

By Senator Siplin

19-269-07

1 A bill to be entitled

2 An act relating to the commercial distribution

3 of pornographic materials; providing a short

4 title; providing legislative findings; defining

5 terms relating to the commercial distribution

6 of pornographic materials; prohibiting a person

7 from willfully and knowingly distributing

8 pornographic materials for commercial purposes;

9 providing a civil penalty; providing that any

10 person, including a church, religious

11 organization, or other representative group or

12 organization, may bring an action to enforce

13 the act; providing certain exemptions;

14 providing procedures for enforcing the act;

15 providing for attorney's fees and costs;

16 requiring that any civil penalty collected be

17 deposited into the General Revenue Fund;

18 providing for declaratory and injunctive

19 relief; authorizing a person to recover actual

20 damages and attorney's fees if the person

21 suffers a loss as a result of commercial

22 distribution of pornographic materials;

23 providing an effective date.

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

26

27 Section 1. Florida commercial anti-pornography act.--

28 (1) SHORT TITLE.--This section may be cited as the

29 "Florida Commercial Anti-Pornography Act."

30 (2) LEGISLATIVE FINDINGS.--

31

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

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

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

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

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

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

26 (c) "Exhibit" means to show.

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

1 failure to inspect or observe is for the purpose of avoiding
2 the disclosure.

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

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

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

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

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

25 2. Incest;

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

28 4. Bestiality;

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

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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 PENALTY.--

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
26 section.

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

30 (6) LIMITATIONS.--This section does not apply to the
31 noncommercial distribution of materials through Internet

1 service providers, Internet users, or others, and does not
2 regulate, limit, or prohibit residents from possessing obscene
3 material for personal use in their own homes.

4 (7) FREE SPEECH.--

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

9 (b) In order to ensure that the application and
10 enforcement of this section is consistent with this intent,
11 when a motion is filed by any party, the court may stay any
12 other suit filed in this state which involves the same
13 defendant, pending 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 therefor, 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 accrues to the state
29 and shall be deposited as received into the General Revenue
30 Fund.

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

