OBSCENE MATERIAL

Act 343 of 1984

AN ACT to define and prohibit the possession or dissemination of obscene material under certain circumstances; to prohibit conduct related thereto; to provide penalties; to prohibit local units of government from enacting or enforcing any law, ordinance, or rule pertaining to matters under this act; and to repeal certain acts and parts of acts.

History: 1984, Act 343, Eff. Mar. 29, 1985

The People of the State of Michigan enact:

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752.361 Meanings of words and phrases.

Sec. 1.

For the purposes of this act, the words and phrases in sections 2 to 4 have the meanings ascribed to them in those sections.

History: 1984, Act 343, Eff. Mar. 29, 1985

752.362 Definitions; C to O.

Sec. 2.

(1) "Contemporary community standards" means the customary limits of candor and decency in this state at or near the time of the alleged violation of this act.

(2) "Disseminate" means to manufacture, sell, lend, rent, publish, exhibit, or lease to the public for commercial gain or to offer or agree to manufacture, sell, lend, rent, publish, exhibit, or lease to the public for commercial gain.

(3) "Knowledge of content and character" means having general knowledge of the nature and character of the material involved. Knowledge of content and character may be proven by direct evidence or by circumstantial evidence, or both.

(4) "Material" means anything tangible that is capable of being used or adapted to arouse prurient interest, whether through the medium of reading, observation, sound, or in any other manner, including but not limited to, anything printed or written, any book, magazine, newspaper, pamphlet, picture, drawing, pictorial representation, motion picture, photograph, video tape, video disk, film, transparency, slide, audiotape, audiodisk, computer tape, or any other medium used to electronically produce or reproduce images on a screen, or any mechanical, chemical, or electronic reproduction. Material includes undeveloped photographs, molds, printing plates, and other latent representational objects whether or not processing or other acts are required to make the content of the material apparent.

(5) "Obscene" means any material that meets all of the following criteria:

(a) The average individual, applying contemporary community standards, would find the material, taken as a whole, appeals to the prurient interest.

(b) The reasonable person would find the material, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(c) The material depicts or describes sexual conduct in a patently offensive way.

History: 1984, Act 343, Eff. Mar. 29, 1985 ;-- Am. 1992, Act 216, Eff. Mar. 31, 1993

752.363 Definitions; P.

Sec. 3.

(1) "Person" means an individual, or a sole proprietorship, partnership, corporation, association, or other legal entity, or an agent or servant of an individual or legal entity.

(2) "Prurient interest" means a shameful or morbid interest in nudity, sex, or excretion.

History: 1984, Act 343, Eff. Mar. 29, 1985

752.364 “Sexual conduct” defined.

Sec. 4.

(1) "Sexual conduct" means 1 or more of the following:

(a) Representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated.

(b) Representations or descriptions of masturbation, excretory functions, or a lewd exhibition of the genitals.

(2) "Simulated" means the explicit depiction or description of any of the types of conduct set forth in the definition of sexual conduct under subsection (1), which creates the appearance of such conduct.

(3) "Ultimate sexual acts" means sexual intercourse, fellatio, cunnilingus, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, or depictions or descriptions of sexual bestiality, sadomasochism, masturbation, or excretory functions.

History: 1984, Act 343, Eff. Mar. 29, 1985

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752.365 Obscenity; elements; misdemeanor; penalty; second or subsequent offense as a felony.

Sec. 5.

(1) A person is guilty of obscenity when, knowing the content and character of the material, the person disseminates, or possesses with intent to disseminate, any obscene material.

(2) Obscenity is a misdemeanor, punishable by imprisonment for not more than 1 year, or by a fine of not more than $100,000.00, or both.

(3) A person convicted of a second or subsequent offense under this section is guilty of a felony and may be imprisoned for not more than 2 years, and shall be fined not less than $50,000.00 or more than $5,000,000.00. For purposes of this section, an offense is considered a second or subsequent offense if the defendant has previously been convicted under this section or under any similar statute of the United States or of any state.

History: 1984, Act 343, Eff. Mar. 29, 1985 ;-- Am. 1992, Act 216, Eff. Mar. 31, 1993

752.366 Repealed. 1992, Act 216, Eff. Mar. 31, 1993.

Compiler's Notes: The repealed section pertained to obscenity in the second degree.

752.367 Applicability of MCL 752.365.

Sec. 7.

Section 5 does not apply to the dissemination of obscene material by any of the following:

(a) An individual who disseminates obscene material in the course of his or her duties as an employee of, or as a member of the board of directors of, any of the following:

(i) A public or private college, university, or vocational school.

(ii) A library established by this state or a library established by a county, city, township, village, or other local unit of government or authority or combination of local units of government and authorities or a library established by a community college district.

(iii) A public or private not for profit art museum that is exempt from taxation under section 501(c)(3) of the internal revenue code.

(b) An individual who disseminates obscene material in the course of the individual's employment and does not have discretion with regard to that dissemination or is not involved in the management of the employer.

(c) Any portion of a business regulated by the federal communications commission.

(d) A cable television operator that is subject to the communications act of 1934, chapter 652, 48 Stat. 1064.

History: 1984, Act 343, Eff. Mar. 29, 1985 ;-- Am. 1992, Act 216, Eff. Mar. 31, 1993

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752.368 Prohibited conduct; violation as misdemeanor; penalty.

Sec. 8.

(1) A person shall not:

(a) As a condition to a sale, allocation, consignment, or delivery for the resale of any paper, magazine, periodical, book, publication, or other merchandise, require or demand that the purchaser or consignee receive for resale or further commercial distribution any obscene material.

(b) Deny, revoke, or threaten to deny or revoke a franchise, or impose or threaten to impose any penalty, financial or otherwise, because of the failure or refusal to accept obscene material or material reasonably believed by the purchaser or consignee to be obscene.

(2) A violation of this section is a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than $500.00, or both.

History: 1984, Act 343, Eff. Mar. 29, 1985

752.369 Action by prosecuting attorney or attorney general.

Sec. 9.

A prosecuting attorney or the attorney general may commence and prosecute an action under this act.

History: 1984, Act 343, Eff. Mar. 29, 1985

752.370 Prohibited law, ordinance, or rules; exceptions.

Sec. 10.

(1) A municipality, township, village, city, or an instrumentality thereof shall not enact or enforce any law, ordinance, or rule which regulates, or intends to regulate, any matter covered by this act.

(2) Subsection (1) does not apply to a zoning law, zoning ordinance, or zoning rule.

History: 1984, Act 343, Eff. Mar. 29, 1985

752.371-752.373 Repealed. 1992, Act 216, Eff. Mar. 31, 1993.

Compiler's Notes: The repealed sections pertained to obtaining and using an advisory opinion and declaratory judgment and establishing a burden of proof.

752.374 Repeal of MCL 750.343a to 750.343d, 750.344, 750.345, 750.345a, and 750.346.

Sec. 14.

Sections 343a to 343d, 344, 345, 345a, and 346 of Act No. 328 of the Public Acts of 1931, being sections 750.343a to 750.343d, 750.344, 750.345, 750.345a, and 750.346 of the Michigan Compiled Laws, are repealed.

History: 1984, Act 343, Eff. Mar. 29, 1985

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