

By the Committee on Criminal Justice and Senators Geller,
Latvala and Saunders

307-1856B-00

1 A bill to be entitled
2 An act relating to improper activity over the
3 Internet; requiring that the Department of Law
4 Enforcement increase public awareness
5 concerning Internet safety; requiring the
6 department to develop guidelines for using the
7 Internet; requiring the development of a
8 mechanism to report crimes through an Internet
9 site; amending s. 501.203, F.S.; including
10 business or commercial entities within the
11 definition of the term "consumer" for purposes
12 of ch. 501, F.S.; amending s. 501.207, F.S.;
13 authorizing an action on behalf of a
14 governmental entity for damages caused by a
15 violation of part II of ch. 501, F.S.; amending
16 s. 501.2075, F.S.; providing for waiver of
17 civil penalties if restitution is made for
18 actual damages to a governmental entity;
19 repealing s. 501.2091, F.S., relating to an
20 authorization for a stay of proceedings pending
21 trial by a party to an action under part II of
22 ch. 501, F.S.; amending s. 501.211, F.S.;
23 providing for the recovery of actual damages on
24 the part of a person who suffers a loss as a
25 result of a violation of part II of ch. 501,
26 F.S.; amending s. 501.212, F.S.; deleting an
27 exemption from regulation under part II of ch.
28 501, F.S., for persons regulated under laws
29 administered by other agencies; amending s.
30 847.001, F.S.; defining the term "child
31 pornography" for purposes of ch. 847, F.S.;

1 clarifying the definition of the term "sexual
2 conduct"; creating s. 847.0137, F.S.;
3 prohibiting transmissions over the Internet of
4 pornography in specified circumstances;
5 providing penalties; creating s. 847.0139,
6 F.S.; providing immunity from civil liability
7 for reporting child pornography; providing an
8 effective date.

9
10 WHEREAS, the Florida Information Service Technology
11 Development Task Force has determined and the Legislature
12 finds that, although the Internet offers enormous positive
13 opportunities for the citizens of this state, it also offers
14 many opportunities for criminal activity and victimization,
15 and

16 WHEREAS, computer and Internet-related crime continues
17 to escalate rapidly throughout our state, the nation, and the
18 world, and

19 WHEREAS, although many businesses and residents have
20 become aware of the potential dangers and are cautious in
21 their use of the Internet, others, perhaps even a majority of
22 Internet users, are unaware of the dangers of on-line crime or
23 are unaware of what they can do to prevent their becoming
24 victims of on-line crime, and

25 WHEREAS, the Legislature finds that the state should
26 improve public awareness on how to safely use the Internet,
27 and

28 WHEREAS, the task force has also recommended and the
29 Legislature finds that it is important to ensure that the
30 statutory protections provided for businesses and the public
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1 against fraud, child abuse, and crimes continue into the new
2 world of electronic commerce over the Internet, and

3 WHEREAS, it is of paramount importance that the courts
4 of this state maintain jurisdiction over perpetrators of
5 Internet crime in order to protect businesses and members of
6 the public, and

7 WHEREAS, sellers of goods and services to businesses
8 and individuals in this state should be regulated in a uniform
9 manner, regardless of the method used to contact or deliver
10 goods or services to that business or individual, and

11 WHEREAS, a person's right to equal protection under the
12 laws of this state should not be diminished because the manner
13 of sales transaction has changed as a result of technological
14 advances, and

15 WHEREAS, The Florida Information Service Technology
16 Development Task Force, in finding that the Internet offers
17 many opportunities for criminal activity and victimization,
18 specifically addressed a subset of that criminal activity
19 relating to the transmission, including Internet transmission,
20 of adult and child pornography, and

21 WHEREAS, the task force, while it recognizes that such
22 transmission is a complicated matter involving primarily First
23 Amendment issues regarding adult pornography and
24 jurisdictional issues regarding child pornography,
25 nevertheless agreed with the statement that internet
26 transmission of child pornography constitutes a crime and that
27 Florida has jurisdiction over any person inside or outside of
28 this state who has engaged in such transmission or knew or
29 should have known that he or she was transmitting pornography
30 to a minor in this state, and

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1 WHEREAS, the task force also agreed with the statement
2 that any person in this state who transmits child pornography
3 to anyone inside or outside of this state commits a crime and
4 that Florida has jurisdiction over such person, and

5 WHEREAS, the task force also agreed with the statement
6 that any person outside this state who transmits child
7 pornography to any person inside this state or who knows or
8 should know that he or she is doing so commits a crime and
9 that Florida has jurisdiction over such person, and

