

STORAGE NAME: h1777.hcc.doc
DATE: April 17, 2001

HOUSE OF REPRESENTATIVES
COUNCIL FOR HEALTHY COMMUNITIES
ANALYSIS

BILL #: HB 1777
RELATING TO: Schools/Adult Entertainment Location
SPONSOR(S): Representative(s) Murman

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:
(1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 5 NAYS 0
(2) COUNCIL FOR HEALTHY COMMUNITIES YEAS 13 NAYS 0
(3)
(4)
(5)

I. SUMMARY:

HB 1777 prohibits the location of adult entertainment establishments within 2,500 feet of a public or private elementary school, middle school, or secondary school unless the county or city approves the location under proceedings specified in statute.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

The bill places restrictions on where "adult entertainment facilities" can be located.

B. PRESENT SITUATION:

Section 847.0133 provides that it is unlawful for any person to knowingly sell, rent, distribute, transmit or show any obscene material to a minor. Section 847.013 prohibits exposing minors to "harmful" motion pictures which depict nudity or sexual conduct.

Section 847.001 includes definitions relevant to the chapter:

"Harmful to minors" means that quality of any description, exhibition, presentation or representation, in whatever form, of nudity, sexual conduct, or sexual excitement when it:

1. Predominately appeals to the prurient, shameful, or morbid interest of minors;
2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
3. Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

s. 847.001(3), F.S.

"Obscene" means the status of material which:

1. The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
2. Depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and
3. Taken as a whole, lacks serious literary, artistic, political or scientific value.

s. 847.001(7), F.S.

C. EFFECT OF PROPOSED CHANGES:

The bill creates section 847.0134 which prohibits an adult entertainment establishment or other adult establishment that sells, rents, loans, distributes, transmits, shows or exhibits any obscene material, as described in s. 847.0133 or presents live entertainment or a motion picture, slide, or other exhibit that, in whole or in part, depicts nudity, sexual conduct, sexual excitement, sexual battery, sexual bestiality, or sadomasochistic abuse and that is harmful to minors, from being located within 2,500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school unless the county or municipality approves the location under proceedings as provided in s. 125.66(4) or s. 166.041(3)(c), F.S. A violation of this section is a third degree felony.

The bill also provides definitions for several of the terms used in the above paragraph including the following:

1. Adult entertainment establishment is defined as any commercial establishment, business or service, or portion thereof, that offers sexually oriented material, devices, paraphernalia, or specific sexual activities, services or performances in any combination or in any other form, whether printed, filmed, recorded or live. The term also includes, but is not limited to the following terms:
 - a. Adult bookstore is defined as any business that restricts or purports to restrict admission to adults, which has as part of its stock, books or magazines and which sells or rents for a fee.
 - i. Any sexually oriented material.
 - ii. Any sexually oriented material that is available for viewing by patrons by use of movie machines, VCRs or slide projectors
 - iii. Any sexually oriented material that has a substantial portion of its contents devoted to the pictorial depiction of sadism, masochism or bestiality or
 - iv. Any sexually oriented material that has as its principal theme the depiction of sexual activity by, or lascivious exhibition of, the uncovered genitals, public region, or buttocks of child who are or appear to be under the age of 18.
 - b. Adult motion picture theatre is defined as an enclosed space used for presenting either films, live plays, dances or other performances that are distinguished or characterized by an emphasis on matter depicting, describing or relating to specific sexual activities for observation by patrons.
 - c. Massage establishment is defined as a business or enterprise which offers, sells or provides, or which holds itself out as offering, selling or providing massages that include bathing, physical massage, rubbing kneading, anointing, stroking, manipulating, or other tactile stimulation of the human body by either male or female employees, by hand or by any electrical or mechanical device, on or off the premises. The definition does not include establishments that routinely provide medical services by state-licensed health care practitioners, electrolysis treatment by licensed operators of electrolysis equipment, and massage by licensed massage therapists.

