

1 HB288
2 174448-1
3 By Representative Farley
4 RFD: Judiciary
5 First Read: 24-FEB-16

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8 SYNOPSIS: Under existing law, it is a crime to
9 disseminate, publicly display, possess, or possess
10 with the intent to disseminate obscene materials
11 containing visual depictions of persons under 17
12 years of age.

13 This bill would further clarify the
14 definition of disseminate by removing the
15 requirement of monetary consideration and would
16 include in the definition sharing or trading such
17 visual depictions.

18 This bill would include under the crime of
19 possession of obscene materials containing visual
20 depictions of persons under 17 years of age a
21 visual depiction of breast nudity.

22 Amendment 621 of the Constitution of Alabama
23 of 1901, now appearing as Section 111.05 of the
24 Official Recompilation of the Constitution of
25 Alabama of 1901, as amended, prohibits a general
26 law whose purpose or effect would be to require a
27 new or increased expenditure of local funds from

1 becoming effective with regard to a local
2 governmental entity without enactment by a 2/3 vote
3 unless: it comes within one of a number of
4 specified exceptions; it is approved by the
5 affected entity; or the Legislature appropriates
6 funds, or provides a local source of revenue, to
7 the entity for the purpose.

8 The purpose or effect of this bill would be
9 to require a new or increased expenditure of local
10 funds within the meaning of the amendment. However,
11 the bill does not require approval of a local
12 governmental entity or enactment by a 2/3 vote to
13 become effective because it comes within one of the
14 specified exceptions contained in the amendment.

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16 A BILL
17 TO BE ENTITLED
18 AN ACT
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20 To amend Sections 13A-12-190 and 13A-12-192 of the
21 Code of Alabama 1975, relating to disseminating, publicly
22 displaying, possessing, or possessing with the intent to
23 disseminate obscene materials containing visual depictions of
24 persons under 17 years of age; to further define terms; to
25 include under the crime of possession a visual depiction of
26 breast nudity; and in connection therewith to have as its
27 purpose or effect the requirement of a new or increased

1 expenditure of local funds within the meaning of Amendment 621
2 of the Constitution of Alabama of 1901, now appearing as
3 Section 111.05 of the Official ReCompilation of the
4 Constitution of Alabama of 1901, as amended.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Sections 13A-12-190 and 13A-12-192 of the
7 Code of Alabama 1975, are amended to read as follows:

8 "§13A-12-190.

9 "For the purposes of this division, the following
10 terms shall have the meanings respectively ascribed to them by
11 this section:

12 "(1) DISSEMINATE. To sell, lend ~~or show for monetary~~
13 ~~consideration, show, share, or trade~~ or to offer or agree to
14 do the same.

15 "(2) DISPLAY PUBLICLY. The exposing, placing,
16 posting, exhibiting or in any fashion displaying in any
17 location, whether public or private, an item in such a manner
18 that it may be readily seen and its content or character
19 distinguished by normal unaided vision viewing it from a
20 public thoroughfare, depot or vehicle.

21 "(3) PUBLIC THOROUGHFARE, DEPOT or VEHICLE. Any
22 street, highway, park, depot or transportation platform or
23 other place, whether indoors or out, or any vehicle for public
24 transportation, owned or operated by government, either
25 directly or through a public corporation or authority, or
26 owned or operated by any agency of public transportation that

1 is designed for the use, enjoyment or transportation of the
2 general public.

3 "(4) KNOWINGLY. A person knowingly disseminates or
4 publicly displays obscene matter when the person knows the
5 nature of the matter. A person knows the nature of the matter
6 when either of the following circumstances exist:

7 "a. The person is aware of the character and content
8 of the matter; or

9 "b. The person recklessly disregards circumstances
10 suggesting the character and content of the matter.

11 "(5) SADO-MASOCHISTIC ABUSE. Such term means either
12 of the following:

13 "a. Flagellation or torture, for the purpose of
14 sexual stimulation, by or upon a person who is nude or clad in
15 undergarments or in a revealing or bizarre costume; or

16 "b. The condition of a person who is nude or clad in
17 undergarments or in a revealing or bizarre costume being
18 fettered, bound or otherwise physically restrained for the
19 purpose of sexual stimulation.