10 WHEREAS, the task force, while recognizing that such
11 transmission is a difficult issue to resolve, as many
12 considerations are involved, primarily First Amendment issues
13 regarding adult pornography and jurisdictional issues
14 regarding child pornography, nevertheless agreed with the
15 statement that a crime is committed, and Florida has
16 jurisdiction over any person in or outside of this state who
17 knew or should have known that he or she was transmitting any
18 type of pornography to a minor in this state, and

19 WHEREAS, the task force also agreed with the statement
20 that a crime is committed, and Florida has jurisdiction over
21 any person in this state who transmits child pornography to
22 anyone in or outside of this state, and

23 WHEREAS, the task force also agreed with the statement
24 that a crime is committed, and Florida has jurisdiction over
25 any person outside this state who knew or should have known
26 that he or she was transmitting child pornography to anyone in
27 this state, and

28 WHEREAS, the Legislature also agrees with these
29 statements and finds that these statements should extend to
30 instances in which a person transmits child pornography to
31 someone whom he believes to be a minor but who is actually a

1 law enforcement officer engaged in an investigation or
2 operation in accordance with the laws of this state, which is
3 already statutorily authorized in relation to computer
4 solicitation offenses against minors, and

5 WHEREAS, the Legislature finds that the First Amendment
6 should not be violated by transmission by any means of
7 pornography of any kind to a minor and transmission of child
8 pornography to any person, and

9 WHEREAS, the Legislature finds that the prohibition of
10 the acts or conduct reflected by the various statements agreed
11 upon by the task force and the Legislature can be accomplished
12 by amending the laws of this state, and

13 WHEREAS, the Legislature finds that the laws of this
14 state can be amended to address jurisdictional concerns
15 regarding child pornography, as those concerns have already
16 been addressed by the Legislature regarding computer
17 solicitation offenses against minors, and

18 WHEREAS, the task force also recommended that
19 legislation be enacted which would not require anyone to
20 report pornography, including child pornography, but which
21 would grant civil immunity from lawsuits to any person who
22 reports to appropriate law enforcement agents what the person
23 reasonably believes to be child pornography, and

24 WHEREAS, the Legislature finds this recommendation may
25 lead to the apprehension of persons conveying by any means
26 child pornography but protects persons from possible arrest
27 based on unsubstantiated or false accusations or statements or
28 the submission of falsified evidence by the person reporting
29 the presence of child pornography, and

30 WHEREAS, the Legislature finds that the laws of this
31 state can be amended to grant civil immunity to any persons

1 who report what they reasonably believe to be child
2 pornography to appropriate law enforcement agents, including
3 immunity from civil liability for a person who furnishes a
4 copy of a photograph or other evidence to law enforcement
5 agents of what the person reasonably believes to be child
6 pornography, NOW, THEREFORE,

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

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10 Section 1. Public awareness campaign on Internet
11 safety.--

12 (1) The Computer Crime Center within the Department of
13 Law Enforcement shall coordinate the development of a
14 comprehensive public awareness campaign on Internet safety.
15 This effort should include a partnership with the Attorney
16 General and the Department of Education, as well as other
17 agencies and organizations as necessary. At a minimum, the
18 campaign must include the development of guidelines for the
19 safe and secure use of the Internet, including the best ways
20 to prevent users from becoming victims of Internet crime.
21 These should also include detailed guidelines for parents to
22 consider for protecting their children from on-line encounters
23 with molesters, pedophiles, and other criminal elements.

24 (2) In addition, the public awareness campaign must
25 include the development of a mechanism to report Internet
26 crimes through the public Internet site of the Department of
27 Law Enforcement. Because of the need to establish a simple
28 method for reporting Internet crimes to law enforcement
29 agencies, the Department of Law Enforcement shall work in
30 cooperation with local law enforcement agencies in
31 investigating and prosecuting Internet crimes.

1 Section 2. Subsection (7) of section 501.203, Florida
2 Statutes, is amended to read:

3 501.203 Definitions.--As used in this chapter, unless
4 the context otherwise requires, the term:

5 (7) "Consumer" means an individual; child, by and
6 through its parent or legal guardian; business; firm;
7 association; joint venture; partnership; estate; trust;
8 business trust; syndicate; fiduciary; corporation; any
9 commercial entity, however denominated; or any other group or
10 combination.

11 Section 3. Subsections (1), (3), and (6) of section
12 501.207, Florida Statutes, are amended to read:

13 501.207 Remedies of enforcing authority.--

14 (1) The enforcing authority may bring:

15 (a) An action to obtain a declaratory judgment that an
16 act or practice violates this part.

