

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

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

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

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

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

29 WHEREAS, the task force has also recommended and the  
30 Legislature finds that it is important to ensure that the  
31 statutory protections provided for businesses and the public

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 Legislature also agrees with these  
11 statements and finds that these statements should extend to  
12 instances in which a person transmits child pornography to  
13 someone whom he believes to be a minor but who is actually a  
14 law enforcement officer engaged in an investigation or  
15 operation in accordance with the laws of this state, which is  
16 already statutorily authorized in relation to computer  
17 solicitation offenses against minors, and

18           WHEREAS, the Legislature finds that the First Amendment  
19 should not be violated by transmission by any means of  
20 pornography of any kind to a minor and transmission of child  
21 pornography to any person, and

22           WHEREAS, the Legislature finds that the prohibition of  
23 the acts or conduct reflected by the various statements agreed  
24 upon by the task force and the Legislature can be accomplished  
25 by amending the laws of this state, and

26           WHEREAS, the Legislature finds that the laws of this  
27 state can be amended to address jurisdictional concerns  
28 regarding child pornography, as those concerns have already  
29 been addressed by the Legislature regarding computer  
30 solicitation offenses against minors, and

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1           WHEREAS, the task force also recommended that  
2 legislation be enacted which would not require anyone to  
3 report pornography, including child pornography, but which  
4 would grant civil immunity from lawsuits to any person who  
5 reports to appropriate law enforcement agents what the person  
6 reasonably believes to be child pornography, and

7           WHEREAS, the Legislature finds this recommendation may  
8 lead to the apprehension of persons conveying by any means  
9 child pornography but protects persons from possible arrest  
10 based on unsubstantiated or false accusations or statements or  
11 the submission of falsified evidence by the person reporting  
12 the presence of child pornography, and

13           WHEREAS, the Legislature finds that the laws of this  
14 state can be amended to grant civil immunity to any persons  
15 who report what they reasonably believe to be child  
16 pornography to appropriate law enforcement agents, including  
17 immunity from civil liability for a person who furnishes a  
18 copy of a photograph or other evidence to law enforcement  
19 agents of what the person reasonably believes to be child  
20 pornography, NOW, THEREFORE,

21  
22 Be It Enacted by the Legislature of the State of Florida:

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24           Section 1. Public awareness campaign on Internet  
25 safety.--

26           (1) The Computer Crime Center within the Department of  
27 Law Enforcement shall coordinate the development of a  
28 comprehensive public awareness campaign on Internet safety.  
29 This effort should include a partnership with the Attorney  
30 General and the Department of Education, as well as other  
31 agencies and organizations as necessary. At a minimum, the

1 campaign must include the development of guidelines for the  
2 safe and secure use of the Internet, including the best ways  
3 to prevent users from becoming victims of Internet crime.  
4 These should also include detailed guidelines for parents to  
5 consider for protecting their children from on-line encounters  
6 with molesters, pedophiles, and other criminal elements.

7 (2) In addition, the public awareness campaign must  
8 include the development of a mechanism to report Internet  
9 crimes through the public Internet site of the Department of  
10 Law Enforcement. Because of the need to establish a simple  
11 method for reporting Internet crimes to law enforcement  
12 agencies, the Department of Law Enforcement shall work in  
13 cooperation with local law enforcement agencies in  
14 investigating and prosecuting Internet crimes.

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

17 501.203 Definitions.--As used in this chapter, unless  
18 the context otherwise requires, the term:

19 (7) "Consumer" means an individual; child, by and  
20 through its parent or legal guardian; business; firm;  
21 association; joint venture; partnership; estate; trust;  
22 business trust; syndicate; fiduciary; corporation; any  
23 commercial entity, however denominated; or any other group or  
24 combination.

25 Section 3. Subsections (1), (3), and (6) of section  
26 501.207, Florida Statutes, are amended to read:

27 501.207 Remedies of enforcing authority.--

28 (1) The enforcing authority may bring:

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

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

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

10 (3) Upon motion of the enforcing authority or any  
11 interested party in any action brought under subsection (1),  
12 the court may make appropriate orders, including, but not  
13 limited to, appointment of a master or receiver or  
14 sequestration or freezing of assets, to reimburse consumers or  
15 governmental entities found to have been damaged; to carry out  
16 a transaction in accordance with the consumers' reasonable  
17 expectations of consumers or governmental entities; to strike  
18 or limit the application of clauses of contracts to avoid an  
19 unconscionable result; to order any defendant to divest  
20 herself or himself of any interest in any enterprise,  
21 including real estate; to impose reasonable restrictions upon  
22 the future activities of any defendant to impede her or him  
23 from engaging in or establishing the same type of endeavor; to  
24 order the dissolution or reorganization of any enterprise; or  
25 to grant other appropriate relief. The court may assess the  
26 expenses of a master or receiver against a person who has  
27 violated, is violating, or is otherwise likely to violate this  
28 part. Any injunctive order, whether temporary or permanent,  
29 issued by the court shall be effective throughout the state  
30 unless otherwise provided in the order.

