

## Committee Substitute for Senate Bill No. 2118

An act relating to educational facilities; amending s. 847.001, F.S.; adding and revising definitions; creating s. 847.0134, F.S.; prohibiting the location of adult entertainment establishments within a specified distance of a school; providing a criminal penalty; providing an exception; providing an effective date.

WHEREAS, based upon the experience of other counties and cities, and the personal observation of the legislators in their own districts, the Legislature finds that adult entertainment establishments cause adverse effects in and around these establishments, and

WHEREAS, relevant studies demonstrate a significant increase in crime in areas where adult entertainment establishments are located, and

WHEREAS, the United States Supreme Court has recognized the adverse secondary effects caused by adult entertainment establishments in *Renton v. Playtime Theatres*, 475 U.S. 41 (1986) and *Eric v. Pap's*, 529 U.S. 277 (2000); and

WHEREAS, prohibiting adult entertainment establishments that show or exhibit material obscene or harmful to minors near public or private elementary, middle, or secondary schools will protect minors from the adverse effects of the activities that accompany such establishments, and

WHEREAS, the Legislature does not intend to impinge on the rights of free speech by limiting the location of these establishments away from schools where minors will be present, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 847.001, Florida Statutes, is amended to read:

847.001 Definitions.—When used in this chapter:

(1) “Adult” means a person 18 years of age or older.

(2) “Adult entertainment establishment” means the following terms as defined:

(a) “Adult bookstore” means any corporation, partnership, or business of any kind which restricts or purports to restrict admission only to adults, which has as part of its stock books, magazines, other periodicals, videos, discs, or other graphic media and which offers, sells, provides, or rents for a fee any sexually oriented material.

(b) “Adult theater” means an enclosed building or an enclosed space within a building used for presenting either films, live plays, dances, or other performances that are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specific sexual activities for

observation by patrons, and which restricts or purports to restrict admission only to adults.

(c) “Unlicensed massage establishment” means any business or enterprise that offers, sells, or provides, or that holds itself out as offering, selling, or providing, massages that include bathing, physical massage, rubbing, kneading, anointing, stroking, manipulating, or other tactile stimulation of the human body by either male or female employees or attendants, by hand or by any electrical or mechanical device, on or off the premises. The term “unlicensed massage establishment” does not include an establishment licensed under s. 480.43 which routinely provides medical services by state-licensed health care practitioners and massage therapists licensed under s. 480.041.

(d) “Special Cabaret” means any business that features persons who engage in specific sexual activities for observation by patrons, and which restricts or purports to restrict admission only to adults.

(3)(4) “Computer” means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions and includes any data storage facility or communications facility directly related to or operating in conjunction with such device. The term also includes: any on-line service, Internet service, or local bulletin board; any electronic storage device, including a floppy disk or other magnetic storage device; or any compact disc that has read-only memory and the capacity to store audio, video, or written materials.

(4)(2) “Deviate sexual intercourse” means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

(5)(3) “Harmful to minors” means that quality of any description, exhibition, presentation, or representation, in whatever form, of nudity, sexual conduct, or sexual excitement when it:

(a) Predominantly appeals to the prurient, shameful, or morbid interest of minors;

(b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

(c) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

A mother’s breastfeeding of her baby is not under any circumstance “harmful to minors.”

(6) “Masochism” means sexual gratification achieved by a person through, or the association of sexual activity with, submission or subjection to physical pain, suffering, humiliation, torture, or death.

(7)(4) “Minor” means any person under the age of 18 years.

(8)(5) “Nudity” means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother’s breastfeeding of her baby does not under any circumstance constitute “nudity,” irrespective of whether or not the nipple is covered during or incidental to feeding.

(9)(6) “Person” includes individuals, firms, associations, corporations, and all other groups and combinations.

(10)(7) “Obscene” means the status of material which:

(a) The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;

(b) Depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and

(c) Taken as a whole, lacks serious literary, artistic, political, or scientific value.

A mother’s breastfeeding of her baby is not under any circumstance “obscene.”

(11) “Sadism” means sexual gratification achieved through, or the association of sexual activity with, the infliction of physical pain, suffering, humiliation, torture, or death upon another person or an animal.

(12)(8) “Sadomasochistic abuse” means flagellation or torture by or upon a person or animal, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself.

(13)(9) “Sexual battery” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, “sexual battery” does not include an act done for a bona fide medical purpose.

(14)(10) “Sexual bestiality” means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.

(15)(11) “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother’s breastfeeding of her baby does not under any circumstance constitute “sexual conduct.”

(16)(12) “Sexual excitement” means the condition of the human male or female genitals when in a state of sexual stimulation or arousal.

(17) “Sexually oriented material” means any book, article, magazine, publication, or written matter of any kind or any drawing, etching, painting, photograph, motion picture film, or sound recording that depicts sexual activity, actual or simulated, involving human beings or human beings and animals, that exhibits uncovered human genitals or the pubic region in a lewd or lascivious manner, or that exhibits human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(18)(13) “Simulated” means the explicit depiction of conduct described in subsection (15) (14) which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

(19) “Specific sexual activities” includes the following sexual activities and the exhibition of the following anatomical areas:

(a) Human genitals in the state of sexual stimulation or arousal.

(b) Acts of human masturbation, sexual intercourse, sodomy, cunnilingus, fellatio, or any excretory function, or representation thereof.

(c) The fondling or erotic touching of human genitals, the pubic region, the buttocks, or the female breasts.

(d) Less than completely and opaquely covered:

1. Human genitals or the pubic region.

2. Buttocks.

3. Female breasts below the top of the areola.

4. Human male genitals in a discernably turgid state, even if completely and opaquely covered.

Section 2. Section 847.0134, Florida Statutes, is created to read:

847.0134 Prohibition of adult entertainment establishment that displays, sells, or distributes materials harmful to minors within 2,500 feet of a school.—

(1) Except for those establishments that are legally operating or have been granted a permit from a local government to operate as adult entertainment establishments on or before July 1, 2001, an adult entertainment establishment that sells, rents, loans, distributes, transmits, shows, or exhibits any obscene material, as described in s. 847.0133, or presents live entertainment or a motion picture, slide, or other exhibit that, in whole or in part, depicts nudity, sexual conduct, sexual excitement, sexual battery, sexual bestiality, or sadomasochistic abuse and that is harmful to minors, as described in s. 847.001, may not be located within 2,500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school unless the county or municipality approves the

location under proceedings as provided in s. 125.66(4) for counties or s. 166.041(3)(c) for municipalities.

(2) A violation of this section constitutes a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

Section 3. This act shall take effect July 1, 2001.

Approved by the Governor June 6, 2001.

Filed in Office Secretary of State June 6, 2001.