2. Sexually oriented material is defined as any book, article, magazine, publication, or written matter of any kind or any drawing, etching, painting, photograph, motion picture film, or sound recording that depicts sexual activity, actual or simulated, involving human beings or human beings and animals, that exhibits uncovered human genitals or the pubic region in a lewd or lascivious manner, or that exhibits human male genitals in a discernibly turgid state, even if completely and opaquely covered.
3. Specific sexual activities is defined to include the following sexual activities and the exhibition of the following anatomical areas:
 - a. Human genitals in the state of sexual stimulation or arousal.
 - b. Acts of human masturbation, sexual intercourse, sodomy, cunnilingus, felatio, or any excretory function or representation thereof.
 - c. The fondling or erotic touching of human genitals, the pubic region, the buttocks or the human breasts.
 - d. Less than completely and opaquely covered:
 - i. Human genitals or the pubic region.
 - ii. Buttocks
 - iii. Female breasts below the top of the areola.
 - iv. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

The bill also amends section 847.001, F.S. to add definitions of the terms "sadism" and "masochism".

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 847.001; providing definitions.

Section 2: Creates s. 847.0134, F.S. relating to prohibition of adult entertainment establishments or other adult establishments that display, sell or distribute materials harmful to minors within 2,500 feet of a school

Section 3: Provides effective date of July 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not affect adult entertainment establishments that are in operation before July 1, 2001. It may have some fiscal impact on adult establishments that were planning on locating within 2,500 feet of a school.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

If enacted, this statute may face a challenge that it violates the First Amendment of the federal constitution. In City of Renton v. Playtime Theatres, 475 U.S. 41, 106 S.Ct. 925 (1986), the city of Renton, Washington enacted a zoning ordinance which prohibited adult motion picture theatres from locating within 1,000 feet of any residential zone, single or multiple family dwelling, church, park or school. The term "adult motion picture theater" was defined as

An enclosed building used for presenting motion picture films, video cassettes, cable television, or any other such visual media, distinguished or characteri[zed] by

an emphasis on matter depicting, describing or relating to 'specified sexual activities' or 'specified anatomical areas'..... for observation by patrons therein.

Playtime Theatres challenged the ordinance under a claim that it violated the First and Fourteenth Amendment to the federal constitution. The court stated:

This Court has long held that regulations enacted for the purpose of restraining speech on the basis of its content presumptively violate the First Amendment. On the other hand, so-called "content-neutral" time, place, and manner regulations are acceptable so long as they are designed to serve a substantial governmental interest and do not unreasonably limit alternative avenues of communication. (citations omitted)

The Supreme Court recognized that the ordinance did not ban adult theatres altogether but merely provided that such theatres could not be located within 1,000 feet of certain specified locations. The court then held that the ordinance could be analyzed "as a form of time, place and manner regulation." Id. at 928. The court recognized that the Renton ordinance was not aimed at the content of the films shown at the theatres but on the "secondary effects of such theatres on the surrounding community." Id. at 929. The court held that the ordinance was designed to "prevent crime, protect the city's retail trade, maintain property values, and generally 'protect and preserve the quality of the city's neighborhoods, commercial districts, and the quality of urban life not to suppress the expression of unpopular views.'" Id. The court further held that the proper inquiry was whether the ordinance was designed to serve a substantial governmental interest and allowed for reasonable alternative avenues of communication. The court found that the ordinance attempted to preserve the quality of life in Renton, a substantial governmental interest, and that the ordinance did not deny Playtime Theatres a reasonable opportunity to open and operate an adult theatre within the city. Id. at 932.

In the Renton case, an adult motion picture theatre could not be located within 1,000 feet of a school. The bill expands that limit to 2,500 feet but unlike the ordinance in Renton does not restrict the location of adult entertainment establishments in relation to residential zones, single or multiple family dwellings, churches or parks.

An ordinance must be "narrowly tailored" enough to affect only the category of establishments shown to produce the unwanted secondary effects. Id. at 931. The bill includes both "adult motion picture theaters" and "adult bookstores" within the definition of "adult entertainment establishments". The bill also includes "massage establishments" within the definition of "adult entertainment establishments". This type of establishment is not as closely related to the type of establishment whose location was restricted in Renton.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Crime Prevention, Corrections and Safety adopted an amendment at its April 3, 2001 meeting which clarified that the definition of massage establishment included unlicensed massage

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establishments and does not include establishments licensed under s. 480.43 that routinely provide medical services by state-licensed health care practitioners and massage therapists licensed under s. 480.041.

The Council for Healthy Communities adopted two amendments at its April 17, 2001 meeting. One of the amendments made a technical change to conform the bill to the Senate companion. The other amendment clarified that establishments "that are legally operating or have been granted a permit from a local government to operate as an adult entertainment establishment" are exempt from the provisions of the bill.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Trina Kramer

David De La Paz

AS REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

Prepared by:

Council Director:

Trina Kramer

Mary Pat Moore