

1 (2) LEGISLATIVE FINDINGS.--

2 (a) The Legislature finds that pornography has a
3 deleterious and harmful effect on the health and morals of the
4 people of this state. Pornography is demeaning to the men and
5 women of this state and it panders to the basest desires of a
6 minority of the residents of this state.

7 (b) The Legislature further finds that pornography is
8 offensive and a nuisance and that affording the people of this
9 state a civil remedy to enjoin the distribution of
10 pornographic materials for profit and commercial purposes
11 within their community, and to recover civil penalties and
12 damages, will result in a general benefit to the health and
13 welfare of the people of the state.

14 (c) The Legislature further finds that extending the
15 remedies provided under this act to any church or religious
16 organization, or other representative group or organization
17 within this state, will further the purposes of this act and
18 result in a general benefit to the health and welfare of the
19 people of the state.

20 (3) DEFINITIONS.--As used in this section, the term:

21 (a) "Commercial" means profit-seeking production,
22 buying, selling, or distribution of any motion picture,
23 exhibition, show, representation, performance, or other
24 product.

25 (b) "Distribute" or "distribution" means to transfer
26 possession of materials whether with or without consideration.

27 (c) "Exhibit" means to show.

28 (d) "Knowingly" means an awareness, whether actual or
29 constructive, of the character of material or of a
30 performance. A person has constructive knowledge if a
31 reasonable inspection or observation under the circumstances

1 would have disclosed the nature of the subject matter and if a
2 failure to inspect or observe is for the purpose of avoiding
3 the disclosure.

4 (e) "Material" means anything printed or written; any
5 picture, drawing, photograph, motion picture, or pictorial
6 representation; any statue or other figure; any recording or
7 transcription; any mechanical, chemical, or electrical
8 reproduction; or anything that is or may be used as a means of
9 communication. Material includes undeveloped photographs,
10 molds, printing plates, and other latent representational
11 objects.

12 (f) "Performance" or "performs" means any physical
13 human bodily activity, whether engaged in alone or with other
14 persons, including, but not limited, to singing, speaking,
15 dancing, acting, simulating, or pantomiming.

16 (g) "Pornography" or "pornographic" means a
17 specifically described or depicted sexual act or conduct that
18 a person, applying contemporary community standards, would
19 consider, taken as a whole, to appeal to the prurient
20 interest, and that the work, when taken as a whole, lacks
21 serious literary, artistic, political, or scientific value.

22 (h) "Specifically described or depicted sexual act or
23 conduct" means a sexual act or conduct depicting:

24 1. Rape; sexual battery; or nonconsensual intercourse,
25 sodomy, or oral sodomy;

26 2. Incest;

27 3. The involvement of an actual minor in sexual acts
28 or conduct;

29 4. Bestiality;

30 5. Multiple penetration by multiple partners of body
31 orifices;

1 6. Visible penetration during intercourse, sodomy, or
2 oral sodomy;

3 7. Visible ejaculation, urination, menstruation, bowel
4 movements, ejaculate, or feces;

5 8. Visible penetration of a bodily orifice with a
6 digit, hand, foot, or inanimate object; or

7 9. Sexual acts or conduct involving the dead.

8 (4) CIVIL WRONG AND NUISANCE.--

9 (a) A person, or an agent or employee of a person, may
10 not willfully and knowingly buy, sell, exhibit, or distribute
11 for commercial use in this state pornographic materials.

12 (b) A person, or an agent or employee of a person, who
13 willfully and knowingly buys, sells, exhibits, or distributes
14 pornographic materials in this state for commercial use is
15 liable for a civil penalty of not more than \$10,000 for each
16 violation.

17 (c) A violation occurs each time the person, or an
18 agent or employee of a person, buys, sells, exhibits, or
19 distributes pornographic material, and a violation occurs for
20 each item of pornographic material bought, sold, exhibited, or
21 distributed by the person or an agent or employee of a person.

22 (5) ENFORCEMENT.--

23 (a) Any person, including a church or religious
24 organization, or other representative group or organization,
25 may bring an action in the circuit court to enforce this act.

