

By the Committee on Comprehensive Planning, Local and Military Affairs; and Senator Crist

316-1802-01

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

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

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 any commercial establishment, business, or service, or portion thereof, which 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. "Adult entertainment establishment" also includes the following terms as defined:

(a) "Adult bookstore" means any corporation, partnership, or business of any kind which restricts or purports to restrict admission only to adults, which has as part of its stock books, magazines, or other periodicals, and which offers, sells, provides, or rents for a fee:

1. Any sexually oriented material;

2. Any sexually oriented material that is available for viewing by patrons on the premises by means of the

1 operation of movie machines, video cassette recorders, or  
2 slide projectors;

3 3. Any sexually oriented material that has a  
4 substantial portion of its contents devoted to the pictorial  
5 depiction of sadism, masochism, or bestiality; or

6 4. Any sexually oriented material that has as its  
7 principal theme the depiction of sexual activity by, or  
8 lascivious exhibition of, the uncovered genitals, pubic  
9 region, or buttocks of children who are or appear to be under  
10 the age of 18.

11 (b) "Adult motion picture theater" means an enclosed  
12 building or an enclosed space within a building used for  
13 presenting either films, live plays, dances, or other  
14 performances that are distinguished or characterized by an  
15 emphasis on matter depicting, describing, or relating to  
16 specific sexual activities for observation by patrons.

17 (c) "Unlicensed massage establishment" means any  
18 business or enterprise that offers, sells, or provides, or  
19 that holds itself out as offering, selling, or providing,  
20 massages that include bathing, physical massage, rubbing,  
21 kneading, anointing, stroking, manipulating, or other tactile  
22 stimulation of the human body by either male or female  
23 employees or attendants, by hand or by any electrical or  
24 mechanical device, on or off the premises. The term  
25 "unlicensed massage establishment" does not include an  
26 establishment licensed under s. 480.43 which routinely  
27 provides medical services by state-licensed health care  
28 practitioners and massage therapists licensed under s.  
29 480.041.

30 (3)(1) "Computer" means an electronic, magnetic,  
31 optical, electrochemical, or other high-speed data processing

1 device performing logical, arithmetic, or storage functions  
2 and includes any data storage facility or communications  
3 facility directly related to or operating in conjunction with  
4 such device. The term also includes: any on-line service,  
5 Internet service, or local bulletin board; any electronic  
6 storage device, including a floppy disk or other magnetic  
7 storage device; or any compact disc that has read-only memory  
8 and the capacity to store audio, video, or written materials.

9 (4)~~(2)~~ "Deviate sexual intercourse" means sexual  
10 conduct between persons not married to each other consisting  
11 of contact between the penis and the anus, the mouth and the  
12 penis, or the mouth and the vulva.

13 (5)~~(3)~~ "Harmful to minors" means that quality of any  
14 description, exhibition, presentation, or representation, in  
15 whatever form, of nudity, sexual conduct, or sexual excitement  
16 when it:

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

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

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

24

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

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

31

1           ~~(7)(4)~~ "Minor" means any person under the age of 18  
2 years.

3           ~~(8)(5)~~ "Nudity" means the showing of the human male or  
4 female genitals, pubic area, or buttocks with less than a  
5 fully opaque covering; or the showing of the female breast  
6 with less than a fully opaque covering of any portion thereof  
7 below the top of the nipple; or the depiction of covered male  
8 genitals in a discernibly turgid state. A mother's  
9 breastfeeding of her baby does not under any circumstance  
10 constitute "nudity," irrespective of whether or not the nipple  
11 is covered during or incidental to feeding.

12           ~~(9)(6)~~ "Person" includes individuals, firms,  
13 associations, corporations, and all other groups and  
14 combinations.

15           ~~(10)(7)~~ "Obscene" means the status of material which:

16           (a) The average person, applying contemporary  
17 community standards, would find, taken as a whole, appeals to  
18 the prurient interest;

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

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

23

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

26           (11) "Sadism" means sexual gratification achieved  
27 through, or the association of sexual activity with, the  
28 infliction of physical pain, suffering, humiliation, torture,  
29 or death upon another person or an animal.

