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1 AMENDMENT TO HOUSE BILL 4023

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 4023, AS AMENDED, by  
3 replacing everything after the enacting clause with the  
4 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.)

33 (720 ILCS 5/Art. 12A heading new)

1                    ARTICLE 12A. VIOLENT VIDEO GAMES

2                    (720 ILCS 5/12A-1 new)

3                    Sec. 12A-1. Short title. This Article may be cited as the  
4 Violent Video Games Law.

5                    (720 ILCS 5/12A-5 new)

6                    Sec. 12A-5. Findings.

7                    (a) The General Assembly finds that minors who play violent  
8 video games are more likely to:

9                    (1) Exhibit violent, asocial, or aggressive behavior.

10                   (2) Experience feelings of aggression.

11                   (3) Experience a reduction of activity in the frontal  
12 lobes of the brain which is responsible for controlling  
13 behavior.

14                   (b) While the video game industry has adopted its own  
15 voluntary standards describing which games are appropriate for  
16 minors, those standards are not adequately enforced.

17                   (c) Minors are capable of purchasing and do purchase  
18 violent video games.

19                   (d) The State has a compelling interest in assisting  
20 parents in protecting their minor children from violent video  
21 games.

22                   (e) The State has a compelling interest in preventing  
23 violent, aggressive, and asocial behavior.

24                   (f) The State has a compelling interest in preventing  
25 psychological harm to minors who play violent video games.

26                   (g) The State has a compelling interest in eliminating any  
27 societal factors that may inhibit the physiological and  
28 neurological development of its youth.

29                   (h) The State has a compelling interest in facilitating the  
30 maturation of Illinois' children into law-abiding, productive  
31 adults.



1 (720 ILCS 5/12A-10 new)

2 Sec. 12A-10. Definitions. For the purposes of this Article,  
3 the following terms have the following meanings:

4 (a) "Video game retailer" means a person who sells or rents  
5 video games to the public.

6 (b) "Video game" means an object or device that stores  
7 recorded data or instructions, receives data or instructions  
8 generated by a person who uses it, and, by processing the data  
9 or instructions, creates an interactive game capable of being  
10 played, viewed, or experienced on or through a computer, gaming  
11 system, console, or other technology.

12 (c) "Minor" means a person under 18 years of age.

13 (d) "Person" includes but is not limited to an individual,  
14 corporation, partnership, and association.

15 (e) "Violent" video games include depictions of or  
16 simulations of human-on-human violence in which the player  
17 kills or otherwise causes serious physical harm to another  
18 human. "Serious physical harm" includes depictions of death,  
19 dismemberment, amputation, decapitation, maiming,  
20 disfigurement, mutilation of body parts, or rape.

21 (720 ILCS 5/12A-15 new)

22 Sec. 12A-15. Restricted sale or rental of violent video  
23 games.

24 (a) A person who sells, rents, or permits to be sold or  
25 rented, any violent video game to any minor, commits a petty  
26 offense for which a fine of \$1,000 may be imposed.

27 (b) A person who sells, rents, or permits to be sold or  
28 rented any violent video game via electronic scanner must  
29 program the electronic scanner to prompt sales clerks to check  
30 identification before the sale or rental transaction is  
31 completed. A person who violates this subsection (b) commits a  
32 petty offense for which a fine of \$1,000 may be imposed.

33 (c) A person may not sell or rent, or permit to be sold or

1 rented, any violent video game through a self-scanning checkout  
2 mechanism. A person who violates this subsection (c) commits a  
3 petty offense for which a fine of \$1,000 may be imposed.

4 (d) A retail sales clerk shall not be found in violation of  
5 this Section unless he or she has complete knowledge that the  
6 party to whom he or she sold or rented a violent video game was  
7 a minor and the clerk sold or rented the video game to the  
8 minor with the specific intent to do so.

9 (720 ILCS 5/12A-20 new)

10 Sec. 12A-20. Affirmative defenses. In any prosecution  
11 arising under this Article, it is an affirmative defense:

12 (1) that the defendant was a family member of the minor for  
13 whom the video game was purchased. "Family member" for the  
14 purpose of this Section, includes a parent, sibling,  
15 grandparent, aunt, uncle, or first cousin;

16 (2) that the minor who purchased the video game exhibited a  
17 draft card, driver's license, birth certificate or other  
18 official or apparently official document purporting to  
19 establish that the minor was 18 years of age or older, which  
20 the defendant reasonably relied on and reasonably believed to  
21 be authentic; or

22 (3) for the video game retailer, if the retail sales clerk  
23 had complete knowledge that the party to whom he or she sold or  
24 rented a violent video game was a minor and the clerk sold or  
25 rented the video game to the minor with the specific intent to  
26 do so.

27 (720 ILCS 5/12A-25 new)

28 Sec. 12A-25. Labeling of violent video games.

29 (a) Video game retailers shall label all violent video  
30 games as defined in this Article, with a solid white "18"  
31 outlined in black. The "18" shall have dimensions of no less  
32 than 2 inches by 2 inches. The "18" shall be displayed on the

1 front face of the video game package.

2 (b) A retailer's failure to comply with this Section is a  
3 petty offense punishable by a fine of \$500 for the first 3  
4 violations, and \$1,000 for every subsequent violation.

5 (720 ILCS 5/Art. 12B heading new)

6 ARTICLE 12B. SEXUALLY EXPLICIT VIDEO GAMES

7 (720 ILCS 5/12B-1 new)

8 Sec. 12B-1. Short title. This Article may be cited as the  
9 Sexually Explicit Video Games Law.

10 (720 ILCS 5/12B-5 new)

11 Sec. 12B-5. Findings. The General Assembly finds sexually  
12 explicit video games inappropriate for minors and that the  
13 State has a compelling interest in assisting parents in  
14 protecting their minor children from sexually explicit video  
15 games.

