

1 HB403  
2 116138-1  
3 By Representatives Baker (L), Robinson (J), Boyd, Hall, Irons,  
4 Warren, Taylor, England, Drake, Thigpen, McMillan, Wood,  
5 Laird, Williams (J), McClendon, Ward, Boothe, Todd, Millican,  
6 Spicer, Gordon, Howard, Jackson and Clouse  
7 RFD: Judiciary  
8 First Read: 21-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.