

HB401 INTRODUCED



1 9WXQMM-1
2 By Representatives Mooney, Kiel, Stadthagen, Butler, Carns,
3 Sells
4 RFD: State Government
5 First Read: 27-Apr-23
6
7 2023 Regular Session



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SYNOPSIS:

Under existing law, the use of any premises to distribute obscene material to minors is a public nuisance.

This bill would further provide that the use of any premises to distribute to minors material that is harmful to minors is a public nuisance.

Under existing law, the term "sexual conduct" is defined.

This bill would further provide for the definition of "sexual conduct."

This bill would also make nonsubstantive, technical revisions to update the existing code language to current style.

Section 111.05 of the Constitution of Alabama of 2022, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or provides a local source of revenue, to the entity for the purpose.

The purpose or effect of this bill would be to



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29 require a new or increased expenditure of local funds
30 within the meaning of the amendment. However, the bill
31 does not require approval of a local governmental
32 entity or enactment by a 2/3 vote to become effective
33 because it comes within one of the specified exceptions
34 contained in the amendment.

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A BILL

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TO BE ENTITLED

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AN ACT

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41 Relating to crimes and offenses; to amend Sections
42 6-5-160, 6-5-160.1, and 13A-12-200.1, Code of Alabama 1975, to
43 provide that the use of any premises to distribute material
44 that is harmful to minors is a public nuisance; to further
45 provide for the definition of "sexual conduct;" to make
46 nonsubstantive, technical revisions to update the existing
47 code language to current style; and in connection therewith
48 would have as its purpose or effect the requirement of a new
49 or increased expenditure of local funds within the meaning of
50 Section 111.05 of the Constitution of Alabama of 2022.

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BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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Section 1. Sections 6-5-160, 6-5-160.1, and

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13A-12-200.1, Code of Alabama 1975, are amended to read as

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follows:

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"§6-5-160

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The Legislature of Alabama finds and declares:



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57 (1) That in order to protect children from exposure to
58 obscenity and material harmful to minors, prevent assaults on
59 the sensibilities of unwilling adults by ~~the purveyor~~
60 purveyors of obscene material, and suppress the proliferation
61 of "adult-only video stores," "adult bookstores," "adult movie
62 houses," and "adult-only entertainment," the sale and
63 dissemination of obscene material and material harmful to
64 minors should be regulated without impinging on the First
65 Amendment rights of free speech by erecting barriers to the
66 open display of erotic and lascivious material.

67 (2) That the premises in which a violation of Division
68 ~~5,~~ of Article ~~4,~~ of Chapter ~~12,~~ of Title 13A occurs should
69 be declared a public nuisance."

70 "§6-5-160.1

71 It is hereby declared that the use of any ~~premise~~
72 premises to distribute material that is obscene ~~material or~~
73 harmful to minors in violation of Division 5 ~~(commencing with~~
74 ~~Section 13A-12-200.1),~~ of Article ~~4,~~ of Chapter ~~12,~~ of Title
75 13A is a public nuisance and the Attorney General, district
76 attorney, or, when authorized by the local governing body, the
77 attorney for the county or municipality may file an action in
78 the circuit courts of this state to abate, enjoin, and prevent
79 the nuisance. A county, by resolution, or a municipality, by
80 ordinance, may authorize the filing of an action in the
81 circuit court within their jurisdiction to abate, enjoin, ~~and~~
82 or prevent the nuisance. The actions shall be commenced by the
83 filing of a complaint alleging the facts constituting the
84 nuisance in circuit court of the county in which the nuisance



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85 is situated."

86 "§13A-12-200.1

87 As used in this division, the following terms ~~shall~~
88 have the following meanings ~~respectively ascribed to them by~~
89 ~~this section~~:

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

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

97 (3) ADULT-ONLY ENTERTAINMENT. Any commercial
98 establishment or private club where entertainers, employees,
99 dancers, or waiters appear nude or semi-nude.

100 (4) BREAST NUDITY. The showing of the post-pubertal
101 human female breasts below a point immediately above the top
102 of the areola.

