

HB385 ENGROSSED



1 HB385

2 CMBFJWQ-2

3 By Representatives Mooney, Stadthagen, Kiel, Sells, Butler,
4 Carns, Shaver, Colvin, Stringer, DuBose, Fidler, Gidley, Lamb,
5 Yarbrough, Estes, Brown, Paschal, Bedsole, Rehm, Ingram,
6 Bolton, Starnes, Harrison, Fincher, Standridge, Oliver,
7 Lipscomb, Woods, Ledbetter, Stubbs, Givens

8 RFD: State Government

9 First Read: 02-Apr-24



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A BILL
TO BE ENTITLED
AN ACT

Relating to crimes and offenses; to amend Sections 6-5-160, 6-5-160.1, 13A-12-200.1, and 13A-12-200.10, Code of Alabama 1975, to provide that the use of any premises to distribute material that is harmful to minors is a public nuisance; to further provide for the definition of "sexual conduct"; to further provide for the applicability of certain criminal provisions; and to make nonsubstantive, technical revisions to update the existing code language to current style.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 6-5-160, 6-5-160.1, 13A-12-200.1, and 13A-12-200.10, Code of Alabama 1975, are amended to read as follows:

"§6-5-160

The Legislature of Alabama finds and declares:

(1) That in order to protect children from exposure to obscenity and material harmful to minors, prevent assaults on the sensibilities of unwilling adults by ~~the purveyor~~ purveyors of obscene material, and suppress the proliferation



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29 of "adult-only video stores," "adult bookstores," "adult movie
30 houses," and "adult-only entertainment," the sale and
31 dissemination of obscene material and material harmful to
32 minors should be regulated without impinging on the First
33 Amendment rights of free speech by erecting barriers to the
34 open display of erotic and lascivious material.

35 (2) That the premises ~~in which~~ where a violation of
36 Division 5, ~~of~~ Article 4, ~~of~~ Chapter 12, ~~of~~ Title 13A
37 occurs should be declared a public nuisance."

38 "§6-5-160.1

39 It is hereby declared that the use of any ~~premise~~
40 premises to distribute material that is obscene ~~material or~~
41 harmful to minors in violation of Division 5 ~~(commencing with~~
42 ~~Section 13A-12-200.1)~~, ~~of~~ Article 4, ~~of~~ Chapter 12, ~~of~~ Title
43 13A is a public nuisance and the Attorney General, district
44 attorney, or, when authorized by the local governing body, the
45 attorney for the county or municipality may file an action in
46 the circuit courts of this state to abate, enjoin, and prevent
47 the nuisance. A county, ~~by~~ resolution, or a municipality, ~~by~~
48 ordinance, may authorize the filing of an action in the
49 circuit court within their jurisdiction to abate, enjoin, ~~and~~
50 or prevent the nuisance. The actions shall be commenced by the
51 filing of a complaint alleging the facts constituting the
52 nuisance in circuit court of the county in which the nuisance
53 is situated."

54 "§13A-12-200.1

55 As used in this division, the following terms ~~shall~~
56 have the following meanings ~~respectively ascribed to them by~~



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57 ~~this section:~~

58 (1) ADULT BOOKSTORES and ADULT VIDEO STORES. A
59 commercial establishment in which is offered for sale or rent
60 any book, video, film, or other medium which in the aggregate
61 ~~constitute~~ constitutes substantially all of its stock or
62 inventory which depicts sexual conduct ~~as defined herein.~~

63 (2) ADULT MOVIE HOUSE. A place where obscene "adult
64 films" depicting sexual conduct are shown.

65 (3) ADULT-ONLY ENTERTAINMENT. Any commercial
66 establishment or private club where entertainers, employees,
67 dancers, or waiters appear nude or semi-nude.

68 (4) BREAST NUDITY. The showing of the post-pubertal
69 human female breasts below a point immediately above the top
70 of the areola.

