

HOUSE BILL No. 5148

September 24, 1991, Introduced by Rep. Walberg and referred to the Committee on Towns and Counties.

A bill to amend sections 2, 5, and 7 of Act No. 343 of the Public Acts of 1984, entitled

"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,"

being sections 752.362, 752.365, and 752.367 of the Michigan Compiled Laws; and to repeal certain parts of the act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2, 5, and 7 of Act No. 343 of the
2 Public Acts of 1984, being sections 752.362, 752.365, and 752.367
3 of the Michigan Compiled Laws, are amended to read as follows:

4 Sec. 2. (1) "Contemporary community standards" means the
5 customary limits of candor and decency in ~~this state~~ THE

1 VICINAGE FROM WHICH THE JURY IS DRAWN at or near the time of the
2 alleged violation of this act.

3 (2) "Disseminate" means to manufacture, sell, lend, rent,
4 publish, exhibit, or lease ~~—~~ to the public for commercial gain
5 ~~—~~ or to offer ~~to~~ or agree to ~~any of the foregoing~~
6 MANUFACTURE, SELL, LEND, RENT, PUBLISH, EXHIBIT, OR LEASE TO THE
7 PUBLIC FOR COMMERCIAL GAIN.

8 (3) "Knowledge of content and character" means having gen-
9 eral knowledge ~~or reason to know, or a belief or ground for~~
10 ~~belief which warrants further inspection or inquiry,~~ of the
11 nature and character of the material involved. ~~A person has~~
12 ~~such knowledge when he or she knows or is aware that the material~~
13 ~~contains, depicts, or describes sexual conduct whether or not~~
14 ~~such person has precise knowledge of the specific contents of the~~
15 ~~material. Such knowledge~~ KNOWLEDGE OF CONTENT AND CHARACTER may
16 be proven by direct EVIDENCE or BY circumstantial evidence, or
17 both.

18 (4) "Material" means anything tangible ~~which~~ THAT is
19 capable of being used or adapted to arouse prurient interest,
20 whether through the medium of reading, observation, sound, or in
21 any other manner, including but not limited to, anything printed
22 or written, any book, magazine, newspaper, pamphlet, picture,
23 drawing, pictorial representation, motion picture, photograph,
24 video tape, video disk, film, transparency, slide, AUDIOTAPE,
25 AUDIODISK, COMPUTER TAPE, or any other medium used to electroni-
26 cally produce or reproduce images on a screen, or any mechanical,
27 chemical, or electronic reproduction. Material includes

1 undeveloped photographs, molds, printing plates, and other latent
2 representational objects ~~notwithstanding that~~ WHETHER OR NOT
3 processing or other acts ~~may be~~ ARE required to make ~~its~~ THE
4 content OF THE MATERIAL apparent.

5 (5) "Obscene" means any material ~~which~~ THAT meets all of
6 the following criteria:

7 (a) ~~That the~~ THE average individual, applying contemporary
8 community standards, would find ~~that~~ the material, taken as a
9 whole, appeals to the prurient interest.

10 (b) ~~That~~ THE REASONABLE PERSON WOULD FIND the material,
11 taken as a whole, lacks serious literary, artistic, political, or
12 scientific value.

13 (c) ~~That the~~ THE material depicts or describes ~~, in a~~
14 ~~patently offensive way,~~ sexual conduct IN A PATENTLY OFFENSIVE
15 WAY.

16 Sec. 5. (1) A person is guilty of obscenity ~~in the first~~
17 ~~degree~~ when, knowing the content and character of the material,
18 the person disseminates, or possesses with intent to disseminate,
19 any obscene material. ~~if dissemination of obscene material is a~~
20 ~~predominant and regular part of the person's business at a par-~~
21 ~~ticular theater, store, warehouse, or other establishment and if~~
22 ~~obscene materials are a principal or substantial part of the~~
23 ~~stock in trade at that theater, store, warehouse, or other~~
24 ~~establishment.~~

25 (2) Obscenity ~~in the first degree~~ is a misdemeanor, pun-
26 ishable by imprisonment for not more than 1 year, or by a fine of
27 not more than \$100,000.00, or both.

1 (3) A person ~~who is~~ convicted of a second or subsequent
2 offense under this section is guilty of a ~~misdemeanor~~ FELONY
3 and may be imprisoned for not more than ~~1 year~~ 2 YEARS, and
4 shall be fined not less than \$50,000.00 ~~and not~~ OR more than
5 \$5,000,000.00. For purposes of this section, an offense is con-
6 sidered a second or subsequent offense if the defendant has pre-
7 viously been convicted under this section or under any similar
8 statute of the United States or OF any state.

9 Sec. 7. ~~Sections 5 and 6 do~~ SECTION 5 DOES not apply to
10 the dissemination of obscene material by any of the following:

11 (a) An individual who disseminates obscene material in the
12 course of ~~the individual's~~ HIS OR HER employment ~~and~~ IF HE OR
13 SHE is employed by any of the following:

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

16 (ii) A library ~~which is~~ established by ~~the~~ THIS state
17 ~~or~~ OR A LIBRARY ESTABLISHED BY a county, city, township, vil-
18 lage, or other local unit of government or authority or combina-
19 tion of local units of ~~governments~~ GOVERNMENT and authorities
20 ~~or~~ or A LIBRARY ESTABLISHED BY a community college district.

21 (iii) A PUBLIC ART MUSEUM.

22 (b) An individual who disseminates obscene material in the
23 course of the individual's employment and does not have discre-
24 tion with regard to that dissemination or is not involved in the
25 management of the employer.

1 Section 2. Sections 6, 11, 12, and 13 of Act No. 343 of the
2 Public Acts of 1984, being sections 752.366, 752.371, 752.372,
3 and 752.373 of the Michigan Compiled Laws, are repealed.