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

107 (6) DISSEMINATE PUBLICLY. To expose, place, perform,
108 exhibit, show or in any fashion display, in any location,
109 public or private, any material in a manner that the material
110 can either be readily seen and its content or character
111 distinguished by normal unaided vision or be physically
112 examined, by viewing or examining the material from any public



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113 place or any place to which members of the general public are
114 invited.

115 (7) DISTRIBUTE. To import, export, sell, rent, lend,
116 transfer possession of or title to, display, exhibit, show,
117 present, provide, broadcast, transmit, retransmit, communicate
118 by telephone, play, orally communicate, or perform.

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

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

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

127 b. Any offer or agreement to pay, furnish or provide
128 any money, negotiable instrument, debt, credit, chose in
129 action, interest in wealth, or any other property whether real
130 or personal, tangible or intangible.

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

133 (11) HARMFUL TO MINORS. The term means all of the
134 following:

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

138 b. The material depicts or describes sexual conduct,
139 breast nudity, or genital nudity, ~~r~~ in a way which is patently
140 offensive to prevailing standards in the adult community with



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141 respect to what is suitable for minors; ~~and~~.

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

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

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

150 (14) KNOWS THE NATURE OF THE MATERIAL.

151 A person knows the nature of the material when any one
152 of the following exists:

153 a. The person knows the nature of the material; ~~and~~.

154 b. The person has reason to know the nature of the
155 material; ~~and~~.

156 c. The person has a belief or reasonable ground for
157 belief as to the nature of the material which warrants further
158 inspection or inquiry of the character and content of the
159 material.

160 (15) MATERIAL. Any book, magazine, newspaper, printed
161 or written matter, writing, description, picture, drawing,
162 animation, photograph, motion picture, film, video tape,
163 pictorial representation, depiction, image, electrical or
164 electronic reproduction, broadcast, transmission, telephone
165 communication, sound recording, article, device, equipment,
166 matter, oral communication, live performance, or dance.

167 (16) MINOR. Any unmarried person under the age of 18
168 years.



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

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

173 b. The material depicts or describes, in a patently
174 offensive way, sexual conduct, actual or simulated, normal or
175 perverted;~~and~~.

176 c. A reasonable person would find that the material,
177 taken as a whole, lacks serious literary, artistic, political,
178 or scientific value.

179 (18) PERSON. Any individual and, except where
180 inappropriate, any partnership, firm, association,
181 corporation, or other legal entity.

182 (19) PRODUCE. Create, make, write, film, produce,
183 reproduce, direct, or stage.

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

187 (21) SADO-MASOCHISTIC ABUSE. The term means either of
188 the following:

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

192 b. The binding or physical restraining of a person who
193 is nude or clad in undergarments or in a revealing or bizarre
194 costume in an act of sexual stimulation.

195 (22) SEXUAL CONDUCT. The term means any of the
196 following:



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197 a. Any act of sexual intercourse, masturbation,
198 urination, defecation, lewd exhibition of the genitals,
199 sado-masochistic abuse, bestiality, or the fondling of the sex
200 organs of animals; ~~or~~.

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

206 c. Any sexual or gender oriented material that exposes
207 minors to persons who are dressed in sexually revealing,
208 exaggerated, or provocative clothing or costumes, or are
209 stripping, or engaged in lewd or lascivious dancing,
210 presentations, or activities, including but not limited to
211 topless, go-go, or exotic dancers, or male or female
212 impersonators, commonly known as drag queens or drag kings.
213 This sexual conduct is prohibited in K-12 public schools,
214 public libraries, and in other public places where minors are
215 present.

216 (23) SEXUAL INTERCOURSE. Intercourse, whether
217 genital-genital, oral-genital, anal-genital, or oral-anal, and
218 whether between persons of the same or opposite sex or between
219 a human and an animal.

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

222 Section 2. Although this bill would have as its purpose
223 or effect the requirement of a new or increased expenditure of
224 local funds, the bill is excluded from further requirements



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225 and application under Section 111.05 of the Constitution of
226 Alabama of 2022, because the bill defines a new crime or
227 amends the definition of an existing crime.

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