20 "(6) SEXUAL EXCITEMENT. The condition of human male
21 or female genitals when in a state of sexual stimulation.

22 "(7) SEXUAL INTERCOURSE. Intercourse, real or
23 simulated, whether genital-genital, oral-genital, anal-genital
24 or oral-anal, whether between persons of the same or opposite
25 sex or between a human and an animal.

1 "(8) MASTURBATION. Manipulation, by hand or
2 instrument, of the human genitals, whether one's own or
3 another's for the purpose of sexual stimulation.

4 "(9) OTHER SEXUAL CONDUCT. Any touching of the
5 genitals, pubic areas or buttocks of the human male or female,
6 or the breasts of the female, whether alone or between members
7 of the same or opposite sex or between humans and animals in
8 an act of apparent sexual stimulation or gratification.

9 "(10) BREAST NUDITY. The lewd showing of the
10 post-pubertal human female breasts below a point immediately
11 above the top of the areola.

12 "(11) GENITAL NUDITY. The lewd showing of the
13 genitals or pubic area.

14 "(12) MATTER. Any book, magazine, newspaper, or
15 other printed material, or any picture, photograph, motion
16 picture, video cassette, tape, record, digital video disc
17 (DVD), video compilation, or electronic depiction in a
18 comparable format, or an image, file, download, or other
19 content stored, or reproduced by using a computer or
20 electronic device or other digital storage, or any other
21 thing, articles, or materials that either are or contain a
22 photographic or other visual depiction of a live act,
23 performance, or event.

24 "(13) OBSCENE. a. When used to describe any matter
25 that contains a visual reproduction of breast nudity, such
26 term means matter that:

1 "1. Applying contemporary local community standards,
2 on the whole, appeals to the prurient interest; and

3 "2. Is patently offensive; and

4 "3. On the whole, lacks serious literary, artistic,
5 political or scientific value.

6 "b. When used to describe matter that is a depiction
7 of an act of sado-masochistic abuse, sexual intercourse,
8 sexual excitement, masturbation, genital nudity, or other
9 sexual conduct, such term means matter containing such a
10 visual reproduction that itself lacks serious literary,
11 artistic, political or scientific value.

12 "(14) LOCAL COMMUNITY. The judicial circuit in which
13 the indictment is brought.

14 "(15) VISUAL DEPICTION. A portrayal, representation,
15 illustration, image, likeness, or other thing that creates a
16 sensory impression, whether an original, duplicate, or
17 reproduction.

18 "(16) SEPARATE OFFENSE. The depiction of an
19 individual less than 17 years of age that violates this
20 division shall constitute a separate offense for each single
21 visual depiction.

22 "§13A-12-192.

23 "(a) Any person who knowingly possesses with intent
24 to disseminate any obscene matter that contains a visual
25 depiction of a person under the age of 17 years engaged in any
26 act of sado-masochistic abuse, sexual intercourse, sexual
27 excitement, masturbation, breast nudity, genital nudity, or

1 other sexual conduct shall be guilty of a Class B felony.
2 Possession of three or more copies of the same visual
3 depiction contained in obscene matter is prima facie evidence
4 of possession with intent to disseminate the same.

5 "(b) Any person who knowingly possesses any obscene
6 matter that contains a visual depiction of a person under the
7 age of 17 years engaged in any act of sado-masochistic abuse,
8 sexual intercourse, sexual excitement, masturbation, breast
9 nudity, genital nudity, or other sexual conduct shall be
10 guilty of a Class C felony."

11 Section 2. Although this bill would have as its
12 purpose or effect the requirement of a new or increased
13 expenditure of local funds, the bill is excluded from further
14 requirements and application under Amendment 621, now
15 appearing as Section 111.05 of the Official Recompilation of
16 the Constitution of Alabama of 1901, as amended, because the
17 bill defines a new crime or amends the definition of an
18 existing crime.

19 Section 3. This act shall become effective on the
20 first day of the third month following its passage and
21 approval by the Governor, or its otherwise becoming law.