

By Senator Siplin

19-192-06

1 A bill to be entitled
 2 An act relating to the commercial distribution
 3 of pornographic materials; defining terms
 4 relating to the commercial distribution of
 5 pornographic materials; prohibiting a person
 6 from willfully and knowingly distributing
 7 pornographic materials for commercial purposes;
 8 providing a civil penalty; providing that any
 9 person, including a church, religious
 10 organization, or other representative group or
 11 organization may bring an action to enforce the
 12 act; providing certain exemptions; providing
 13 procedures for enforcing the act; providing for
 14 attorney's fees and costs; requiring that any
 15 civil penalty collected be deposited into the
 16 General Revenue Fund; providing for declaratory
 17 and injunctive relief; authorizing a person to
 18 recover actual damages and attorney's fees if
 19 the person suffers a loss as a result of
 20 commercial distribution of pornographic
 21 materials; providing an effective date.
 22

23 Be It Enacted by the Legislature of the State of Florida:
 24

25 Section 1. Florida commercial anti-pornography act.--
 26 (1) SHORT TITLE.--This section may be cited as the
 27 "Florida Commercial Anti-Pornography Act."
 28 (2) LEGISLATIVE FINDINGS.--
 29 (a) The Legislature finds that pornography has a
 30 deleterious effect on the health and morals of the people of
 31 this state. Pornography is demeaning to the men and women of

1 this state and it panders to the basest desires of a minority
2 of the residents of this state.

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

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

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

17 (a) "Commercial" means profit-seeking production,
18 buying, selling, or distribution of any motion picture,
19 exhibition, show, representation, performance, or other
20 product.

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

23 (c) "Exhibit" means to show.

24 (d) "Knowingly" means an awareness, whether actual or
25 constructive, of the character of material or of a
26 performance. A person has constructive knowledge if a
27 reasonable inspection or observation under the circumstances
28 would have disclosed the nature of the subject matter and if a
29 failure to inspect or observe is for the purpose of avoiding
30 the disclosure.

31

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

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

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

19 (h) "Specifically described or depicted sexual act or
20 conduct" means a sexual act or conduct depicting:

21 1. Rape; sexual battery; or nonconsensual intercourse,
22 sodomy, or oral sodomy;

23 2. Incest;

24 3. The involvement of an actual minor in sexual acts
25 or conduct;

26 4. Bestiality;

27 5. Multiple penetration by multiple partners of body
28 orifices;

29 6. Visible penetration during intercourse, sodomy, or
30 oral sodomy;

31

1 7. Visible ejaculation, urination, menstruation, bowel
2 movements, ejaculate, or feces;

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

5 9. Sexual acts or conduct involving the dead.

6 (4) CIVIL WRONG AND NUISANCE.--

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

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

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

20 (5) ENFORCEMENT.--

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

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

27 (6) LIMITATIONS.--This act does not apply to the
28 noncommercial distribution of materials through Internet
29 service providers, Internet users, or others, and does not
30 regulate, limit, or prohibit residents from possessing obscene
31 material for personal use in their own homes.

1 (7) FREE SPEECH.--

2 (a) It is the intent of the Legislature to preserve,
3 protect, and foster protected free speech, and to minimize the
4 costs associated with defending a multiplicity of suits
5 brought under this act.

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

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

21 (8) RELIEF.--

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

25 (b) Any civil penalty collected accrues to the state
26 and shall be deposited as received into the General Revenue
27 Fund.

28 (9) INJUNCTIVE PROCEEDINGS.--

29 (a) After a complaint is filed, the court may grant a
30 temporary order restraining the person or persons complained
31 of upon an application for a temporary restraining order. A

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

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

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

20 **(10) DAMAGES.--**

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

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

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

31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

SENATE SUMMARY

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