

1 A bill to be entitled
 2 An act relating to protection of minors; amending s.
 3 847.001, F.S.; revising the definition of the term
 4 "harmful to minors"; amending s. 847.011, F.S.;
 5 prohibiting certain actions involving depictions of minors
 6 engaged in certain conduct; providing criminal penalties;
 7 precluding certain defenses; amending s. 847.012, F.S.;
 8 deleting a provision providing a defense as to age of a
 9 minor following a bona fide attempt to ascertain a minor's
 10 age; precluding certain defenses; prohibiting the use of
 11 minors in the production of specified material; providing
 12 penalties; amending s. 847.013, F.S.; deleting a provision
 13 providing a defense as to age of a minor following a bona
 14 fide attempt to ascertain a minor's age; precluding
 15 certain defenses; prohibiting use of minors in the
 16 production of specified material; providing penalties;
 17 providing legislative intent; amending s. 921.0022, F.S.;
 18 conforming the Offense Severity Ranking Chart of the
 19 Criminal Punishment Code; providing an effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Subsection (6) of section 847.001, Florida
 24 Statutes, is amended to read:

25 847.001 Definitions.--As used in this chapter, the term:
 26 (6) "Harmful to minors" means any reproduction, imitation,
 27 characterization, description, exhibition, presentation, or

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28 representation, of whatever kind or form, depicting nudity,
 29 sexual conduct, or sexual excitement when it:

30 (a) Predominantly appeals to a ~~the~~ prurient, shameful, or
 31 morbid interest ~~of minors~~;

32 (b) Is patently offensive to prevailing standards in the
 33 adult community as a whole with respect to what is suitable
 34 material or conduct for minors; and

35 (c) Taken as a whole, is without serious literary,
 36 artistic, political, or scientific value for minors.

37

38 A mother's breastfeeding of her baby is not under any
 39 circumstance "harmful to minors."

40 Section 2. Paragraphs (c) and (d) are added to subsection
 41 (1) of section 847.011, Florida Statutes, to read:

42 847.011 Prohibition of certain acts in connection with
 43 obscene, lewd, etc., materials; penalty.--

44 (1)

45 (c) Any person who violates subsection (1) or subsection
 46 (2) where the violation is based on material that depicts a
 47 minor, whether his or her identity is known or unknown, engaged
 48 in any act or conduct that is harmful to minors commits a felony
 49 of the third degree, punishable as provided in s. 775.082, s.
 50 775.083, or s. 775.084.

51 (d) A person's ignorance of a minor's age, a minor's
 52 misrepresentation of his or her age, a bona fide belief of a
 53 minor's age, or a minor's consent cannot be raised as a defense
 54 in a prosecution for violation of this section.

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55 Section 3. Subsections (2) through (7) of section 847.012,
56 Florida Statutes, are renumbered as subsections (3) through (9),
57 respectively, new subsections (2) and (4) are added to that
58 section, and present subsections (1), (2), and (3) of that
59 section are amended, to read:

60 847.012 ~~Prohibition of~~ Sale or other distribution of
61 harmful materials to minors ~~persons under 18 years of age; use~~
62 of minors in production; penalty.--

63 (1) As used in this section, "knowingly" means having the
64 general knowledge of, reason to know, or a belief or ground for
65 belief which warrants further inspection or inquiry of both:

66 (a) The character and content of any material described in
67 this section herein which is reasonably susceptible of
68 examination by the defendant;~~;~~ and

69 (b) The age of the minor; ~~however, an honest mistake shall~~
70 ~~constitute an excuse from liability hereunder if the defendant~~
71 ~~made a reasonable bona fide attempt to ascertain the true age of~~
72 ~~such minor.~~

73 (2) A person's ignorance of a minor's age, a minor's
74 misrepresentation of his or her age, a bona fide belief as to a
75 minor's age, or a minor's consent cannot be raised as a defense
76 in a prosecution for violation of subsection (4).

77 ~~(3)-(2)~~ It is unlawful for any person knowingly to sell,
78 rent, or loan for monetary consideration to a minor:

79 (a) Any picture, photograph, drawing, sculpture, motion
80 picture film, videocassette, or similar visual representation or
81 image of a person or portion of the human body which depicts
82 nudity or sexual conduct, sexual excitement, sexual battery,

83 bestiality, or sadomasochistic abuse and which is harmful to
 84 minors, or

85 (b) Any book, pamphlet, magazine, printed matter however
 86 reproduced, or sound recording which contains any matter defined
 87 in s. 847.001, explicit and detailed verbal descriptions or
 88 narrative accounts of sexual excitement, or sexual conduct and
 89 which is harmful to minors.

