

## CHAPTER 2023-94

### Senate Bill No. 1438

An act relating to the protection of children; creating s. 255.70, F.S.; defining the term “governmental entity”; prohibiting a governmental entity from issuing a permit or otherwise authorizing a person to conduct a performance in violation of specified provisions; providing criminal penalties; amending s. 509.261, F.S.; authorizing the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to fine, suspend, or revoke the license of any public lodging establishment or public food service establishment if the establishment admits a child to an adult live performance; specifying that a specified violation constitutes an immediate, serious danger to the public health, safety, or welfare; authorizing the division to issue specified fines for first, second, and subsequent violations of certain provisions; amending s. 561.29, F.S.; specifying that the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation is given full power and authority to revoke or suspend the license of any person issued under the Beverage Law when it is determined or found by the division upon sufficient cause appearing that he or she is maintaining a licensed premises that admits a child to an adult live performance; specifying that a specified violation constitutes an immediate serious danger to the public health, safety, or welfare; authorizing the division to issue specified fines for first, second, and subsequent violations of certain provisions; creating s. 827.11, F.S.; defining the terms “adult live performance” and “knowingly”; prohibiting the raising of specified arguments as a defense in a prosecution for certain violations; prohibiting a person from knowingly admitting a child to an adult live performance; providing criminal penalties; providing an effective date.

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

Section 1. Section 255.70, Florida Statutes, is created to read:

255.70 Public permitting.—

(1) As used in this section, the term “governmental entity” means any state, county, district, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law and any other public or private agency, person, partnership, or corporation or business entity acting on behalf of any public agency.

(2) A governmental entity may not issue a permit or otherwise authorize a person to conduct a performance in violation of s. 827.11.

(3) If a violation of s. 827.11 occurs for a lawfully issued permit or other authorization, the individual who was issued the permit or other

authorization commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. Subsection (10) is added to section 509.261, Florida Statutes, to read:

509.261 Revocation or suspension of licenses; fines; procedure.—

(10)(a) The division may fine, suspend, or revoke the license of any public lodging establishment or public food service establishment if the establishment admits a child to an adult live performance, in violation of s. 827.11.

(b) A violation of this subsection constitutes an immediate serious danger to the public health, safety, or welfare for the purposes of s. 120.60(6).

(c) Notwithstanding subsection (1), the division may issue a \$5,000 fine for an establishment's first violation of this subsection.

(d) Notwithstanding subsection (1), the division may issue a \$10,000 fine for an establishment's second or subsequent violation of this subsection.

Section 3. Paragraph (1) is added to subsection (1) of section 561.29, Florida Statutes, to read:

561.29 Revocation and suspension of license; power to subpoena.—

(1) The division is given full power and authority to revoke or suspend the license of any person holding a license under the Beverage Law, when it is determined or found by the division upon sufficient cause appearing of:

(1) Maintaining a licensed premises that admits a child to an adult live performance in violation of s. 827.11.

1. A violation of this paragraph constitutes an immediate, serious danger to the public health, safety, or welfare for the purposes of s. 120.60(6).

2. The division may issue a \$5,000 fine for a first violation of this paragraph.

3. The division may issue a \$10,000 fine for a second or subsequent violation of this paragraph.

Section 4. Section 827.11, Florida Statutes, is created to read:

827.11 Exposing children to an adult live performance.—

(1) As used in this section, the term:

(a) "Adult live performance" means any show, exhibition, or other presentation in front of a live audience which, in whole or in part, depicts or simulates nudity, sexual conduct, sexual excitement, or specific sexual

activities as those terms are defined in s. 847.001, lewd conduct, or the lewd exposure of prosthetic or imitation genitals or breasts when it:

1. Predominantly appeals to a prurient, shameful, or morbid interest;

2. Is patently offensive to prevailing standards in the adult community of this state as a whole with respect to what is suitable material or conduct for the age of the child present; and

3. Taken as a whole, is without serious literary, artistic, political, or scientific value for the age of the child present.

(b) “Knowingly” means having general knowledge of, reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

1. The character and content of any adult live performance described in this section which is reasonably susceptible of examination by the defendant; and

2. The age of the child.

(2) A person’s ignorance of a child’s age, a child’s misrepresentation of his or her age, or a bona fide belief of a child’s consent may not be raised as a defense in a prosecution for a violation of this section.

(3) A person may not knowingly admit a child to an adult live performance.

(4) A violation of subsection (3) constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 5. This act shall take effect upon becoming a law.

Approved by the Governor May 17, 2023.

Filed in Office Secretary of State May 17, 2023.