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1           (6) The enforcing authority may terminate an  
2 investigation or an action upon acceptance of a person's  
3 written assurance of voluntary compliance with this part.  
4 Acceptance of an assurance may be conditioned on a commitment  
5 to reimburse consumers or governmental entities, make  
6 contributions, pay civil penalties, pay attorney's fees and  
7 costs, or take other appropriate corrective action. An  
8 assurance is not evidence of a prior violation of this part.  
9 However, unless an assurance has been rescinded by agreement  
10 of the parties or voided by a court for good cause, subsequent  
11 failure to comply with the terms of an assurance is prima  
12 facie evidence of a violation of this part. ~~No~~ Such assurance  
13 is not ~~shall act as~~ a limitation upon any action or remedy  
14 available to a person aggrieved by a violation of this part.

15           Section 4. Section 501.2075, Florida Statutes, is  
16 amended to read:

17           501.2075 Civil penalty.--Except as provided in s.  
18 501.2077, any person, firm, corporation, association, or  
19 entity, or any agent or employee of the foregoing, who is  
20 willfully using, or has willfully used, a method, act, or  
21 practice declared unlawful under s. 501.204, or who is  
22 willfully violating any of the rules of the department adopted  
23 ~~promulgated~~ under this part, is liable for a civil penalty of  
24 not more than \$10,000 for each such violation. Willful  
25 violations occur when the person knew or should have known  
26 that his or her conduct was unfair or deceptive or prohibited  
27 by rule. This civil penalty may be recovered in any action  
28 brought under this part by the enforcing authority; or the  
29 enforcing authority may terminate any investigation or action  
30 upon agreement by the person, firm, corporation, association,  
31 or entity, or the agent or employee of the foregoing, to pay a

1 stipulated civil penalty. The department or the court may  
2 waive any such civil penalty if the person, firm, corporation,  
3 association, or entity, or the agent or employee of the  
4 foregoing, has previously made full restitution or  
5 reimbursement or has paid actual damages to the consumers or  
6 governmental entities who have been injured by the unlawful  
7 act or practice or rule violation. If civil penalties are  
8 assessed in any litigation, the enforcing authority is  
9 entitled to reasonable attorney's fees and costs. A civil  
10 penalty so collected shall accrue to the state and shall be  
11 deposited as received into the General Revenue Fund  
12 unallocated.

13 Section 5. Section 501.2091, Florida Statutes, is  
14 repealed.

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

17 501.211 Other individual remedies.--

18 (2) In any ~~individual~~ action brought by a person  
19 ~~consumer~~ who has suffered a loss as a result of a violation of  
20 this part, such person ~~consumer~~ may recover actual damages,  
21 plus attorney's fees and court costs as provided in s.  
22 501.2105. ~~However, no damages, fees, or costs are not shall~~  
23 ~~be~~ recoverable under this section against a retailer who has,  
24 in good faith, engaged in the dissemination of claims of a  
25 manufacturer or wholesaler without actual knowledge that it  
26 violated this part.

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

29 501.212 Application.--This part does not apply to:

30 (4) Any ~~person or~~ activity regulated under laws  
31 administered by the Department of Insurance or the Florida

1 Public Service Commission or banks and savings and loan  
2 associations regulated by the Department of Banking and  
3 Finance or banks or savings and loan associations regulated by  
4 federal agencies.

5 Section 8. Section 847.001, Florida Statutes, is  
6 amended to read:

7 847.001 Definitions.--When used in this chapter:

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

10 (2)~~(1)~~ "Computer" means an electronic, magnetic,  
11 optical, electrochemical, or other high-speed data processing  
12 device performing logical, arithmetic, or storage functions  
13 and includes any data storage facility or communications  
14 facility directly related to or operating in conjunction with  
15 such device. The term also includes: any on-line service,  
16 Internet service, or local bulletin board; any electronic  
17 storage device, including a floppy disk or other magnetic  
18 storage device; or any compact disc that has read-only memory  
19 and the capacity to store audio, video, or written materials.

20 (3)~~(2)~~ "Deviate sexual intercourse" means sexual  
21 conduct between persons not married to each other consisting  
22 of contact between the penis and the anus, the mouth and the  
23 penis, or the mouth and the vulva.

24 (4)~~(3)~~ "Harmful to minors" means that quality of any  
25 description, exhibition, presentation, or representation, in  
26 whatever form, of nudity, sexual conduct, or sexual excitement  
27 when it:

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

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

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

6  
7 A mother's breastfeeding of her baby is not under any  
8 circumstance "harmful to minors."