17 (b) An action to enjoin any person who has violated,
18 is violating, or is otherwise likely to violate, this part.

19 (c) An action on behalf of one or more consumers or
20 governmental entities for the actual damages caused by an act
21 or practice in violation of this part. However, ~~no~~ damages
22 are not ~~shall be~~ recoverable under this section against a
23 retailer who has in good faith engaged in the dissemination of
24 claims of a manufacturer or wholesaler without actual
25 knowledge that it violated this part.

26 (3) Upon motion of the enforcing authority or any
27 interested party in any action brought under subsection (1),
28 the court may make appropriate orders, including, but not
29 limited to, appointment of a master or receiver or
30 sequestration or freezing of assets, to reimburse consumers or
31 governmental entities found to have been damaged; to carry out

1 a transaction in accordance with the consumers reasonable
2 expectations of consumers or governmental entities; to strike
3 or limit the application of clauses of contracts to avoid an
4 unconscionable result; to order any defendant to divest
5 herself or himself of any interest in any enterprise,
6 including real estate; to impose reasonable restrictions upon
7 the future activities of any defendant to impede her or him
8 from engaging in or establishing the same type of endeavor; to
9 order the dissolution or reorganization of any enterprise; or
10 to grant other appropriate relief. The court may assess the
11 expenses of a master or receiver against a person who has
12 violated, is violating, or is otherwise likely to violate this
13 part. Any injunctive order, whether temporary or permanent,
14 issued by the court shall be effective throughout the state
15 unless otherwise provided in the order.

16 (6) The enforcing authority may terminate an
17 investigation or an action upon acceptance of a person's
18 written assurance of voluntary compliance with this part.
19 Acceptance of an assurance may be conditioned on a commitment
20 to reimburse consumers or governmental entities, make
21 contributions, pay civil penalties, pay attorney's fees and
22 costs, or take other appropriate corrective action. An
23 assurance is not evidence of a prior violation of this part.
24 However, unless an assurance has been rescinded by agreement
25 of the parties or voided by a court for good cause, subsequent
26 failure to comply with the terms of an assurance is prima
27 facie evidence of a violation of this part. ~~No~~ Such assurance
28 is not shall act as a limitation upon any action or remedy
29 available to a person aggrieved by a violation of this part.

30 Section 4. Section 501.2075, Florida Statutes, is
31 amended to read:

1 501.2075 Civil penalty.--Except as provided in s.
2 501.2077, any person, firm, corporation, association, or
3 entity, or any agent or employee of the foregoing, who is
4 willfully using, or has willfully used, a method, act, or
5 practice declared unlawful under s. 501.204, or who is
6 willfully violating any of the rules of the department adopted
7 ~~promulgated~~ under this part, is liable for a civil penalty of
8 not more than \$10,000 for each such violation. Willful
9 violations occur when the person knew or should have known
10 that his or her conduct was unfair or deceptive or prohibited
11 by rule. This civil penalty may be recovered in any action
12 brought under this part by the enforcing authority; or the
13 enforcing authority may terminate any investigation or action
14 upon agreement by the person, firm, corporation, association,
15 or entity, or the agent or employee of the foregoing, to pay a
16 stipulated civil penalty. The department or the court may
17 waive any such civil penalty if the person, firm, corporation,
18 association, or entity, or the agent or employee of the
19 foregoing, has previously made full restitution or
20 reimbursement or has paid actual damages to the consumers or
21 governmental entities who have been injured by the unlawful
22 act or practice or rule violation. If civil penalties are
23 assessed in any litigation, the enforcing authority is
24 entitled to reasonable attorney's fees and costs. A civil
25 penalty so collected shall accrue to the state and shall be
26 deposited as received into the General Revenue Fund
27 unallocated.

28 Section 5. Section 501.2091, Florida Statutes, is
29 repealed.

30 Section 6. Subsection (2) of section 501.211, Florida
31 Statutes, is amended to read:

1 501.211 Other individual remedies.--

2 (2) In any ~~individual~~ action brought by a person
3 ~~consumer~~ who has suffered a loss as a result of a violation of
4 this part, such person ~~consumer~~ may recover actual damages,
5 plus attorney's fees and court costs as provided in s.
6 501.2105. ~~However, no damages, fees, or costs are not shall~~
7 ~~be~~ recoverable under this section against a retailer who has,
8 in good faith, engaged in the dissemination of claims of a
9 manufacturer or wholesaler without actual knowledge that it
10 violated this part.

