

SENATE BILL No. 399

July 11, 1991, Introduced by Senators WELBORN, CARL, DILLINGHAM, BARCIA, DI NELLO, WARTNER, EMMONS, GAST, ARTHURHULTZ, POSTHUMUS, HART, EHLERS, DINGELL, GEAKE, DE GROW, MILLER, CISKY and FAUST and referred to the the Committee on Family Law, Criminal Law, and Corrections.

A bill to amend the title and 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; to add sections 6a, 6b, and 6c; and to repeal certain parts of the act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 2, 5, and 7 of Act
2 No. 343 of the Public Acts of 1984, being sections 752.362,
3 752.365, and 752.367 of the Michigan Compiled Laws, are amended
4 and sections 6a, 6b, and 6c are added to read as follows:

1 TITLE

2 An act to define and prohibit the possession or dissemina-
3 tion of obscene material under certain circumstances; to prohibit
4 conduct related ~~thereto~~ TO THE POSSESSION OR DISSEMINATION OF
5 OBSCENE MATERIAL UNDER CERTAIN CIRCUMSTANCES; TO REGULATE THE
6 INTRODUCTION OF CERTAIN EVIDENCE; to provide penalties; to pro-
7 hibit local units of government from enacting or enforcing ~~any~~
8 A law, ordinance, or rule pertaining to matters ADDRESSED under
9 this act; and to repeal certain acts and parts of acts.

10 Sec. 2. (1) "Contemporary community standards" means the
11 customary limits of candor and decency in ~~this state~~ THE VICI-
12 NAGE FROM WHICH THE JURY IS DRAWN at or near the time of the
13 alleged violation of this act.

14 (2) "Disseminate" means to manufacture, PUBLISH, sell, lend,
15 rent, ~~publish~~ GIVE AWAY, exhibit, or lease, to the public, ~~for~~
16 ~~commercial gain,~~ or to offer to or agree to any of the
17 foregoing.

18 (3) "Knowledge of content and character" means having gen-
19 eral knowledge ~~or reason to know, or a belief or ground for~~
20 ~~belief which warrants further inspection or inquiry,~~ of the
21 nature and character of the material involved. ~~A person has~~
22 ~~such knowledge when he or she knows or is aware that the material~~
23 ~~contains, depicts, or describes sexual conduct whether or not~~
24 ~~such person has precise knowledge of the specific contents of the~~
25 ~~material.~~ Such knowledge may be proven by direct or circumstan-
26 tial evidence, or both.

1 (4) "Material" means anything tangible ~~which~~ THAT is
2 capable of being used or adapted to arouse prurient interest,
3 whether through the medium of reading, observation, sound, or in
4 any other manner, including but not limited to, anything printed
5 or written, any book, magazine, newspaper, pamphlet, picture,
6 drawing, pictorial representation, motion picture, photograph,
7 video tape, video disk, film, transparency, slide, AUDIOTAPE,
8 AUDIODISK, COMPUTER TAPE, or any other medium used to electroni-
9 cally produce or reproduce images on a screen, or any mechanical,
10 chemical, or electronic reproduction. Material includes undevel-
11 oped photographs, molds, printing plates, and other latent repre-
12 sentational objects notwithstanding that processing or other acts
13 may be required to make its content apparent.

14 (5) "Obscene" means any material which meets all of the fol-
15 lowing criteria:

16 (a) That the average individual, applying contemporary com-
17 munity standards, would find that the material, taken as a whole,
18 appeals to the prurient interest.

19 (b) That the REASONABLE PERSON WOULD FIND material, taken as
20 a whole, lacks serious literary, artistic, political, or scien-
21 tific value.

22 (c) That the material depicts or describes, in a patently
23 offensive way, sexual conduct.

