

**DISSEMINATING, EXHIBITING, OR DISPLAYING SEXUALLY EXPLICIT MATTER TO MINORS
(EXCERPT)
Act 33 of 1978**

722.693 Good faith as defense.

Sec. 23.

(1) It is an affirmative defense to an alleged violation under this part that the person acted in good faith. Except as provided in subsection (2), good faith exists if at the time the alleged violation occurs all of the following conditions are satisfied:

(a) The minor shows the person identification that appears to be valid and that contains a photograph and a date of birth purporting to show that the minor is 17 years of age or older, or the service terms of the internet provider of a seller or rental enterprise that sells or rents ultra-violent explicit video games over the internet require a purchaser or renter to be 17 years of age or older if all of the following conditions are met:

(i) The ultra-violent explicit video game is purchased or rented over the internet.

(ii) The ultra-violent explicit video game is sent to the purchaser's or renter's home or place of residence or otherwise made directly available through the internet to the purchaser or renter.

(iii) The purchaser or renter of the ultra-violent explicit video game uses a credit card to purchase or rent the ultra-violent explicit video game.

(b) The person does not have independent knowledge that the minor is under 17 years of age.

(c) Relying upon information described in subdivisions (a) and (b), the person complies with a rating system established by the pertinent entertainment industry that does not conflict with this part.

(2) If the person possesses managerial responsibility for a business enterprise, good faith exists if at the time the alleged violation occurs the business enterprise satisfies all of the following conditions:

(a) The business enterprise has in existence a policy that its employees are required to comply with a rating system established by the pertinent entertainment industry that does not conflict with this part.

(b) The business enterprise trains its employees to follow the policy described in subdivision (a).

(c) The business enterprise enforces the policy described in subdivision (a).

History: Add. 2005, Act 108, Eff. Dec. 1, 2005

Constitutionality: In *Entertainment Software Association v Granholm*, F Supp (2006), the United States district court for the Eastern District of Michigan, Southern Division, permanently enjoined enforcement of an act regulating sexually explicit and ultra-violent video games as violating free speech rights and the due process requirement that a law be sufficiently definite to provide notice of the conduct prohibited that are granted in the First and Fourteenth Amendments to the United States Constitution.