

583-218AXA-22

Bill No. HB 1777

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

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Murman offered the following:

Amendment (with title amendment)

Remove from the bill: Everything after the enacting clause
and insert in lieu thereof:

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

847.001 Definitions.--When used in this chapter:

(1) "Adult" means a person 18 years of age or older.

(2) "Adult entertainment establishment" means the following terms as defined:

(a) "Adult bookstore" means any corporation, partnership, or business of any kind that restricts or purports to restrict admission only to adults, that has as part of its stock books, magazines, or other periodicals or videos, discs, or other graphic media, and that offers, sells, provides, or rents for a fee any sexually oriented material.

(b) "Adult theater" means an enclosed building or an enclosed space within a building used for presenting either films, live plays, dances, or other performances that are

1 distinguished or characterized by an emphasis on matter
2 depicting, describing, or relating to specific sexual
3 activities for observation by patrons and that restricts or
4 purports to restrict admission only to adults.

5 (c) "Unlicensed massage establishment" means any
6 business or enterprise that offers, sells, or provides, or
7 that holds itself out as offering, selling, or providing
8 massages, that include bathing, physical massage, rubbing,
9 kneading, anointing, stroking, manipulating, or other tactile
10 stimulation of the human body by either male or female
11 employees or attendants, by hand or by any electrical or
12 mechanical device, on or off the premises. "Unlicensed
13 massage establishment" does not include establishments
14 licensed under s. 480.043 that routinely provide medical
15 services by state-licensed health care practitioners and
16 massage therapists licensed under s. 480.041.

17 (d) "Special cabaret" means any business that features
18 persons who engage in specific sexual activities for
19 observation by patrons, and that restricts or purports to
20 restrict admission only to adults.

21 (3)(1) "Computer" means an electronic, magnetic,
22 optical, electrochemical, or other high-speed data processing
23 device performing logical, arithmetic, or storage functions
24 and includes any data storage facility or communications
25 facility directly related to or operating in conjunction with
26 such device. The term also includes: any on-line service,
27 Internet service, or local bulletin board; any electronic
28 storage device, including a floppy disk or other magnetic
29 storage device; or any compact disc that has read-only memory
30 and the capacity to store audio, video, or written materials.

31 (4)(2) "Deviate sexual intercourse" means sexual

1 conduct between persons not married to each other consisting
2 of contact between the penis and the anus, the mouth and the
3 penis, or the mouth and the vulva.

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

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

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

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

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

18 (6) "Masochism" means sexual gratification achieved by
19 a person through, or the association of sexual activity with,
20 submission or subjection to physical pain, suffering,
21 humiliation, torture, or death.

22 (7)~~(4)~~ "Minor" means any person under the age of 18
23 years.

24 (8)~~(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
31 constitute "nudity," irrespective of whether or not the nipple

1 is covered during or incidental to feeding.

2 (9)~~(6)~~ "Person" includes individuals, firms,
3 associations, corporations, and all other groups and
4 combinations.

5 (10)~~(7)~~ "Obscene" means the status of material which:

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

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

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

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

16 (11) "Sadism" means sexual gratification achieved
17 through, or the association of sexual activity with, the
18 infliction of physical pain, suffering, humiliation, torture,
19 or death upon another person or an animal.

20 (12)~~(8)~~ "Sadomasochistic abuse" means flagellation or
21 torture by or upon a person or animal, or the condition of
22 being fettered, bound, or otherwise physically restrained, for
23 the purpose of deriving sexual satisfaction, or satisfaction
24 brought about as a result of sadistic violence, from
25 inflicting harm on another or receiving such harm oneself.

26 (13)~~(9)~~ "Sexual battery" means oral, anal, or vaginal
27 penetration by, or union with, the sexual organ of another or
28 the anal or vaginal penetration of another by any other
29 object; however, "sexual battery" does not include an act done
30 for a bona fide medical purpose.

31 (14)~~(10)~~ "Sexual bestiality" means any sexual act,

1 actual or simulated, between a person and an animal involving
2 the sex organ of the one and the mouth, anus, or vagina of the
3 other.

4 (15)~~(11)~~ "Sexual conduct" means actual or simulated
5 sexual intercourse, deviate sexual intercourse, sexual
6 bestiality, masturbation, or sadomasochistic abuse; actual
7 lewd exhibition of the genitals; actual physical contact with
8 a person's clothed or unclothed genitals, pubic area,
9 buttocks, or, if such person is a female, breast; or any act
10 or conduct which constitutes sexual battery or simulates that
11 sexual battery is being or will be committed. A mother's
12 breastfeeding of her baby does not under any circumstance
13 constitute "sexual conduct."

