase funding to public libraries.

Fiscal Analyst: Ryan Bergan

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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.