71 (5) DISPLAY FOR SALE. To expose, place, exhibit, show,
72 or in any fashion display any material for the purpose of the
73 sale of such material to any person in a manner that a minor
74 can physically examine or see the material.

75 (6) DISSEMINATE PUBLICLY. To expose, place, perform,
76 exhibit, show or in any fashion display, in any location,
77 public or private, any material in a manner that the material
78 can either be readily seen and its content or character
79 distinguished by normal unaided vision or be physically
80 examined, by viewing or examining the material from any public
81 place or any place to which members of the general public are
82 invited.

83 (7) DISTRIBUTE. To import, export, sell, rent, lend,
84 transfer possession of or title to, display, exhibit, show,



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85 present, provide, broadcast, transmit, retransmit, communicate
86 by telephone, play, orally communicate, or perform.

87 (8) EXPORT. To send or cause to be sent outside of the
88 ~~State of Alabama~~ state from inside the state.

89 (9) FOR ANY THING OF PECUNIARY VALUE. In exchange for,
90 in return for, or for any consideration consisting of, whether
91 wholly or partly, either of the following:

92 a. Any money, negotiable instrument, debt, credit,
93 chose in action, interest in wealth, or any other property
94 whether real or personal, tangible or intangible; ~~or.~~

95 b. Any offer or agreement to pay, furnish, or provide
96 any money, negotiable instrument, debt, credit, chose in
97 action, interest in wealth, or any other property whether real
98 or personal, tangible or intangible.

99 (10) GENITAL NUDITY. The showing of the human male or
100 female genitals or pubic area.

101 (11) HARMFUL TO MINORS. The term means all of the
102 following:

103 a. The average person, applying contemporary community
104 standards, would find that the material, taken as a whole,
105 appeals to the prurient interest of minors; ~~and.~~

106 b. The material depicts or describes sexual conduct,
107 breast nudity, or genital nudity, in a way which is patently
108 offensive to prevailing standards in the adult community with
109 respect to what is suitable for minors; ~~and.~~

110 c. A reasonable person would find that the material,
111 taken as a whole, lacks serious literary, artistic, political,
112 or scientific value for minors.



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113 (12) IMPORT. To bring or cause to be brought into the
114 ~~State of Alabama~~ state from outside of the state.

115 (13) KNOWINGLY. The term means knowingly, as defined by
116 ~~Section 13A-2-2(2)~~ Section 13A-2-2, doing an act involving a
117 material when the person knows the nature of the material.

118 (14) KNOWS THE NATURE OF THE MATERIAL.

119 A person knows the nature of the material when any one
120 of the following exists:

121 a. The person knows the nature of the material; .

122 b. The person has reason to know the nature of the
123 material; .

124 c. The person has a belief or reasonable ground for
125 belief as to the nature of the material which warrants further
126 inspection or inquiry of the character and content of the
127 material.

128 (15) MATERIAL. Any book, magazine, newspaper, printed
129 or written matter, writing, description, picture, drawing,
130 animation, photograph, motion picture, film, video tape,
131 pictorial representation, depiction, image, electrical or
132 electronic reproduction, broadcast, transmission, telephone
133 communication, sound recording, article, device, equipment,
134 matter, oral communication, live performance, or dance.

135 (16) MINOR. Any unmarried person under ~~the age of 18~~
136 years of age.

137 (17) OBSCENE. The term means ~~that~~ all of the following:

138 a. The average person, applying contemporary community
139 standards, would find that the material, taken as a whole,
140 appeals to the prurient interest; ~~and~~ .



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141 b. The material depicts or describes, in a patently
142 offensive way, sexual conduct, actual or simulated, normal or
143 perverted;~~and.~~

144 c. A reasonable person would find that the material,
145 taken as a whole, lacks serious literary, artistic, political,
146 or scientific value.

