

By the Committees on Communications and Public Utilities;
Criminal Justice; and Senators Posey and Lynn

579-1783-06

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A bill to be entitled

An act relating to the transmission of sexually oriented material or material harmful to a minor; creating s. 847.01385, F.S.; providing a definition relating to the transmission of materials to a minor or person believed to be a minor; prohibiting a person in this state or another jurisdiction from transmitting, by means of electronic mail or computer pop-up, sexually oriented material or material that is harmful to minors to an individual in this state who is a minor or is believed to be a minor; providing that a violation of the act is a felony of the third degree; precluding a defense to prosecution for a violation of the act; providing that the act shall not be construed to prohibit prosecution of a person in this state or another jurisdiction for a violation of any law of this state; exempting list servers from application of the act; providing that the act does not create a cause of action or provide for criminal charges against an interactive computer service, customer premise equipment provider, communications service provider, or cable provider whose equipment is used in violation of the act; providing an effective date.

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

1 Section 1. Section 847.01385, Florida Statutes, is
2 created to read:

3 847.01385 Transmission of sexually oriented material
4 or material harmful to minors by electronic mail or computer
5 pop-up prohibited; penalties.--

6 (1) As used in this section, the terms "transmits" and
7 "transmission" mean the act of sending any image, information,
8 or data by use of any electronic equipment or device.

9 (2) Notwithstanding ss. 847.012 and 847.0133, any
10 person in this state who knows, should know, or believes that
11 an individual in this state is a minor and who transmits, by
12 means of electronic mail or a computer pop-up, sexually
13 oriented material, as defined in s. 847.001, or an image,
14 information, or data that is harmful to minors, as defined in
15 s. 847.001, to such individual commits a felony of the third
16 degree.

17 (3) Notwithstanding ss. 847.012 and 847.0133, a person
18 in a jurisdiction other than this state who knows, should
19 know, or believes that an individual in this state is a minor
20 and who transmits, by means of electronic mail or a computer
21 pop-up, sexually oriented material, as defined in s. 847.001,
22 or an image, information, or data that is harmful to minors,
23 as defined in s. 847.001, to such individual commits a felony
24 of the third degree.

25 (4) The fact that an undercover operative or law
26 enforcement officer was involved in the detection and
27 investigation of an offense under this section shall not
28 constitute a defense to a prosecution under this section.

29 (5) This section shall not be construed to prohibit
30 prosecution of a person in this state or another jurisdiction
31 for a violation of any law of this state, including a law

1 providing for greater penalties than prescribed in this
2 section, for the transmission of sexually oriented material or
3 material harmful to minors.

4 (6) This section does not apply to subscription-based
5 transmissions such as list servers.

6 (7) This section does not create a cause of action or
7 provide for criminal charges against an interactive computer
8 service as defined in s. 668.602, a customer premise equipment
9 provider, a communications service provider, or a cable
10 provider whose equipment is used to transport, handle, or
11 retransmit an unsolicited electronic mail or a computer pop-up
12 that violates this section.

13 Section 2. This act shall take effect July 1, 2006.

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15 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
16 COMMITTEE SUBSTITUTE FOR
17 CS/SB 1220

18 The Committee Substitute for Committee Substitute for Senate
19 Bill 1220 changes the list of entities against whom the bill
20 does not create a civil cause of action nor provide for
21 criminal charges by deleting the term "telephone company" and
22 inserting "customer premise equipment provider" and
23 "communications services provider."
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