

1 SB35  
2 188586-1  
3 By Senator Ward  
4 RFD: Judiciary  
5 First Read: 09-JAN-18  
6 PFD: 01/02/2018

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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.

15  
16 A BILL  
17 TO BE ENTITLED  
18 AN ACT  
19

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.