24 Sec. 5. (1) A person is guilty of obscenity ~~in the first~~
25 ~~degree~~ when, knowing the content and character of the material,
26 the person disseminates, or possesses with intent to disseminate,
27 any obscene material. ~~if dissemination of obscene material is a~~

1 ~~predominant and regular part of the person's business at a~~
2 ~~particular theater, store, warehouse, or other establishment and~~
3 ~~if obscene materials are a principal or substantial part of the~~
4 ~~stock in trade at that theater, store, warehouse, or other~~
5 ~~establishment.~~

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

9 (3) A person who is convicted of a second or subsequent
10 offense under this section is guilty of a ~~misdemeanor~~ FELONY
11 and may be imprisoned for not more than ~~1 year~~ 2 YEARS, and
12 shall be fined not less than \$50,000.00 ~~and not~~ OR more than
13 \$5,000,000.00. For purposes of this section, an offense is con-
14 sidered a second or subsequent offense if the defendant has pre-
15 viously been convicted under this section or under any similar
16 statute of the United States or any state.

17 SEC. 6A. EXPERT TESTIMONY OR OTHER ANCILLARY EVIDENCE IS
18 NOT REQUIRED TO DETERMINE WHETHER SPECIFIC MATERIAL IS OBSCENE IF
19 THE ALLEGEDLY OBSCENE MATERIAL HAS BEEN PLACED INTO EVIDENCE.

20 SEC. 6B. THE FACT THAT SEXUALLY EXPLICIT MATERIAL IS DIS-
21 TRIBUTED IN THE COMMUNITY IS NOT ADMISSIBLE AS EVIDENCE OF THE
22 LOCAL CONTEMPORARY STANDARDS IN THAT COMMUNITY, UNLESS BOTH OF
23 THE FOLLOWING CIRCUMSTANCES EXIST:

24 (A) THE MATERIAL IS SUBSTANTIALLY SIMILAR TO THE ALLEGEDLY
25 OBSCENE MATERIAL. IN DETERMINING WHETHER A MATERIAL IS SUBSTAN-
26 Tially SIMILAR TO THE ALLEGEDLY OBSCENE MATERIAL, THE COURT SHALL
27 CONSIDER ALL OF THE FOLLOWING:

1 (i) THE MEDIA IN WHICH THE MATERIAL AND THE ALLEGEDLY
2 OBSCENE MATERIAL ARE PRESENTED.

3 (ii) THE TYPE OF SEXUAL CONDUCT OR ACTIVITY DEPICTED BY THE
4 MATERIAL AND BY THE ALLEGEDLY OBSCENE MATERIAL.

5 (iii) THE SEXUAL EXPLICITNESS OF THE MATERIAL AND THE
6 ALLEGEDLY OBSCENE MATERIAL.

7 (B) THE MATERIAL ENJOYS A REASONABLE DEGREE OF ACCEPTANCE IN
8 THE COMMUNITY.

9 SEC. 6C. EVIDENCE REGARDING THE MANNER IN WHICH ALLEGED
10 OBSCENE MATERIAL IS PANDERED, PRODUCED, PACKAGED, SOLD, EDITED,
11 ADVERTISED, OR DISPLAYED THAT IS OTHERWISE ADMISSIBLE IS ADMISSI-
12 BLE TO PROVE OR DISPROVE THAT THE MATERIAL MEETS ANY OF THE CRI-
13 TERIA UNDER SECTION 2(5).

14 Sec. 7. ~~Sections 5 and 6 do~~ SECTION 5 DOES not apply to
15 the dissemination of obscene material by ~~any of the following:~~
16 ~~(a) An~~ AN individual who disseminates obscene material in the
17 course of ~~the individual's~~ HIS OR HER employment and WHO is
18 employed by any of the following:

19 (A) ~~(i)~~ A public or private college, university, or voca-
20 tional school.

21 (B) ~~(ii)~~ A library ~~which~~ THAT is established by ~~the~~
22 THIS state ~~—~~ OR A LIBRARY ESTABLISHED BY a county, city, town-
23 ship, village, or other local unit of government or authority or
24 combination of local units of ~~governments~~ GOVERNMENT and
25 authorities ~~—~~ or A LIBRARY ESTABLISHED BY a community college
26 district.

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

5 (C) A PUBLIC ART MUSEUM.

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