

By Senator Geller

29-1169-00

1                                   A bill to be entitled  
2           An act relating to pornography; amending s.  
3           847.001, F.S.; defining the term "child  
4           pornography" for purposes of ch. 847, F.S.;  
5           creating s. 847.0139, F.S.; providing immunity  
6           from civil or criminal liability for reporting  
7           to a law enforcement officer the possession of  
8           child pornography or materials harmful to  
9           minors by another person or entity, unless the  
10          person making the report knows it to be false;  
11          providing an effective date.

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

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

17           847.001 Definitions.--When used in this chapter:

18           (1) "Child pornography" means the visual depiction of  
19 sexual conduct of or with a minor.

20           (2)~~(1)~~ "Computer" means an electronic, magnetic,  
21 optical, electrochemical, or other high-speed data processing  
22 device performing logical, arithmetic, or storage functions  
23 and includes any data storage facility or communications  
24 facility directly related to or operating in conjunction with  
25 such device. The term also includes: any on-line service,  
26 Internet service, or local bulletin board; any electronic  
27 storage device, including a floppy disk or other magnetic  
28 storage device; or any compact disc that has read-only memory  
29 and the capacity to store audio, video, or written materials.

30           (3)~~(2)~~ "Deviate sexual intercourse" means sexual  
31 conduct between persons not married to each other consisting

1 of contact between the penis and the anus, the mouth and the  
2 penis, or the mouth and the vulva.

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

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

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

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

14

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

17 (5)~~(4)~~ "Minor" means any person under the age of 18  
18 years.

19 (6)~~(5)~~ "Nudity" means the showing of the human male or  
20 female genitals, pubic area, or buttocks with less than a  
21 fully opaque covering; or the showing of the female breast  
22 with less than a fully opaque covering of any portion thereof  
23 below the top of the nipple; or the depiction of covered male  
24 genitals in a discernibly turgid state. A mother's  
25 breastfeeding of her baby does not under any circumstance  
26 constitute "nudity," irrespective of whether or not the nipple  
27 is covered during or incidental to feeding.

28 (7)~~(6)~~ "Person" includes individuals, firms,  
29 associations, corporations, and all other groups and  
30 combinations.

31 (8)~~(7)~~ "Obscene" means the status of material which:

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

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

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

8  
9 A mother's breastfeeding of her baby is not under any  
10 circumstance "obscene."

11           (9)~~(8)~~ "Sadomasochistic abuse" means flagellation or  
12 torture by or upon a person or animal, or the condition of  
13 being fettered, bound, or otherwise physically restrained, for  
14 the purpose of deriving sexual satisfaction, or satisfaction  
15 brought about as a result of sadistic violence, from  
16 inflicting harm on another or receiving such harm oneself.

17           (10)~~(9)~~ "Sexual battery" means oral, anal, or vaginal  
18 penetration by, or union with, the sexual organ of another or  
19 the anal or vaginal penetration of another by any other  
20 object; however, "sexual battery" does not include an act done  
21 for a bona fide medical purpose.

22           (11)~~(10)~~ "Sexual bestiality" means any sexual act  
23 between a person and an animal involving the sex organ of the  
24 one and the mouth, anus, or vagina of the other.

25           (12)~~(11)~~ "Sexual conduct" means actual or simulated  
26 sexual intercourse, deviate sexual intercourse, sexual  
27 bestiality, masturbation, or sadomasochistic abuse; actual  
28 lewd exhibition of the genitals; actual physical contact with  
29 a person's clothed or unclothed genitals, pubic area,  
30 buttocks, or, if such person is a female, breast; or any act  
31 or conduct which constitutes sexual battery or simulates that

1 sexual battery is being or will be committed. A mother's  
2 breastfeeding of her baby does not under any circumstance  
3 constitute "sexual conduct."

4 (13)~~(12)~~ "Sexual excitement" means the condition of  
5 the human male or female genitals when in a state of sexual  
6 stimulation or arousal.

7 (14)~~(13)~~ "Simulated" means the explicit depiction of  
8 conduct described in subsection (12)~~(11)~~ which creates the  
9 appearance of such conduct and which exhibits any uncovered  
10 portion of the breasts, genitals, or buttocks.

11 Section 2. Section 847.0139, Florida Statutes, is  
12 created to read:

13 847.0139 Immunity from liability for reporting child  
14 pornography.--Any person who reports to a law enforcement  
15 officer that another person or entity is in possession of  
16 child pornography or materials harmful to minors may not be  
17 held civilly or criminally liable for reporting such  
18 information, unless the person making the report knows it to  
19 be false.

20 Section 3. This act shall take effect July 1, 2000.

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23 SENATE SUMMARY

24 Defines the term "child pornography." Provides that a  
25 person is immune from civil or criminal liability for  
26 reporting to a law enforcement officer that another  
27 person or entity possesses child pornography or materials  
28 harmful to minors, unless the person knows that such  
29 report is false.  
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