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

A BILL TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 6-5-160, 6-5-160.1, and 13A-12-200.1, Code of Alabama 1975, are amended to read as follows:

"$6-5-160

The Legislature of Alabama finds and declares:
(1) That in order to protect children from exposure to obscenity and material harmful to minors, prevent assaults on the sensibilities of unwilling adults by the purveyors of obscene material, and suppress the proliferation of "adult-only video stores," "adult bookstores," "adult movie houses," and "adult-only entertainment," the sale and dissemination of obscene material and material harmful to minors should be regulated without impinging on the First Amendment rights of free speech by erecting barriers to the open display of erotic and lascivious material.

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

"§6-5-160.1
It is hereby declared that the use of any premise premises to distribute material that is obscene material or harmful to minors in violation of Division 5 (commencing with Section 13A-12-200.1), of Article 4, of Chapter 12, of Title 13A is a public nuisance and the Attorney General, district attorney, or, when authorized by the local governing body, the attorney for the county or municipality may file an action in the circuit courts of this state to abate, enjoin, and prevent the nuisance. A county, by resolution, or a municipality, by ordinance, may authorize the filing of an action in the circuit court within their jurisdiction to abate, enjoin, and prevent the nuisance. The actions shall be commenced by the filing of a complaint alleging the facts constituting the nuisance in circuit court of the county in which the nuisance
§13A-12-200.1 As used in this division, the following terms shall have the following meanings respectively ascribed to them by this section:

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

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

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

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

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

(6) DISSEMINATE PUBLICLY. To expose, place, perform, exhibit, show or in any fashion display, in any location, public or private, any material in a manner that the material can either be readily seen and its content or character distinguished by normal unaided vision or be physically examined, by viewing or examining the material from any public
place or any place to which members of the general public are
invited.

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

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

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

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

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

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

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

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

b. The material depicts or describes sexual conduct, breast nudity, or genital nudity in a way which is patently offensive to prevailing standards in the adult community with
respect to what is suitable for minors; and

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

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

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

(14) KNOWS THE NATURE OF THE MATERIAL. A person knows the nature of the material when any one of the following exists:

a. The person knows the nature of the material;

b. The person has reason to know the nature of the material;

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

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

(16) MINOR. Any unmarried person under the age of 18 years.
(17) OBSCENE. The term means **that all of the following:**

a. The average person, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest—**and**—

b. The material depicts or describes, in a patently offensive way, sexual conduct, actual or simulated, normal or perverted—**and**—

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

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

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

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

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

a. Flagellation or torture, in an act of sexual stimulation, by or upon a person who is nude or clad in undergarments or in a revealing or bizarre costume—**or**—

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

(22) SEXUAL CONDUCT. The term means **any of the following:**
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a. Any act of sexual intercourse, masturbation, urination, defecation, lewd exhibition of the genitals, sado-masochistic abuse, bestiality, or the fondling of the sex organs of animals; or.

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

c. Any sexual or gender oriented material that exposes minors to persons who are dressed in sexually revealing, exaggerated, or provocative clothing or costumes, or are stripping, or engaged in lewd or lascivious dancing, presentations, or activities, including but not limited to topless, go-go, or exotic dancers, or male or female impersonators, commonly known as drag queens or drag kings.

This sexual conduct is prohibited in K-12 public schools, public libraries, and in other public places where minors are present.

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

(24) WHOLESALER. A person who distributes material for the purpose of resale or commercial distribution at retail."
and application under Section 111.05 of the Constitution of
Alabama of 2022, because the bill defines a new crime or
amends the definition of an existing crime.

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