

108TH CONGRESS
2D SESSION

H. R. 4239

To provide a civil action for a minor injured by exposure to an entertainment product containing material that is harmful to minors, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 2004

Mr. HUNTER introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To provide a civil action for a minor injured by exposure
to an entertainment product containing material that
is harmful to minors, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Parents’ Empower-
5 ment Act”.

1 **SEC. 2. CIVIL ACTION FOR A MINOR INJURED BY EXPO-**
2 **SURE TO AN ENTERTAINMENT PRODUCT**
3 **CONTAINING MATERIAL THAT IS HARMFUL**
4 **TO MINORS.**

5 (a) CIVIL ACTION.—A minor, through a person act-
6 ing on behalf of the minor in accordance with Rule 17(c)
7 of the Federal Rules of Civil Procedure to the extent appli-
8 cable, may, in a civil action in an appropriate district court
9 of the United States, obtain relief under subsection (b)
10 against any person who knowingly sells or distributes in
11 interstate or foreign commerce an entertainment product
12 containing material that is harmful to minors, if—

13 (1) a reasonable person would expect a substan-
14 tial number of minors to be exposed to the material;
15 and

16 (2) the minor as a result of exposure to that
17 material is likely to suffer personal or emotional in-
18 jury or injury to mental or moral welfare.

19 (b) RELIEF.—In an action under subsection (a), if
20 the minor is the prevailing party—

21 (1) the minor shall recover compensatory dam-
22 ages of not less than \$10,000 for each instance of
23 any such material in any such product to which such
24 minor was so exposed;

25 (2) the minor may recover punitive damages;

1 (3) the court, in its discretion, may allow the
2 minor a reasonable attorney's fee (including expert
3 fees) as part of the costs; and

4 (4) the court may order any other appropriate
5 relief.

6 (c) AFFIRMATIVE DEFENSE.—It is an affirmative de-
7 fense to an action under this section that a parent or
8 guardian of the minor owned or possessed the entertain-
9 ment product containing the material to which the minor
10 was exposed, and an act of that parent or guardian was
11 the proximate cause of the minor's exposure to that mate-
12 rial.

13 (d) DEFINITIONS.—For purposes of this section:

14 (1) The term “entertainment product” means a
15 picture, photograph, image, graphic image file,
16 drawing, video game, motion picture film, or similar
17 visual representation or image, book, pamphlet,
18 magazine, printed matter, or sound recording.

19 (2) The term “material that is harmful to mi-
20 nors” means any pornographic communication, pic-
21 ture, image, graphic image file, article, recording,
22 writing, or other pornographic matter of any kind
23 that is obscene or that—

24 (A) the average person, applying the con-
25 temporary standards of the adult community in

1 which the minor resides with respect to what is
2 suitable for minors, would find, taking the ma-
3 terial as a whole and with respect to minors of
4 the ages that the person reasonably would ex-
5 pect to be exposed to the material—

6 (i) is designed to appeal to, or is de-
7 signed to pander to, the prurient interest
8 in nudity, sex, or excretion, with respect to
9 minors; and

10 (ii) depicts, describes, or represents,
11 in a manner patently offensive with respect
12 to minors, an actual or simulated sexual
13 act or sexual contact, an actual or simu-
14 lated normal or perverted sexual act, or a
15 lewd exhibition of the genitals or post-pu-
16 bescent female breast; and

17 (B) a reasonable person would find, taken
18 as a whole, lacks serious literary, artistic, polit-
19 ical, and scientific value for minors sufficient to
20 overcome the pernicious effect of that material.

21 (3) The term “minor” means an individual
22 under the age of 18.

23 (e) SEVERABILITY.—If any provision of this section
24 or any application of such provision to any person or cir-
25 cumstance is held to be unconstitutional, the remainder

- 1 of this section and the application of the provision to any
- 2 other person or circumstance shall not be affected.