30           ~~(12)(8)~~ "Sodomasochistic abuse" means flagellation or  
31 torture by or upon a person or animal, or the condition of

1 being fettered, bound, or otherwise physically restrained, for  
2 the purpose of deriving sexual satisfaction, or satisfaction  
3 brought about as a result of sadistic violence, from  
4 inflicting harm on another or receiving such harm oneself.

5 (13)~~(9)~~ "Sexual battery" means oral, anal, or vaginal  
6 penetration by, or union with, the sexual organ of another or  
7 the anal or vaginal penetration of another by any other  
8 object; however, "sexual battery" does not include an act done  
9 for a bona fide medical purpose.

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

14 (15)~~(11)~~ "Sexual conduct" means actual or simulated  
15 sexual intercourse, deviate sexual intercourse, sexual  
16 bestiality, masturbation, or sadomasochistic abuse; actual  
17 lewd exhibition of the genitals; actual physical contact with  
18 a person's clothed or unclothed genitals, pubic area,  
19 buttocks, or, if such person is a female, breast; or any act  
20 or conduct which constitutes sexual battery or simulates that  
21 sexual battery is being or will be committed. A mother's  
22 breastfeeding of her baby does not under any circumstance  
23 constitute "sexual conduct."

24 (16)~~(12)~~ "Sexual excitement" means the condition of  
25 the human male or female genitals when in a state of sexual  
26 stimulation or arousal.

27 (17) "Sexually oriented material" means any book,  
28 article, magazine, publication, or written matter of any kind  
29 or any drawing, etching, painting, photograph, motion picture  
30 film, or sound recording that depicts sexual activity, actual  
31 or simulated, involving human beings or human beings and

1 animals, that exhibits uncovered human genitals or the pubic  
2 region in a lewd or lascivious manner, or that exhibits human  
3 male genitals in a discernibly turgid state, even if  
4 completely and opaquely covered.

5 (18)(13) "Simulated" means the explicit depiction of  
6 conduct described in subsection(15)(11)which creates the  
7 appearance of such conduct and which exhibits any uncovered  
8 portion of the breasts, genitals, or buttocks.

9 (19) "Specific sexual activities" includes the  
10 following sexual activities and the exhibition of the  
11 following anatomical areas:

12 (a) Human genitals in the state of sexual stimulation  
13 or arousal.

14 (b) Acts of human masturbation, sexual intercourse,  
15 sodomy, cunnilingus, fellatio, or any excretory function, or  
16 representation thereof.

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

19 (d) Less than completely and opaquely covered:

20 1. Human genitals or the pubic region.

21 2. Buttocks.

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

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

25 Section 2. Section 847.0134, Florida Statutes, is  
26 created to read:

27 847.0134 Prohibition of adult entertainment  
28 establishment or other adult establishment that displays,  
29 sells, or distributes materials harmful to minors within 2,500  
30 feet of a school.--

31

1       (1) Except for those establishments in operation on or  
 2       before July 1, 2001, an adult entertainment establishment or  
 3       \_\_\_\_\_

4       distributes, transmits, shows, or exhibits any obscene  
 5       material, as described in s. 847.0133, or presents live  
 6       \_\_\_\_\_

7       that, in whole or in part, depicts nudity, sexual conduct,  
 8       sexual excitement, sexual battery, sexual bestiality, or  
 9       \_\_\_\_\_

10       described in s. 847.001, may not be located within 2,500 feet  
 11       of the real property that comprises a public or private  
 12       \_\_\_\_\_

13       the county or municipality approves the location under  
 14       proceedings as provided in s. 125.66(4) for counties or s.  
 15       \_\_\_\_\_

16       (2) A violation of this section constitutes a felony  
 17       of the third degree, punishable as provided in s. 775.082 or  
 18       \_\_\_\_\_

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

21                                       COMMITTEE SUBSTITUTE FOR

22                                       \_\_\_\_\_

23

24       The qualifying language "but not limited to" is removed from

25       including, but is not limited to: "Adult bookstore," "Adult

26       motion picture theater" and "Unlicensed massage

27       The definition of massage establishment is changed to that of

28       an "Unlicensed massage establishment" to clarify that the term

29       services by state-licensed health care practitioners and

30       massage therapists.

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