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09400HB4023ham002

LRB094 11300 RLC 43353 a

1 AMENDMENT TO HOUSE BILL 4023

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 4023 on page 1, line  
3 1, by changing "video games" to "criminal law"; and

4 on page 1, by replacing lines 4 and 5 with the following:

5 "Section 5. The Criminal Code of 1961 is amended by  
6 changing Section 11-21 and by adding Articles 12A and 12B as  
7 follows:

8 (720 ILCS 5/11-21) (from Ch. 38, par. 11-21)

9 Sec. 11-21. Harmful material.

10 (a) As used in this Section:

11 "Distribute" means transfer possession of, whether  
12 with or without consideration.

13 "Harmful to minors" means that quality of any  
14 description or representation, in whatever form, of  
15 nudity, sexual conduct, sexual excitement, or  
16 sado-masochistic abuse, when, taken as a whole, it (i)  
17 predominately appeals to the prurient interest in sex of  
18 minors, (ii) is patently offensive to prevailing standards  
19 in the adult community in the State as a whole with respect  
20 to what is suitable material for minors, and (iii) lacks  
21 serious literary, artistic, political, or scientific value  
22 for minors.

23 "Knowingly" means having knowledge of the contents of  
24 the subject matter, or recklessly failing to exercise

1 reasonable inspection which would have disclosed the  
2 contents.

3 "Material" means (i) any picture, photograph, drawing,  
4 sculpture, film, video game, computer game, video or  
5 similar visual depiction, including any such  
6 representation or image which is stored electronically, or  
7 (ii) any book, magazine, printed matter however  
8 reproduced, or recorded audio of any sort.

9 "Minor" means any person under the age of 18.

10 "Nudity" means the showing of the human male or female  
11 genitals, pubic area or buttocks with less than a full  
12 opaque covering, or the showing of the female breast with  
13 less than a fully opaque covering of any portion below the  
14 top of the nipple, or the depiction of covered male  
15 genitals in a discernably turgid state.

16 "Sado-masochistic abuse" means flagellation or torture  
17 by or upon a person clad in undergarments, a mask or  
18 bizarre costume, or the condition of being fettered, bound  
19 or otherwise physically restrained on the part of one  
20 clothed for sexual gratification or stimulation.

21 "Sexual conduct" means acts of masturbation, sexual  
22 intercourse, or physical contact with a person's clothed or  
23 unclothed genitals, pubic area, buttocks or, if such person  
24 be a female, breast.

25 "Sexual excitement" means the condition of human male  
26 or female genitals when in a state of sexual stimulation or  
27 arousal.

28 (b) A person is guilty of distributing harmful material to  
29 a minor when he or she:

30 (1) knowingly sells, lends, distributes, or gives away  
31 to a minor, knowing that the minor is under the age of 18  
32 or failing to exercise reasonable care in ascertaining the  
33 person's true age:

34 (A) any material which depicts nudity, sexual

1 conduct or sado-masochistic abuse, or which contains  
2 explicit and detailed verbal descriptions or narrative  
3 accounts of sexual excitement, sexual conduct or  
4 sado-masochistic abuse, and which taken as a whole is  
5 harmful to minors;

6 (B) a motion picture, show, or other presentation  
7 which depicts nudity, sexual conduct or  
8 sado-masochistic abuse and is harmful to minors; or

9 (C) an admission ticket or pass to premises where  
10 there is exhibited or to be exhibited such a motion  
11 picture, show, or other presentation; or

12 (2) admits a minor to premises where there is exhibited  
13 or to be exhibited such a motion picture, show, or other  
14 presentation, knowing that the minor is a person under the  
15 age of 18 or failing to exercise reasonable care in  
16 ascertaining the person's true age.