16 (720 ILCS 5/12B-10 new)

17 Sec. 12B-10. Definitions. For the purposes of this Article,  
18 the following terms have the following meanings:

19 (a) "Video game retailer" means a person who sells or rents  
20 video games to the public.

21 (b) "Video game" means an object or device that stores  
22 recorded data or instructions, receives data or instructions  
23 generated by a person who uses it, and, by processing the data  
24 or instructions, creates an interactive game capable of being  
25 played, viewed, or experienced on or through a computer, gaming  
26 system, console, or other technology.

27 (c) "Minor" means a person under 18 years of age.

28 (d) "Person" includes but is not limited to an individual,  
29 corporation, partnership, and association.

30 (e) "Sexually explicit" video games include those that the

1 average person, applying contemporary community standards  
2 would find, with respect to minors, is designed to appeal or  
3 pander to the prurient interest and depict or represent in a  
4 manner patently offensive with respect to minors, an actual or  
5 simulated sexual act or sexual contact, an actual or simulated  
6 normal or perverted sexual act or a lewd exhibition of the  
7 genitals or post-pubescent female breast.

8 (720 ILCS 5/12B-15 new)

9 Sec. 12B-15. Restricted sale or rental of sexually explicit  
10 video games.

11 (a) A person who sells, rents, or permits to be sold or  
12 rented, any sexually explicit video game to any minor, commits  
13 a petty offense for which a fine of \$1,000 may be imposed.

14 (b) A person who sells, rents, or permits to be sold or  
15 rented any sexually explicit video game via electronic scanner  
16 must program the electronic scanner to prompt sales clerks to  
17 check identification before the sale or rental transaction is  
18 completed. A person who violates this subsection (b) commits a  
19 petty offense for which a fine of \$1,000 may be imposed.

20 (c) A person may not sell or rent, or permit to be sold or  
21 rented, any sexually explicit video game through a  
22 self-scanning checkout mechanism. A person who violates this  
23 subsection (c) commits a petty offense for which a fine of  
24 \$1,000 may be imposed.

25 (d) A retail sales clerk shall not be found in violation of  
26 this Section unless he or she has complete knowledge that the  
27 party to whom he or she sold or rented a sexually explicit  
28 video game was a minor and the clerk sold or rented the video  
29 game to the minor with the specific intent to do so.

30 (720 ILCS 5/12B-20 new)

31 Sec. 12B-20. Affirmative defenses. In any prosecution  
32 arising under this Article, it is an affirmative defense:

1       (1) that the defendant was a family member of the minor for  
2 whom the video game was purchased. "Family member" for the  
3 purpose of this Section, includes a parent, sibling,  
4 grandparent, aunt, uncle, or first cousin;

5       (2) that the minor who purchased the video game exhibited a  
6 draft card, driver's license, birth certificate or other  
7 official or apparently official document purporting to  
8 establish that the minor was 18 years of age or older, which  
9 the defendant reasonably relied on and reasonably believed to  
10 be authentic; or

11       (3) for the video game retailer, if the retail sales clerk  
12 had complete knowledge that the party to whom he or she sold or  
13 rented a violent video game was a minor and the clerk sold or  
14 rented the video game to the minor with the specific intent to  
15 do so.

16       (720 ILCS 5/12B-25 new)

17       Sec. 12B-25. Labeling of sexually explicit video games.

18       (a) Video game retailers shall label all sexually explicit  
19 video games as defined in this Act, with a solid white "18"  
20 outlined in black. The "18" shall have dimensions of no less  
21 than 2 inches by 2 inches. The "18" shall be displayed on the  
22 front face of the video game package.

23       (b) A retailer who fails to comply with this Section is  
24 guilty of a petty offense punishable by a fine of \$500 for the  
25 first 3 violations, and \$1,000 for every subsequent violation.

26       (720 ILCS 5/12B-30 new)

27       Sec. 12B-30. Posting notification of video games rating  
28 system.

29       (a) A retailer who sells or rents video games shall post a  
30 sign that notifies customers that a video game rating system,  
31 created by the Entertainment Software Ratings Board, is  
32 available to aid in the selection of a game. The sign shall be

1 prominently posted in, or within 5 feet of, the area in which  
2 games are displayed for sale or rental, at the information desk  
3 if one exists, and at the point of purchase.

4 (b) The lettering of each sign shall be printed, at a  
5 minimum, in 36-point type and shall be in black ink against a  
6 light colored background, with dimensions of no less than 18 by  
7 24 inches.

8 (c) A retailer's failure to comply with this Section is a  
9 petty offense punishable by a fine of \$500 for the first 3  
10 violations, and \$1,000 for every subsequent violation.

11 (720 ILCS 5/12B-35 new)

12 Sec. 12B-35. Availability of brochure describing rating  
13 system.

14 (a) A video game retailer shall make available upon request  
15 a brochure to customers that explains the Entertainment  
16 Software Ratings Board ratings system.

17 (b) A retailer who fails to comply with this Section shall  
18 receive the punishment described in subsection (b) of Section  
19 12B-25.

20 Section 98. Severability. If any provision of this Act or  
21 the application thereof to any person or circumstance is held  
22 invalid, the remainder of this Act and the application of such  
23 provision to other persons or circumstances shall not be  
24 affected thereby.

25 Section 99. Effective Date. This Act takes effect January  
26 1, 2006.".