

Amendment No. 01 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	

ORIGINAL STAMP BELOW

1  
2  
3  
4  
5  
6  
7  
8  
9

10

11 Representative(s) Merchant offered the following:

12

13 **Amendment (with title amendment)**

14 On page 9, lines 1 through 2  
15 remove from the bill: all of said lines

16

17 and insert in lieu thereof:

18 Section 11. Subsections (1) through (13) of section  
19 847.001, Florida Statutes, are renumbered as subsections (2)  
20 through (14), respectively, present subsections (1), (11) and  
21 (13) are amended, and a new subsection (1) is added to said  
22 section to read:

23 847.001 Definitions.--When used in this chapter:

24 (1) "Child pornography" means any image depicting, or  
25 intending to depict, a minor engaged in sexual conduct as  
26 defined in subsection (12). An image of a mother's  
27 breastfeeding of her baby does not under any circumstance  
28 constitute "child pornography."

29 (2)~~(1)~~ "Computer" means an electronic, magnetic,  
30 optical, electrochemical, or other high-speed data processing  
31 device or system performing logical, arithmetic, or storage

1 functions and includes any data storage facility or  
2 communications facility directly related to or operating in  
3 conjunction with such device. The term also includes: any  
4 on-line service, Internet service, or local bulletin board;  
5 any electronic storage device, including a floppy disk or  
6 other magnetic storage device; or any compact disc that has  
7 read-only memory and the capacity to store audio, video, or  
8 written materials.

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

20        ~~(13)~~ (14) "Simulated" means the explicit depiction of  
21 conduct described in subsection ~~(11)~~ (12) which creates the  
22 appearance of such conduct and which exhibits any uncovered  
23 portion of the breasts, genitals, or buttocks.

24        Section 12. Section 847.0135, Florida Statutes, is  
25 amended to read:

26        847.0135 Computer pornography; penalties.--

27        (1) SHORT TITLE.--This section shall be known and may  
28 be cited as the "Computer Pornography and Child Exploitation  
29 Prevention Act of 1986."

30        (2) COMPUTER PORNOGRAPHY.--A person who:

31        (a) Knowingly compiles, enters into, or transmits by

1 means of computer;

2 (b) Makes, prints, publishes, or reproduces by other  
3 computerized means;

4 (c) Knowingly causes or allows to be entered into or  
5 transmitted by means of computer; or

6 (d) Buys, sells, receives, exchanges, or disseminates,  
7  
8 any notice, statement, or advertisement of, or any minor's  
9 name, telephone number, place of residence, physical  
10 characteristics, or other descriptive or identifying  
11 information; for purposes of facilitating, encouraging,  
12 offering, or soliciting sexual conduct of or with any minor,  
13 or the visual depiction of such conduct, commits a felony of  
14 the third degree, punishable as provided in s. 775.082, s.  
15 775.083, or s. 775.084. The fact that an undercover operative  
16 or law enforcement officer was involved in the detection and  
17 investigation of an offense under this section shall not  
18 constitute a defense to a prosecution under this section. ~~Any~~  
19 ~~person who violates the provisions of this subsection commits~~  
20 ~~a felony of the third degree, punishable as provided for in s.~~  
21 ~~775.082, s. 775.083, or s. 775.084.~~

22 (3) CERTAIN USES OF COMPUTER SERVICES PROHIBITED.--Any  
23 person who knowingly utilizes a computer on-line service,  
24 Internet service, or local bulletin board service to seduce,  
25 solicit, lure, or entice, or attempt to seduce, solicit, lure,  
26 or entice, a child or another person believed by the person to  
27 be a child, to commit any illegal act described in chapter  
28 794, relating to sexual battery; chapter 800, relating to  
29 lewdness and indecent exposure; or chapter 827, relating to  
30 child abuse, commits a felony of the third degree, punishable  
31 as provided in s. 775.082, s. 775.083, or s. 775.084.

1           (4) OWNERS OR OPERATORS OF COMPUTER SERVICES  
2 LIABLE.--It is unlawful for any owner or operator of a  
3 computer on-line service, Internet service, or local bulletin  
4 board service knowingly to permit a subscriber to utilize the  
5 service to commit a violation of this section. Any person who  
6 violates this section commits a misdemeanor of the first  
7 degree, punishable by a fine not exceeding \$2,000.

8           (5) MANDATORY REPORTING REQUIREMENTS.--Any person,  
9 including, but not limited to, any computer repair technician,  
10 computer system administrator, or Internet service provider,  
11 who comes to know or to have reason to believe, while in the  
12 course of modifying, updating, or repair ng, maintaining, or  
13 servicing, that:

- 14           (a) a computer, as defined in s. 847.001(2);
- 15           (b) a computer program, as defined in s. 815.03(2);
- 16           (c) computer software, as defined in s. 815.03(4);
- 17           (d) a computer system, as defined in s. 815.03(5); or
- 18           (e) a computer network, as defined in s. 815.03(6)

19  
20 contains images of child pornography, as defined in s.  
21 847.001, or evidence of violations of subsection (2) or  
22 subsection (3), shall immediately report such knowledge or  
23 belief to the Florida Department of Law Enforcement. Any  
24 person who fails to make a required report commits a  
25 misdemeanor of the second degree, punishable as provided in s.  
26 775.082 or s. 775.083. No person shall be held civilly liable  
27 for making disclosures required by this subsection in good  
28 faith to the Florida Department of Law Enforcement. Any person  
29 who knowingly and willfully makes a false report under this  
30 subsection commits a felony of the third degree, punishable as  
31 provided in s. 775.082, s. 775.083, or s. 775.084. The Florida

1 Department of Law Enforcement shall promulgate rules pursuant  
2 to ss. 120.54 and 120.536(1) necessary to catalog and document  
3 reports of information pursuant to this subsection.