14 (16)~~(12)~~ "Sexual excitement" means the condition of
15 the human male or female genitals when in a state of sexual
16 stimulation or arousal.

17 (17) "Sexually oriented material" means any book,
18 article, magazine, publication, or written matter of any kind
19 or any drawing, etching, painting, photograph, motion picture
20 film, or sound recording that depicts sexual activity, actual
21 or simulated, involving human beings or human beings and
22 animals, that exhibits uncovered human genitals or the pubic
23 region in a lewd or lascivious manner, or that exhibits human
24 male genitals in a discernibly turgid state, even if
25 completely and opaquely covered.

26 (18)~~(13)~~ "Simulated" means the explicit depiction of
27 conduct described in subsection (15)~~(11)~~ which creates the
28 appearance of such conduct and which exhibits any uncovered
29 portion of the breasts, genitals, or buttocks.

30 (19) "Specific sexual activities" includes the
31 following sexual activities and the exhibition of the

1 following anatomical areas:

2 (a) Human genitals in the state of sexual stimulation
3 or arousal.

4 (b) Acts of human masturbation, sexual intercourse,
5 sodomy, cunnilingus, fellatio, or any excretory function, or
6 representation thereof.

7 (c) The fondling or erotic touching of human genitals,
8 the pubic region, the buttocks, or the female breasts.

9 (d) Less than completely and opaquely covered:

10 1. Human genitals or the pubic region.

11 2. Buttocks.

12 3. Female breasts below the top of the areola.

13 4. Human male genitals in a discernably turgid state,
14 even if completely and opaquely covered.

15 Section 2. Section 847.0134, Florida Statutes, is
16 created to read:

17 847.0134 Prohibition of adult entertainment
18 establishment that displays, sells, or distributes materials
19 harmful to minors within 2,500 feet a school.--

20 (1) Except for those establishments that are legally
21 operating or have been granted a permit from a local
22 government to operate as an adult entertainment establishment
23 on or before July 1, 2001, an adult entertainment
24 establishment that sells, rents, loans, distributes,
25 transmits, shows, or exhibits any obscene material, as
26 described in s. 847.0133, or presents live entertainment or a
27 motion picture, slide, or other exhibit that, in whole or in
28 part, depicts nudity, sexual conduct, sexual excitement,
29 sexual battery, sexual bestiality, or sadomasochistic abuse
30 and that is harmful to minors, as described in s. 847.001, may
31 not be located within 2,500 feet of the real property that

1 comprises a public or private elementary school, middle
2 school, or secondary school unless the county or municipality
3 approves the location under proceedings as provided in s.
4 125.66(4) for counties or s. 166.041(3)(c) for municipalities.

5 (2) A violation of this section constitutes a felony
6 of the third degree, punishable as provided in s. 775.082 or
7 s. 775.083.

8 Section 3. This act shall take effect July 1, 2001.

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

12 And the title is amended as follows:

13 On page 1, line 9,

14
15 insert:

16 WHEREAS, based upon the experience and research of
17 other counties and cities and the personal observation of the
18 legislators in their own districts, the Legislature finds that
19 adult entertainment establishments cause adverse affects in
20 and around these establishments, and

21 WHEREAS, relevant studies demonstrate a significant
22 increase in crime in areas where adult entertainment
23 establishments are located, and

24 WHEREAS, the United States Supreme Court has recognized
25 the adverse secondary effects caused by adult entertainment
26 establishments in Renton v. Playtime Theatres, 475 U.S. 41
27 (1986) and Erie v. Pap's, 529 U.S. 277 (2000), and

28 WHEREAS, prohibiting adult entertainment establishments
29 that show or exhibit material obscene or harmful to minors
30 near public or private elementary schools, middle schools, or
31 secondary schools will serve to protect minors from the

583-218AXA-22

Bill No. HB 1777

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

1 adverse effects of the activities that accompany such
2 establishments, and

3 WHEREAS, the Legislature does not intend to impinge on
4 the First Amendment rights of free speech by limiting the
5 location of these establishments to keep them away from
6 schools where minors will be present, NOW, THEREFORE,

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