17 (c) In any prosecution arising under this Section, it is an  
18 affirmative defense:

19 (1) that the minor as to whom the offense is alleged to  
20 have been committed exhibited to the accused a draft card,  
21 driver's license, birth certificate or other official or  
22 apparently official document purporting to establish that  
23 the minor was 18 years of age or older, which was relied  
24 upon by the accused;

25 (2) that the defendant was in a parental or  
26 guardianship relationship with the minor or that the minor  
27 was accompanied by a parent or legal guardian;

28 (3) that the defendant was a bona fide school, museum,  
29 or public library, or was a person acting in the course of  
30 his or her employment as an employee or official of such  
31 organization or retail outlet affiliated with and serving  
32 the educational purpose of such organization;

33 (4) that the act charged was committed in aid of  
34 legitimate scientific or educational purposes; or

1           (5) that an advertisement of harmful material as  
2           defined in this Section culminated in the sale or  
3           distribution of such harmful material to a child under  
4           circumstances where there was no personal confrontation of  
5           the child by the defendant, his employees, or agents, as  
6           where the order or request for such harmful material was  
7           transmitted by mail, telephone, Internet or similar means  
8           of communication, and delivery of such harmful material to  
9           the child was by mail, freight, Internet or similar means  
10           of transport, which advertisement contained the following  
11           statement, or a substantially similar statement, and that  
12           the defendant required the purchaser to certify that he or  
13           she was not under the age of 18 and that the purchaser  
14           falsely stated that he or she was not under the age of 18:  
15           "NOTICE: It is unlawful for any person under the age of 18  
16           to purchase the matter advertised. Any person under the age  
17           of 18 that falsely states that he or she is not under the  
18           age of 18 for the purpose of obtaining the material  
19           advertised is guilty of a Class B misdemeanor under the  
20           laws of the State."

21           (d) The predominant appeal to prurient interest of the  
22           material shall be judged with reference to average children of  
23           the same general age of the child to whom such material was  
24           sold, lent, distributed or given, unless it appears from the  
25           nature of the matter or the circumstances of its dissemination  
26           or distribution that it is designed for specially susceptible  
27           groups, in which case the predominant appeal of the material  
28           shall be judged with reference to its intended or probable  
29           recipient group.

30           (e) Distribution of harmful material in violation of this  
31           Section is a Class A misdemeanor. A second or subsequent  
32           offense is a Class 4 felony.

33           (f) Any person under the age of 18 that falsely states,  
34           either orally or in writing, that he or she is not under the

1 age of 18, or that presents or offers to any person any  
2 evidence of age and identity that is false or not actually his  
3 or her own for the purpose of ordering, obtaining, viewing, or  
4 otherwise procuring or attempting to procure or view any  
5 harmful material is guilty of a Class B misdemeanor.

6 ~~(a) Elements of the Offense.~~

7 ~~A person who, with knowledge that a person is a child, that~~  
8 ~~is a person under 18 years of age, or who fails to exercise~~  
9 ~~reasonable care in ascertaining the true age of a child,~~  
10 ~~knowingly distributes to or sends or causes to be sent to, or~~  
11 ~~exhibits to, or offers to distribute or exhibit any harmful~~  
12 ~~material to a child, is guilty of a misdemeanor.~~

13 ~~(b) Definitions.~~

14 ~~(1) Material is harmful if, to the average person, applying~~  
15 ~~contemporary standards, its predominant appeal, taken as a~~  
16 ~~whole, is to prurient interest, that is a shameful or morbid~~  
17 ~~interest in nudity, sex, or excretion, which goes substantially~~  
18 ~~beyond customary limits of candor in description or~~  
19 ~~representation of such matters, and is material the redeeming~~  
20 ~~social importance of which is substantially less than its~~  
21 ~~prurient appeal.~~

22 ~~(2) Material, as used in this Section means any writing,~~  
23 ~~picture, record or other representation or embodiment.~~

24 ~~(3) Distribute means to transfer possession of, whether~~  
25 ~~with or without consideration.~~

26 ~~(4) Knowingly, as used in this section means having~~  
27 ~~knowledge of the contents of the subject matter, or recklessly~~  
28 ~~failing to exercise reasonable inspection which would have~~  
29 ~~disclosed the contents thereof.~~

30 ~~(c) Interpretation of Evidence.~~

31 ~~The predominant appeal to prurient interest of the material~~  
32 ~~shall be judged with reference to average children of the same~~  
33 ~~general age of the child to whom such material was offered,~~  
34 ~~distributed, sent or exhibited, unless it appears from the~~