147 (18) PERSON. Any individual and, except where
148 inappropriate, any partnership, firm, association,
149 corporation, or other legal entity.

150 (19) PRODUCE. Create, make, write, film, produce,
151 reproduce, direct, or stage.

152 (20) RECKLESSLY. The term means recklessly, as defined
153 by ~~Section 13A-2-2(3)~~Section 13A-2-2, doing an act involving a
154 material when the person knows the nature of the material.

155 (21) ~~SADO-MASOCHISTIC~~SADOMASOCHISTIC ABUSE. The term
156 means either of the following:

157 a. Flagellation or torture, in an act of sexual
158 stimulation, by or upon a person who is nude or clad in
159 undergarments or in a revealing or bizarre costume;~~or.~~

160 b. The binding or physical restraining of a person who
161 is nude or clad in undergarments or in a revealing or bizarre
162 costume in an act of sexual stimulation.

163 (22) SEXUAL CONDUCT. The term means any of the
164 following:

165 a. Any act of sexual intercourse, masturbation,
166 urination, defecation, lewd exhibition of the genitals,
167 ~~sado-masochistic~~sadomasochistic abuse, bestiality, or the
168 fondling of the sex organs of animals;~~or.~~



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169 b. Any other physical contact with a person's unclothed
170 genitals, pubic area, buttocks, or the breast or breasts of a
171 female, whether alone or between members of the same or
172 opposite sex or between a human and an animal, in an act of
173 sexual stimulation, gratification, or perversion.

174 c. Any sexual or gender oriented conduct that knowingly
175 exposes minors to persons who are dressed in sexually
176 revealing, exaggerated, or provocative clothing or costumes,
177 or are stripping, or engaged in lewd or lascivious dancing,
178 presentations, or activities in K-12 public schools or public
179 libraries where minors are expected and known to be present
180 without parental presence or consent.

181 (23) SEXUAL INTERCOURSE. Intercourse, whether
182 genital-genital, oral-genital, anal-genital, or oral-anal, and
183 whether between persons of the same or opposite sex or between
184 a human and an animal.

185 (24) WHOLESALER. A person who distributes material for
186 the purpose of resale or commercial distribution at retail."

187 "§13A-12-200.10

188 (a) The criminal provisions of this division shall not
189 apply to ~~bona fide public libraries, or public school or~~
190 college or university libraries, or their employees or agents
191 acting on behalf of the legitimate educational purposes of
192 such ~~public libraries, or public school or~~ college or
193 university libraries.

194 (b) (1) The criminal provisions of this division shall
195 not apply to K-12 public schools or public libraries, or their
196 employees or agents acting on behalf of the legitimate



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197 educational purposes of K-12 public schools or public
198 libraries, unless the K-12 public school or public library
199 fails to remove material or cease conduct that violates this
200 division within seven business days of receiving a valid
201 notice pursuant to this subsection. A violation of this
202 subdivision is a Class C misdemeanor. A second violation of
203 this subdivision is a Class B misdemeanor. A third or
204 subsequent violation of this subdivision is a Class A
205 misdemeanor.

206 (2) Any person who believes that material is present or
207 conduct is occurring at a K-12 public school or public library
208 that violates this division may provide written notice to the
209 principal of the K-12 public school, the superintendent of the
210 K-12 public school's school district, or the director or head
211 librarian of the public library which reasonably identifies
212 the specific material or conduct. A notice submitted pursuant
213 to this subdivision is only valid if a copy of the notice is
214 also provided to the office of the district attorney in the
215 county where the K-12 public school or public library is
216 located."

217 Section 2. This act shall become effective on October
218 1, 2024.



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House of Representatives

Read for the first time and referred02-Apr-24
to the House of Representatives
committee on State Government

Read for the second time and placed04-Apr-24
on the calendar:
0 amendments

Read for the third time and passed25-Apr-24
as amended
Yeas 72
Nays 28
Abstains 11

John Treadwell
Clerk