

By Senator Saunders

25-1197-00

See HB 895

1 A bill to be entitled
2 An act relating to child pornography and
3 exploitation; amending s. 847.001, F.S.;
4 defining "child pornography"; conforming a
5 cross reference; amending s. 847.0135, F.S.;
6 requiring any person who knows, or has
7 reasonable cause to believe, that a computer
8 contains images of child pornography or
9 evidence of violations of certain provisions of
10 the "Computer Pornography and Child
11 Exploitation Prevention Act of 1986," to report
12 such knowledge or belief to the Florida
13 Department of Law Enforcement; providing a
14 penalty for failure to make such report;
15 providing immunity from civil liability for
16 persons making disclosures in compliance with
17 the act; providing a penalty for making a false
18 report; requiring the Florida Department of Law
19 Enforcement to adopt rules; providing an
20 effective date.

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

23
24 Section 1. Present subsections (1) through (13) of
25 section 847.001, Florida Statutes, are renumbered as
26 subsections (2) through (14), respectively, present subsection
27 (13) is amended, and a new subsection (1) is added to that
28 section to read:

29 847.001 Definitions.--When used in this chapter:
30 (1) "Child pornography" means any image depicting, or
31 intending to depict, a minor engaged in sexual conduct as

1 defined in subsection (12). An image of a mother's
2 breastfeeding of her baby does not under any circumstance
3 constitute "child pornography."

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

8 Section 2. Section 847.0135, Florida Statutes, is
9 amended to read:

10 847.0135 Computer pornography; penalties.--

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

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

15 (a) Knowingly compiles, enters into, or transmits by
16 means of computer;

17 (b) Makes, prints, publishes, or reproduces by other
18 computerized means;

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

21 (d) Buys, sells, receives, exchanges, or disseminates,
22

23 any notice, statement, or advertisement of,~~or~~ any minor's
24 name, telephone number, place of residence, physical
25 characteristics, or other descriptive or identifying
26 information, for purposes of facilitating, encouraging,
27 offering, or soliciting sexual conduct of or with any minor,
28 or the visual depiction of such conduct, commits a felony of
29 the third degree, punishable as provided in s. 775.082, s.
30 775.083, or s. 775.084. The fact that an undercover operative
31 or law enforcement officer was involved in the detection and

1 investigation of an offense under this section shall not
2 constitute a defense to a prosecution under this section. ~~Any~~
3 ~~person who violates the provisions of this subsection commits~~
4 ~~a felony of the third degree, punishable as provided for in s.~~
5 ~~775.082, s. 775.083, or s. 775.084.~~

6 (3) CERTAIN USES OF COMPUTER SERVICES PROHIBITED.--Any
7 person who knowingly utilizes a computer on-line service,
8 Internet service, or local bulletin board service to seduce,
9 solicit, lure, or entice, or attempt to seduce, solicit, lure,
10 or entice, a child or another person believed by the person to
11 be a child, to commit any illegal act described in chapter
12 794, relating to sexual battery; chapter 800, relating to
13 lewdness and indecent exposure; or chapter 827, relating to
14 child abuse, commits a felony of the third degree, punishable
15 as provided in s. 775.082, s. 775.083, or s. 775.084.

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

23 (5) MANDATORY REPORTING REQUIREMENTS.--Any person,
24 including, but not limited to, any computer repair technician,
25 computer system administrator, or Internet service provider,
26 who knows, or has reasonable cause to believe, that a computer
27 contains images of child pornography as defined in s. 847.001,
28 or evidence of violations of subsections (2) or (3), shall
29 immediately report such knowledge or belief to the Florida
30 Department of Law Enforcement. Any person failing to comply
31 with the provisions of this subsection commits a misdemeanor

1 of the second degree, punishable as provided in s. 775.082 or
2 s. 775.083. No person shall be held civilly liable for making
3 disclosures in good faith to the Florida Department of Law
4 Enforcement required under this subsection. Any person who
5 knowingly and willfully makes a false report under this
6 subsection commits a felony of the third degree, punishable as
7 provided in s. 775.082, s. 775.083, or s. 775.084. The Florida
8 Department of Law Enforcement shall promulgate rules pursuant
9 to ss. 120.54 and 120.536(1) necessary to catalog and document
10 reports of information pursuant to this subsection.

11 (6)(5) STATE CRIMINAL JURISDICTION.--A person is
12 subject to prosecution in this state pursuant to chapter 910
13 for any conduct proscribed by this section which the person
14 engages in, while either within or outside this state, if by
15 such conduct the person commits a violation of this section
16 involving a child residing in this state, or another person
17 believed by the person to be a child residing in this state.

18 Section 3. This act shall take effect October 1, 2000.

19 *****
20 *****

21 LEGISLATIVE SUMMARY

22 Requires any person who knows, or has reasonable cause to
23 believe, that a computer contains images of child
24 pornography or evidence of violations of specified
25 provisions of the "Computer Pornography and Child
26 Exploitation Prevention Act of 1986" to report such
27 knowledge or belief to the Florida Department of Law
28 Enforcement. Provides a second degree misdemeanor penalty
29 for failure to make such report and a third degree felony
30 penalty for making a false report. Provides immunity from
31 civil liability for persons making disclosures in
compliance with the act. Defines "child pornography" for
purposes of the act.