

1                                   A bill to be entitled  
2           An act relating to educational facilities;  
3           amending s. 847.001, F.S.; adding and revising  
4           definitions; creating s. 847.0134, F.S.;  
5           prohibiting the location of adult entertainment  
6           establishments within a specified distance of a  
7           school; providing a criminal penalty; providing  
8           an exception; providing an effective date.

9  
10           WHEREAS, based upon the experience and research of  
11 other counties and cities and the personal observation of the  
12 legislators in their own districts, the Legislature finds that  
13 adult entertainment establishments cause adverse affects in  
14 and around these establishments, and

15           WHEREAS, relevant studies demonstrate a significant  
16 increase in crime in areas where adult entertainment  
17 establishments are located, and

18           WHEREAS, the United States Supreme Court has recognized  
19 the adverse secondary effects caused by adult entertainment  
20 establishments in *Renton v. Playtime Theatres*, 475 U.S. 41  
21 (1986) and *Erie v. Pap's*, 529 U.S. 277 (2000), and

22           WHEREAS, prohibiting adult entertainment establishments  
23 that show or exhibit material obscene or harmful to minors  
24 near public or private elementary schools, middle schools, or  
25 secondary schools will serve to protect minors from the  
26 adverse effects of the activities that accompany such  
27 establishments, and

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

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

2

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

5 847.001 Definitions.--When used in this chapter:

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

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

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

15 (b) "Adult theater" means an enclosed building or an  
16 enclosed space within a building used for presenting either  
17 films, live plays, dances, or other performances that are  
18 distinguished or characterized by an emphasis on matter  
19 depicting, describing, or relating to specific sexual  
20 activities for observation by patrons and that restricts or  
21 purports to restrict admission only to adults.

22 (c) "Unlicensed massage establishment" means any  
23 business or enterprise that offers, sells, or provides, or  
24 that holds itself out as offering, selling, or providing  
25 massages, that include bathing, physical massage, rubbing,  
26 kneading, anointing, stroking, manipulating, or other tactile  
27 stimulation of the human body by either male or female  
28 employees or attendants, by hand or by any electrical or  
29 mechanical device, on or off the premises. "Unlicensed  
30 massage establishment" does not include establishments  
31 licensed under s. 480.043 that routinely provide medical

1 services by state-licensed health care practitioners and  
2 massage therapists licensed under s. 480.041.

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

7 (3)~~(1)~~ "Computer" means an electronic, magnetic,  
8 optical, electrochemical, or other high-speed data processing  
9 device performing logical, arithmetic, or storage functions  
10 and includes any data storage facility or communications  
11 facility directly related to or operating in conjunction with  
12 such device. The term also includes: any on-line service,  
13 Internet service, or local bulletin board; any electronic  
14 storage device, including a floppy disk or other magnetic  
15 storage device; or any compact disc that has read-only memory  
16 and the capacity to store audio, video, or written materials.

17 (4)~~(2)~~ "Deviate sexual intercourse" means sexual  
18 conduct between persons not married to each other consisting  
19 of contact between the penis and the anus, the mouth and the  
20 penis, or the mouth and the vulva.

21 (5)~~(3)~~ "Harmful to minors" means that quality of any  
22 description, exhibition, presentation, or representation, in  
23 whatever form, of nudity, sexual conduct, or sexual excitement  
24 when it:

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

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

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

1  
2 A mother's breastfeeding of her baby is not under any  
3 circumstance "harmful to minors."

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

8 (7)(4) "Minor" means any person under the age of 18  
9 years.

10 (8)(5) "Nudity" means the showing of the human male or  
11 female genitals, pubic area, or buttocks with less than a  
12 fully opaque covering; or the showing of the female breast  
13 with less than a fully opaque covering of any portion thereof  
14 below the top of the nipple; or the depiction of covered male  
15 genitals in a discernibly turgid state. A mother's  
16 breastfeeding of her baby does not under any circumstance  
17 constitute "nudity," irrespective of whether or not the nipple  
18 is covered during or incidental to feeding.

19 (9)(6) "Person" includes individuals, firms,  
20 associations, corporations, and all other groups and  
21 combinations.

