

1 SB259
2 116138-1
3 By Senator Smith
4 RFD: Judiciary
5 First Read: 14-JAN-10

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8 SYNOPSIS: Under existing law, it is unlawful for a
9 person to knowingly disseminate or display publicly
10 any obscene matter containing a visual reproduction
11 of a person under the age of 17 years engaged in
12 any act of sexual conduct.

13 This bill would further define the term
14 "disseminate" to include import, export, transfer
15 possession of, display, exhibit, show, present,
16 provide, broadcast, transmit, retransmit,
17 circulate, disperse, or distribute. This bill would
18 expand the material that constitutes visual obscene
19 matter.

20 Amendment 621 of the Constitution of Alabama
21 of 1901, now appearing as Section 111.05 of the
22 Official Recompilation of the Constitution of
23 Alabama of 1901, as amended, prohibits a general
24 law whose purpose or effect would be to require a
25 new or increased expenditure of local funds from
26 becoming effective with regard to a local
27 governmental entity without enactment by a 2/3 vote

1 unless: it comes within one of a number of
2 specified exceptions; it is approved by the
3 affected entity; or the Legislature appropriates
4 funds, or provides a local source of revenue, to
5 the entity for the purpose. The purpose or effect
6 of this bill would be to require a new or increased
7 expenditure of local funds within the meaning of
8 the amendment. However, the bill does not require
9 approval of a local governmental entity or
10 enactment by a 2/3 vote to become effective because
11 it comes within one of the specified exceptions
12 contained in the amendment.

13
14 A BILL
15 TO BE ENTITLED
16 AN ACT

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18 To amend Sections 13A-12-190 and 13A-12-192, Code of
19 Alabama 1975, relating to obscene material involving children;
20 to further define the term "disseminate"; to expand the
21 material that constitutes obscene visual matter; and in
22 connection therewith would have as its purpose or effect the
23 requirement of a new or increased expenditure of local funds
24 within the meaning of Amendment 621 of the Constitution of
25 Alabama of 1901, now appearing as Section 111.05 of the
26 Official Recompilation of the Constitution of Alabama of 1901,
27 as amended.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

4 "§13A-12-190.

5 "For the purposes of this division, the following
6 terms shall have the meanings respectively ascribed to them by
7 this section:

8 "(1) DISSEMINATE. To sell, lend ~~or show for monetary~~
9 ~~consideration, import, export, transfer possession of or title~~
10 ~~to, display, exhibit, show, present, provide, broadcast,~~
11 ~~transmit, retransmit, circulate, disperse, or distribute by~~
12 ~~any means,~~ or to offer or agree to do the same.

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

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

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

5 "a. The person is aware of the character and content
6 of the matter; or

7 "b. The person recklessly disregards circumstances
8 suggesting the character and content of the matter.

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

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

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

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

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

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

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

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

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

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

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

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

27 "2. Is patently offensive; and

1 "3. On the whole, lacks serious literary, artistic,
2 political or scientific value.

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

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

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

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

19 "§13A-12-192.

20 "(a) Any person who knowingly possesses with intent
21 to disseminate any obscene matter that contains a visual
22 depiction of a person under the age of 17 years engaged in any
23 act of sado-masochistic abuse, sexual intercourse, sexual
24 excitement, masturbation, breast nudity, genital nudity, or
25 other sexual conduct shall be guilty of a Class B felony.
26 Possession of three or more copies of the same visual

1 depiction contained in obscene matter is prima facie evidence
2 of possession with intent to disseminate the same.

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

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

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