4 (6) SEARCHES AND SEIZURES BY LAW ENFORCEMENT OFFICERS  
5 AND EMPLOYEES IN CONNECTION WITH INVESTIGATION OR  
6 PROSECUTION--Notwithstanding any other law, it shall be  
7 unlawful for a government officer or employee, in connection  
8 with the investigation or prosecution of a criminal offense  
9 under this section, to search for or seize any materials  
10 reasonably believed to be possessed by a person for the lawful  
11 purpose of disseminating to the public, a newspaper, book,  
12 broadcast, or other similar form of public communication, but  
13 this provision shall not impair or affect the ability of any  
14 government officer or employee, if:

15 (a) The materials in question constitute child  
16 pornography or are obscene; or

17 (b) There is probable cause to believe that a person  
18 possessing such materials has committed or is committing a  
19 criminal offense and the materials are evidence of said  
20 offense; or

21 (c) There is reason to believe that the immediate  
22 seizure of such materials is necessary to prevent the death  
23 of, or serious injury to, a human being; or

24 (d) There is a reason to believe that the giving of  
25 notice pursuant to a subpoena duces tecum would result in the  
26 destruction, alteration, or concealment of such materials; or

27 (e) Such materials have not been produced in response  
28 to a court order directing compliance with a subpoena duces  
29 tecum, and

30 1. All appellate remedies have been exhausted; or

31 2. There is reason to believe that the delay in an

1 investigation or trial occasioned by further proceedings  
2 relating to the subpoena would threaten the interests of  
3 justice.

4 (7) ACTIONS ARISING UNDER THIS SECTION--

5 (a) The sole and exclusive right of action for the  
6 willful and knowing failure to make a report pursuant to the  
7 requirements of this section is a criminal prosecution  
8 pursuant to subsection (5).

9 (b) A person aggrieved by a search for or seizure of  
10 materials in violation of subsection (6) of this section shall  
11 have a civil cause of action for damages for such search for  
12 or seizure against:

13 1. Any governmental unit, which shall be liable for  
14 violations of this section by their officers or employees  
15 while acting within the scope or under color of their office  
16 or employment; and

17 2. Against an officer or employee of a governmental  
18 unit who has violated this section while acting within the  
19 scope or under color of his office or employment.

20  
21 The remedy provided in this paragraph is exclusive of any  
22 other civil action or proceeding for conduct constituting a  
23 violation of this section, against the officer or employee  
24 whose violation gave rise to the claim, against the estate of  
25 such officer or employee, or against the governmental unit  
26 employing such officer or employee.

27 (c) It shall be a complete defense to a civil action  
28 brought under paragraph (b) of this subsection that the  
29 officer or employee had a reasonable good faith belief in the  
30 lawfulness of his or her conduct.

31 (d) A governmental unit liable for violations of this

1 section may not assert as a defense to a claim arising under  
2 this section the immunity of the officer or employee whose  
3 violation is complained of or his or her reasonably-good faith  
4 belief in the lawfulness of his or her conduct, except that  
5 such a defense may be asserted if the violation complained of  
6 is that of a judicial officer.

7 (e) Evidence otherwise admissible in a proceeding  
8 shall not be excluded on the basis of a violation of this  
9 section.

10 (f) A person having a cause of action under this  
11 subsection shall be entitled to recover actual damages but not  
12 less than liquidated damages of \$1,000, and such reasonable  
13 attorneys' fees and other litigation costs reasonably incurred  
14 as the court, in its discretion, may award, however there  
15 shall be no liability for interest prior to judgment.

16 (g) The Florida Department of Law Enforcement, in  
17 cooperation with the Office of the Statewide Prosecutor, shall  
18 publish recommended regulations and procedures for the  
19 investigation and prosecution of offenses arising under this  
20 section.

21 (7)(5) STATE CRIMINAL JURISDICTION.--A person is  
22 subject to prosecution in this state pursuant to chapter 910  
23 for any conduct proscribed by this section which the person  
24 engages in, while either within or outside this state, if by  
25 such conduct the person commits a violation of this section  
26 involving a child residing in this state, or another person  
27 believed by the person to be a child residing in this state.

28 Section 13. This act shall take effect October 1,  
29 2000.

30  
31

1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 On page 1, line 27

4

5 after the word "rules;" insert:

6 amending s. 847.001, F.S.; defining "child  
7 pornography"; amending definition of computer;  
8 amending definition of "sexual conduct";  
9 conforming a cross reference; amending s.  
10 847.0135, F.S.; requiring any person who comes  
11 to know or to believe, while in the course of  
12 modifying, updating, repairing, maintaining, or  
13 servicing, that a computer, a computer program,  
14 computer software, a computer system, or a  
15 computer network, contains images of child  
16 pornography or evidence of violations of  
17 certain provisions of the "Computer Pornography  
18 and Child Exploitation Prevention Act of 1986,"  
19 to report such knowledge or belief to the  
20 Florida Department of Law Enforcement;  
21 providing a penalty for failure to make such  
22 report; providing immunity from civil liability  
23 for persons making disclosures in compliance  
24 with the act; providing a penalty for making a  
25 false report; requiring the Florida Department  
26 of Law Enforcement to promulgate rules;  
27 relating to documenting reports; limiting  
28 searches and seizures by law enforcement  
29 officers and government employees in connection  
30 with investigation or prosecution; providing  
31 actions and remedies pursuant to a violation of



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

this act; requiring the Florida Department of Law Enforcement, in cooperation with the Office of the Statewide Prosecutor, to publish recommended regulations and procedures for investigation and prosecution of offenses arising under this act; providing an effective date.