22 (10)(7) "Obscene" means the status of material which:

23 (a) The average person, applying contemporary  
24 community standards, would find, taken as a whole, appeals to  
25 the prurient interest;

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

28 (c) Taken as a whole, lacks serious literary,  
29 artistic, political, or scientific value.  
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1 A mother's breastfeeding of her baby is not under any  
2 circumstance "obscene."

3 (11) "Sadism" means sexual gratification achieved  
4 through, or the association of sexual activity with, the  
5 infliction of physical pain, suffering, humiliation, torture,  
6 or death upon another person or an animal.

7 (12)~~(8)~~ "Sadomasochistic abuse" means flagellation or  
8 torture by or upon a person or animal, or the condition of  
9 being fettered, bound, or otherwise physically restrained, for  
10 the purpose of deriving sexual satisfaction, or satisfaction  
11 brought about as a result of sadistic violence, from  
12 inflicting harm on another or receiving such harm oneself.

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

18 (14)~~(10)~~ "Sexual bestiality" means any sexual act,  
19 actual or simulated, between a person and an animal involving  
20 the sex organ of the one and the mouth, anus, or vagina of the  
21 other.

22 (15)~~(11)~~ "Sexual conduct" means actual or simulated  
23 sexual intercourse, deviate sexual intercourse, sexual  
24 bestiality, masturbation, or sadomasochistic abuse; actual  
25 lewd exhibition of the genitals; actual physical contact with  
26 a person's clothed or unclothed genitals, pubic area,  
27 buttocks, or, if such person is a female, breast; or any act  
28 or conduct which constitutes sexual battery or simulates that  
29 sexual battery is being or will be committed. A mother's  
30 breastfeeding of her baby does not under any circumstance  
31 constitute "sexual conduct."

1        ~~(16)(12)~~ "Sexual excitement" means the condition of  
2 the human male or female genitals when in a state of sexual  
3 stimulation or arousal.

4        (17) "Sexually oriented material" means any book,  
5 article, magazine, publication, or written matter of any kind  
6 or any drawing, etching, painting, photograph, motion picture  
7 film, or sound recording that depicts sexual activity, actual  
8 or simulated, involving human beings or human beings and  
9 animals, that exhibits uncovered human genitals or the pubic  
10 region in a lewd or lascivious manner, or that exhibits human  
11 male genitals in a discernibly turgid state, even if  
12 completely and opaquely covered.

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

17        (19) "Specific sexual activities" includes the  
18 following sexual activities and the exhibition of the  
19 following anatomical areas:

20        (a) Human genitals in the state of sexual stimulation  
21 or arousal.

22        (b) Acts of human masturbation, sexual intercourse,  
23 sodomy, cunnilingus, fellatio, or any excretory function, or  
24 representation thereof.

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

27        (d) Less than completely and opaquely covered:

28            1. Human genitals or the pubic region.

29            2. Buttocks.

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

31

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

3           Section 2. Section 847.0134, Florida Statutes, is  
4 created to read:

5           847.0134 Prohibition of adult entertainment  
6 establishment that displays, sells, or distributes materials  
7 harmful to minors within 2,500 feet a school.--

8           (1) Except for those establishments that are legally  
9 operating or have been granted a permit from a local  
10 government to operate as an adult entertainment establishment  
11 on or before July 1, 2001, an adult entertainment  
12 establishment that sells, rents, loans, distributes,  
13 transmits, shows, or exhibits any obscene material, as  
14 described in s. 847.0133, or presents live entertainment or a  
15 motion picture, slide, or other exhibit that, in whole or in  
16 part, depicts nudity, sexual conduct, sexual excitement,  
17 sexual battery, sexual bestiality, or sadomasochistic abuse  
18 and that is harmful to minors, as described in s. 847.001, may  
19 not be located within 2,500 feet of the real property that  
20 comprises a public or private elementary school, middle  
21 school, or secondary school unless the county or municipality  
22 approves the location under proceedings as provided in s.  
23 125.66(4) for counties or s. 166.041(3)(c) for municipalities.

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

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