1 ~~nature of the matter or the circumstances of its dissemination,~~  
2 ~~distribution or exhibition that it is designed for specially~~  
3 ~~susceptible groups, in which case the predominant appeal of the~~  
4 ~~material shall be judged with reference to its intended or~~  
5 ~~probable recipient group.~~

6 ~~In prosecutions under this section, where circumstances of~~  
7 ~~production, presentation, sale, dissemination, distribution,~~  
8 ~~or publicity indicate the material is being commercially~~  
9 ~~exploited for the sake of its prurient appeal, such evidence is~~  
10 ~~probative with respect to the nature of the material and can~~  
11 ~~justify the conclusion that the redeeming social importance of~~  
12 ~~the material is in fact substantially less than its prurient~~  
13 ~~appeal.~~

14 ~~(d) Sentence.~~

15 ~~Distribution of harmful material in violation of this~~  
16 ~~Section is a Class A misdemeanor. A second or subsequent~~  
17 ~~offense is a Class 4 felony.~~

18 ~~(e) Affirmative Defenses.~~

19 ~~(1) Nothing in this section shall prohibit any public~~  
20 ~~library or any library operated by an accredited institution of~~  
21 ~~higher education from circulating harmful material to any~~  
22 ~~person under 18 years of age, provided such circulation is in~~  
23 ~~aid of a legitimate scientific or educational purpose, and it~~  
24 ~~shall be an affirmative defense in any prosecution for a~~  
25 ~~violation of this section that the act charged was committed in~~  
26 ~~aid of legitimate scientific or educational purposes.~~

27 ~~(2) Nothing in this section shall prohibit any parent from~~  
28 ~~distributing to his child any harmful material.~~

29 ~~(3) Proof that the defendant demanded, was shown and acted~~  
30 ~~in reliance upon any of the following documents as proof of the~~  
31 ~~age of a child, shall be a defense to any criminal prosecution~~  
32 ~~under this section: A document issued by the federal government~~  
33 ~~or any state, county or municipal government or subdivision or~~  
34 ~~agency thereof, including, but not limited to, a motor vehicle~~

1 ~~operator's license, a registration certificate issued under~~  
2 ~~the Federal Selective Service Act or an identification card~~  
3 ~~issued to a member of the armed forces.~~

4 ~~(4) In the event an advertisement of harmful material as~~  
5 ~~defined in this section culminates in the sale or distribution~~  
6 ~~of such harmful material to a child, under circumstances where~~  
7 ~~there was no personal confrontation of the child by the~~  
8 ~~defendant, his employees or agents, as where the order or~~  
9 ~~request for such harmful material was transmitted by mail,~~  
10 ~~telephone, or similar means of communication, and delivery of~~  
11 ~~such harmful material to the child was by mail, freight, or~~  
12 ~~similar means of transport, it shall be a defense in any~~  
13 ~~prosecution for a violation of this section that the~~  
14 ~~advertisement contained the following statement, or a~~  
15 ~~statement substantially similar thereto, and that the~~  
16 ~~defendant required the purchaser to certify that he was not~~  
17 ~~under 18 years of age and that the purchaser falsely stated~~  
18 ~~that he was not under 18 years of age: "NOTICE: It is unlawful~~  
19 ~~for any person under 18 years of age to purchase the matter~~  
20 ~~herein advertised. Any person under 18 years of age who falsely~~  
21 ~~states that he is not under 18 years of age for the purpose of~~  
22 ~~obtaining the material advertised herein, is guilty of a Class~~  
23 ~~B misdemeanor under the laws of the State of Illinois."~~

24 ~~(f) Child Falsifying Age.~~

25 ~~Any person under 18 years of age who falsely states, either~~  
26 ~~orally or in writing, that he is not under the age of 18 years,~~  
27 ~~or who presents or offers to any person any evidence of age and~~  
28 ~~identity which is false or not actually his own for the purpose~~  
29 ~~of ordering, obtaining, viewing, or otherwise procuring or~~  
30 ~~attempting to procure or view any harmful material, is guilty~~  
31 ~~of a Class B misdemeanor.~~

32 (Source: P.A. 77-2638.)".