11 Section 7. Subsection (4) of section 501.212, Florida
12 Statutes, is amended to read:

13 501.212 Application.--This part does not apply to:

14 (4) Any ~~person~~ or activity regulated under laws
15 administered by the Department of Insurance or the Florida
16 Public Service Commission or banks and savings and loan
17 associations regulated by the Department of Banking and
18 Finance or banks or savings and loan associations regulated by
19 federal agencies.

20 Section 8. Section 847.001, Florida Statutes, is
21 amended to read:

22 847.001 Definitions.--When used in this chapter:

23 (1) "Child pornography" means any image depicting, or
24 intending to depict, a minor engaged in sexual conduct.

25 (2) ~~(1)~~ "Computer" means an electronic, magnetic,
26 optical, electrochemical, or other high-speed data processing
27 device performing logical, arithmetic, or storage functions
28 and includes any data storage facility or communications
29 facility directly related to or operating in conjunction with
30 such device. The term also includes: any on-line service,
31 Internet service, or local bulletin board; any electronic

1 storage device, including a floppy disk or other magnetic
2 storage device; or any compact disc that has read-only memory
3 and the capacity to store audio, video, or written materials.

4 (3)~~(2)~~ "Deviate sexual intercourse" means sexual
5 conduct between persons not married to each other consisting
6 of contact between the penis and the anus, the mouth and the
7 penis, or the mouth and the vulva.

8 (4)~~(3)~~ "Harmful to minors" means that quality of any
9 description, exhibition, presentation, or representation, in
10 whatever form, of nudity, sexual conduct, or sexual excitement
11 when it:

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

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

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

19

20 A mother's breastfeeding of her baby is not under any
21 circumstance "harmful to minors."

22 (5)~~(4)~~ "Minor" means any person under the age of 18
23 years.

24 (6)~~(5)~~ "Nudity" means the showing of the human male or
25 female genitals, pubic area, or buttocks with less than a
26 fully opaque covering; or the showing of the female breast
27 with less than a fully opaque covering of any portion thereof
28 below the top of the nipple; or the depiction of covered male
29 genitals in a discernibly turgid state. A mother's
30 breastfeeding of her baby does not under any circumstance

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1 constitute "nudity," irrespective of whether or not the nipple
2 is covered during or incidental to feeding.

3 (7)~~(6)~~ "Person" includes individuals, firms,
4 associations, corporations, and all other groups and
5 combinations.

6 (8)~~(7)~~ "Obscene" means the status of material which:

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

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

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

14
15 A mother's breastfeeding of her baby is not under any
16 circumstance "obscene."

17 (9)~~(8)~~ "Sadomasochistic abuse" means flagellation or
18 torture by or upon a person or animal, or the condition of
19 being fettered, bound, or otherwise physically restrained, for
20 the purpose of deriving sexual satisfaction, or satisfaction
21 brought about as a result of sadistic violence, from
22 inflicting harm on another or receiving such harm oneself.

23 (10)~~(9)~~ "Sexual battery" means oral, anal, or vaginal
24 penetration by, or union with, the sexual organ of another or
25 the anal or vaginal penetration of another by any other
26 object; however, "sexual battery" does not include an act done
27 for a bona fide medical purpose.

28 (11)~~(10)~~ "Sexual bestiality" means any sexual act
29 between a person and an animal involving the sex organ of the
30 one and the mouth, anus, or vagina of the other.

31

1 ~~(11)~~ (12) "Sexual conduct" means actual or simulated
2 sexual intercourse, deviate sexual intercourse, sexual
3 bestiality, masturbation, or sadomasochistic abuse; actual
4 lewd exhibition of the genitals; actual physical contact with
5 a person's clothed or unclothed genitals, pubic area,
6 buttocks, or, if such person is a female, breast with the
7 intent to arouse or gratify the sexual desire of either party;
8 or any act or conduct which constitutes sexual battery or
9 simulates that sexual battery is being or will be committed.
10 A mother's breastfeeding of her baby does not under any
11 circumstance constitute "sexual conduct."

12 ~~(12)~~ (13) "Sexual excitement" means the condition of
13 the human male or female genitals when in a state of sexual
14 stimulation or arousal.

15 ~~(13)~~ (14) "Simulated" means the explicit depiction of
16 conduct described in subsection ~~(12)~~ (11) which creates the
17 appearance of such conduct and which exhibits any uncovered
18 portion of the breasts, genitals, or buttocks.

19 Section 9. Section 847.0137, Florida Statutes, is
20 created to read:

21 847.0137 Transmission of pornography by means of the
22 Internet prohibited; penalties.--

23 (1) For purposes of this section, the term "minor"
24 means any person less than 18 years of age.