26 (b) Civil penalties may be assessed by and at the
27 discretion of the circuit court, with due regard for the
28 purposes of this act and the nature of the offense.

29 (6) LIMITATIONS.--This act does not apply to the
30 noncommercial distribution of materials through Internet
31 service providers, Internet users, or others, and may not be

1 construed to regulate, limit, or prohibit residents from
2 possessing obscene material for personal use in their own
3 homes.

4 (7) FREE SPEECH.--

5 (a) It is the intention of the Legislature to
6 preserve, protect, and foster protected free speech, and to
7 minimize the costs associated with defending a multiplicity of
8 suits brought under this act.

9 (b) In order to ensure that the application and
10 enforcement of this act is consistent with this intent, when a
11 motion is filed by any party the court may stay any other suit
12 filed in this state which involves the same defendant, pending
13 a final determination.

14 (c) In an action brought under this section, upon a
15 motion filed by the party against whom the action is brought
16 alleging that the action is frivolous, without legal or
17 factual merit, or brought for the purpose of harassment, the
18 court may, after hearing evidence as to the necessity
19 therefore, and after review of the alleged pornographic
20 materials, require the party instituting the action to post a
21 bond, in an amount not to exceed \$10,000, which the court
22 finds reasonable to indemnify the defendant for any damages
23 incurred, including reasonable attorney's fees.

24 (8) RELIEF.--

25 (a) If civil penalties are assessed in any litigation,
26 the plaintiff is entitled to reasonable attorney's fees and
27 costs.

28 (b) Any civil penalty collected shall accrue to the
29 state and shall be deposited as received into the General
30 Revenue Fund of the state.

31 (9) INJUNCTIVE PROCEEDINGS.--

1 (a) After a complaint is filed, the court may grant a
2 temporary order restraining the person or persons complained
3 of upon an application for a temporary restraining order. A
4 hearing must be conducted no later than 3 days after the
5 temporary restraining order is issued by the court. A
6 temporary restraining order may not be issued unless it is
7 manifest to the court, after review of the alleged
8 pornographic material and from the allegations of a complaint
9 or affidavit, sworn to by the plaintiff or the plaintiff's
10 representative, that the apprehended violation will be
11 committed if an immediate remedy is not afforded.

12 (b) The person or persons sought to be enjoined are
13 entitled to a trial of the issues no later than 30 days after
14 the date the temporary restraining order is issued.

15 (c) Except as otherwise provided in this section, a
16 bond or undertaking is not required of the state or other
17 plaintiff in any action brought under this section before a
18 temporary restraining order is issued. The state or other
19 plaintiff is not liable for costs or damages sustained by
20 reason of the temporary restraining order in any case in which
21 a final decree is rendered in favor of the person or persons
22 sought to be enjoined.

23 (10) DAMAGES.--

24 (a) Anyone aggrieved by a violation of this act may
25 bring an action for declaratory relief that a sexual act or
26 conduct violates this act or to enjoin a person who has
27 violated, is violating, or is otherwise likely to violate this
28 act, without regard to any other remedy or relief to which a
29 person is entitled.

1 (b) A person may recover actual damages and attorney's
2 fees and court costs in any action brought by a person who has
3 suffered a loss as a result of a violation of this act.

4 Section 2. This act shall take effect July 1, 2005.

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7 SENATE SUMMARY

8 Prohibits a person from willfully and knowingly
9 distributing pornographic materials for commercial
10 purposes. Provides a civil penalty. Provides that any
11 person, including a church or religious organization, or
12 other representative group or organization may bring an
13 action to enforce the act. Provides procedures to enforce
14 the act. Provides that if civil penalties are assessed in
15 any litigation, the plaintiff is entitled to reasonable
16 attorney's fees and costs. Provides that any civil
17 penalty collected be deposited into the General Revenue
18 Fund. Provides for declaratory and injunctive relief.
19 Authorizes a person to recover actual damages and
20 attorney's fees if the person suffers a loss as a result
21 of commercial distribution of pornographic materials.