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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.

WHEREAS, based upon the experience of other counties
and cities, and the personal observation of the legislators in
their own districts, the Legislature finds that adult
entertainment establishments cause adverse effects in and
around these establishments, and

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

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

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

WHEREAS, the Legislature does not intend to impinge on
the rights of free speech by limiting the location of these
establishments away from schools where minors will be present,
NOW, THEREFORE,

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

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

3 847.001 Definitions.--When used in this chapter:

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

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

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

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

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

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1 practitioners and massage therapists licensed under s.
2 480.041.

3 (d) "Special Cabaret" means any business that features
4 persons who engage in specific sexual activities for
5 observation by patrons, and which 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.

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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.

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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 of 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 adult entertainment establishments
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.