25 (2) Notwithstanding ss. 847.012 and 847.0133, any
26 person in this state who:

27 (a) Transmits, by means of the Internet, child
28 pornography, as defined in s. 847.001, to another person in
29 this state or in another jurisdiction; or

30 (b) Under the circumstances, knew or should have known
31 that he or she was transmitting, by means of the Internet, an

1 image harmful to minors, as defined in s. 847.001, to a minor,
2 or a person believed to be a minor, in this state

3
4 commits a felony of the third degree, punishable as provided
5 in s. 775.082, s. 775.083, or s. 775.084.

6 (3) Notwithstanding ss. 847.012 and 847.0133, any
7 person in any jurisdiction other than this state who:

8 (a) Under the circumstances, knew or should have known
9 that he or she was transmitting, by means of the Internet,
10 child pornography, as defined in s. 847.001, to any person in
11 this state; or

12 (b) Under the circumstances, knew or should have known
13 that he or she was transmitting, by means of the Internet, an
14 image harmful to minors, as defined in s. 847.001, to a minor,
15 or a person believed to be a minor, in this state

16
17 commits a felony of the third degree, punishable as provided
18 in s. 775.082, s. 775.083, or s. 775.084.

19 (4) This section shall not be construed to prohibit
20 prosecution of a person in this state or another jurisdiction
21 for a violation of any law of this state, including a law
22 providing for greater penalties than prescribed in this
23 section, for the transmission, by means of the Internet, of an
24 image harmful to minors, or child pornography, as defined in
25 s. 847.001, to any person in this state.

26 (5) A person is subject to prosecution in this state
27 pursuant to chapter 910 for any act or conduct proscribed by
28 this section, including a person in a jurisdiction other than
29 this state, if the act or conduct violates paragraph (3)(a) or
30 paragraph (3)(b).

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1 Section 10. Section 847.0139, Florida Statutes, is
2 created to read:

3 847.0139 Immunity from civil liability for reporting
4 child pornography.--Any person who reports to a law
5 enforcement officer what the person reasonably believes to be
6 child pornography as defined in s. 847.001(1) may not be held
7 civilly liable for reporting such information. For purposes of
8 this section, reporting child pornography to a law enforcement
9 officer may include furnishing the officer with a copy of a
10 photograph or other evidence of what the person reasonably
11 believes to be child pornography.

12 Section 11. This act shall take effect July 1, 2000.

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill's 1284, 1476, 1528 & 1616

- 4 - Requires that the Computer Crime Center within the
5 Florida Department of Law Enforcement (FDLE) coordinate
6 the development of a comprehensive public awareness
7 campaign on Internet safety.
- 8 - Mandates, at a minimum, that the campaign include the
9 development of guidelines for the safe and secure use of
10 the Internet, including the best means to prevent users
11 from becoming the victims of on-line crime.
- 12 - Requires that the campaign include the development of a
13 mechanism to report Internet crimes through FDLE's
14 public Internet site, and requires FDLE to work in
15 cooperation with local law enforcement agencies in
16 investigating and prosecuting Internet crimes.
- 17 - Clarifies the definition of consumer in the Florida
18 Deceptive and Unfair Trade Practices Act includes
19 businesses and that all types of businesses may seek
20 their own relief under this act.
- 21 - Ensures that governmental entities are protected by the
22 Florida Deceptive and Unfair Trade Practices Act.
- 23 - Repeals s. 501.211, F.S., a venue section in the Florida
24 Deceptive and Unfair Trade Practices Act.
- 25 - Clarifies that the Florida Deceptive and Unfair Trade
26 Practices Act applies to businesses regulated by the
27 Public Service Commission.
- 28 - Defines "child pornography" as "any image depicting, or
29 intending to depict, a minor engaged in sexual conduct."
- 30 - Amends the definition of "sexual conduct" in s. 847.001,
31 F.S.
- Prohibits certain Internet transmissions of material
harmful to minors to a minor in this state, or a person
believed to be a minor in this state.
- Prohibits Internet transmissions of child pornography
into or out of this state.
- Defines "minor" for the purpose of the new offenses.
- Provides that the new section creating these new
offenses shall not be construed to prohibit prosecution
of a person in this state or any other jurisdiction for
a violation of any law of this state, including a law
providing for greater penalties than prescribed in this
new section for the transmission, by means of the
Internet, of an image harmful to minors or child
pornography.
- Provides that a person is subject to prosecution in this

1 state, pursuant to Chapter 910, F.S., for any act
2 proscribed by this new section, including acts in
3 violation of this new section committed by a person in
4 another jurisdiction.
5 - Provides that any person who reports to law enforcement
6 what that person reasonably believes to be child
7 pornography is immune from civil liability.
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