9 (5)~~(4)~~ "Minor" means any person under the age of 18  
10 years.

11 (6)~~(5)~~ "Nudity" means the showing of the human male or  
12 female genitals, pubic area, or buttocks with less than a  
13 fully opaque covering; or the showing of the female breast  
14 with less than a fully opaque covering of any portion thereof  
15 below the top of the nipple; or the depiction of covered male  
16 genitals in a discernibly turgid state. A mother's  
17 breastfeeding of her baby does not under any circumstance  
18 constitute "nudity," irrespective of whether or not the nipple  
19 is covered during or incidental to feeding.

20 (7)~~(6)~~ "Person" includes individuals, firms,  
21 associations, corporations, and all other groups and  
22 combinations.

23 (8)~~(7)~~ "Obscene" means the status of material which:

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

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

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

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1 A mother's breastfeeding of her baby is not under any  
2 circumstance "obscene."

3 (9)~~(8)~~ "Sadomasochistic abuse" means flagellation or  
4 torture by or upon a person or animal, or the condition of  
5 being fettered, bound, or otherwise physically restrained, for  
6 the purpose of deriving sexual satisfaction, or satisfaction  
7 brought about as a result of sadistic violence, from  
8 inflicting harm on another or receiving such harm oneself.

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

14 (11)~~(10)~~ "Sexual bestiality" means any sexual act  
15 between a person and an animal involving the sex organ of the  
16 one and the mouth, anus, or vagina of the other.

17 (12)~~(11)~~ "Sexual conduct" means actual or simulated  
18 sexual intercourse, deviate sexual intercourse, sexual  
19 bestiality, masturbation, or sadomasochistic abuse; actual  
20 lewd exhibition of the genitals; actual physical contact with  
21 a person's clothed or unclothed genitals, pubic area,  
22 buttocks, or, if such person is a female, breast with the  
23 intent to arouse or gratify the sexual desire of either party;  
24 or any act or conduct which constitutes sexual battery or  
25 simulates that sexual battery is being or will be committed.  
26 A mother's breastfeeding of her baby does not under any  
27 circumstance constitute "sexual conduct."

28 (13)~~(12)~~ "Sexual excitement" means the condition of  
29 the human male or female genitals when in a state of sexual  
30 stimulation or arousal.

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1           ~~(14)(13)~~ "Simulated" means the explicit depiction of  
2 conduct described in subsection~~(12)(11)~~which creates the  
3 appearance of such conduct and which exhibits any uncovered  
4 portion of the breasts, genitals, or buttocks.

5           (15) "Transmit" means to send an electronic mail  
6 communication to a specified electronic mail address or  
7 addresses.

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

10           847.0137 Transmission of pornography by means of the  
11 Internet prohibited; penalties.--

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

14           (2) Notwithstanding ss. 847.012 and 847.0133, any  
15 person in this state who knew or believed under the  
16 circumstances that he or she was transmitting, by means of the  
17 Internet:

18           (a) Child pornography, as defined in s. 847.001, to  
19 another person in this state or in another jurisdiction; or

20           (b) An image harmful to minors, as defined in s.  
21 847.001, to a minor, or a person believed to be a minor, in  
22 this state

23  
24 commits a felony of the third degree, punishable as provided  
25 in s. 775.082, s. 775.083, or s. 775.084.

26           (3) Notwithstanding ss. 847.012 and 847.0133, any  
27 person in any jurisdiction other than this state who knew or  
28 believed under the circumstances that he or she was  
29 transmitting, by means of the Internet:

30           (a) Child pornography, as defined in s. 847.001, to  
31 any person in this state; or

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

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

7           (4) This section shall not apply to subscription-based  
8 transmissions such as list servers.

9           (5) This section shall not be construed to prohibit  
10 prosecution of a person in this state or another jurisdiction  
11 for a violation of any law of this state, including a law  
12 providing for greater penalties than prescribed in this  
13 section, for the transmission, by means of the Internet, of an  
14 image harmful to minors, or child pornography, as defined in  
15 s. 847.001, to any person in this state.

16           (6) A person is subject to prosecution in this state  
17 pursuant to chapter 910 for any act or conduct proscribed by  
18 this section, including a person in a jurisdiction other than  
19 this state, if the act or conduct violates paragraph (3)(a) or  
20 paragraph (3)(b).

21           Section 10. Section 847.0139, Florida Statutes, is  
22 created to read:

23           847.0139 Immunity from civil liability for reporting  
24 child pornography.--Any person who reports to a law  
25 enforcement officer what the person reasonably believes to be  
26 child pornography as defined in s. 847.001(1) may not be held  
27 civilly liable for reporting such information. For purposes of  
28 this section, reporting child pornography to a law enforcement  
29 officer may include furnishing the officer with a copy of a  
30 photograph or other evidence of what the person reasonably  
31 believes to be child pornography.

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