90 (4) It is unlawful for any person knowingly to use a minor
 91 in the production of any material described in paragraph (3) (a)
 92 or paragraph (3) (b), regardless of whether the material is
 93 intended for distribution to minors or is actually distributed
 94 to minors.

95 (5)~~(3)~~ Any person violating any provision of this section
 96 commits ~~is guilty of~~ a felony of the third degree, punishable as
 97 provided in s. 775.082, s. 775.083, or s. 775.084.

98 Section 4. Section 847.013, Florida Statutes, is amended
 99 to read:

100 847.013 Exposing minors to, or using minors in the
 101 production of, harmful motion pictures, exhibitions, shows,
 102 presentations, or representations.--

103 (1) "KNOWINGLY" DEFINED.--As used in this section
 104 "knowingly" means having general knowledge of, reason to know,
 105 or a belief or ground for belief which warrants further
 106 inspection or inquiry of both:

107 (a) The character and content of any motion picture
 108 described in this section ~~herein~~ which is reasonably susceptible
 109 of examination by the defendant, or the character of any
 110 exhibition, presentation, representation, or show described in

111 this section herein, other than a motion picture show, which is
 112 reasonably susceptible of being ascertained by the defendant;;
 113 and

114 (b) The age of the minor; ~~however, an honest mistake shall~~
 115 ~~constitute an excuse from liability hereunder if the defendant~~
 116 ~~made a reasonable bona fide attempt to ascertain the true age of~~
 117 ~~such minor.~~

118 (2) A person's ignorance of a minor's age, a minor's
 119 misrepresentation of his or her age, a bona fide belief as to a
 120 minor's age, or a minor's consent cannot be raised as a defense
 121 in a prosecution for violation of subsection (3).

122 (3)~~(2)~~ OFFENSES AND PENALTIES.--

123 (a) It is unlawful for any person knowingly to exhibit for
 124 a monetary consideration to a minor or knowingly to sell or rent
 125 a videotape of a motion picture to a minor or knowingly sell to
 126 a minor an admission ticket or pass or knowingly admit a minor
 127 for a monetary consideration to premises whereon there is
 128 exhibited a motion picture, exhibition, show, representation, or
 129 other presentation which, in whole or in part, depicts nudity,
 130 sexual conduct, sexual excitement, sexual battery, bestiality,
 131 or sadomasochistic abuse and which is harmful to minors.

132 (b) It is unlawful for any person knowingly to rent or
 133 sell, or loan to a minor for monetary consideration, a
 134 videocassette or a videotape of a motion picture, or similar
 135 presentation, which, in whole or in part, depicts nudity, sexual
 136 conduct, sexual excitement, sexual battery, bestiality, or
 137 sadomasochistic abuse and which is harmful to minors.

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138 (c) The provisions of paragraph (a) do not apply to a
139 minor when the minor is accompanied by his or her parents or
140 either of them.

141 (d) It is unlawful for any minor to falsely represent to
142 the owner of any premises mentioned in paragraph (a), or to the
143 owner's agent, or to any person mentioned in paragraph (b), that
144 such minor is 17 years of age or older, with the intent to
145 procure such minor's admission to such premises, or such minor's
146 purchase or rental of a videotape, for a monetary consideration.

147 (e) It is unlawful for any person to knowingly make a
148 false representation to the owner of any premises mentioned in
149 paragraph (a), or to the owner's agent, or to any person
150 mentioned in paragraph (b), that he or she is the parent of any
151 minor or that any minor is 17 years of age or older, with intent
152 to procure such minor's admission to such premises or to aid
153 such minor in procuring admission thereto, or to aid or enable
154 such minor's purchase or rental of a videotape, for a monetary
155 consideration.

156 (f) It is unlawful for any person knowingly to use a minor
157 in the production of any material whereon there is exhibited a
158 motion picture, exhibition, show, representation, or other
159 presentation which, in whole or in part, depicts a minor,
160 whether his or her identity is known or unknown, engaged in
161 nudity, sexual conduct, sexual excitement, sexual battery,
162 bestiality, or sadomasochistic abuse and which is harmful to
163 minors.

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164 (g)~~(f)~~ A violation of any provision of this subsection
165 constitutes a misdemeanor of the first degree, punishable as
166 provided in s. 775.082 or s. 775.083.

167 (4)~~(3)~~ INJUNCTIVE PROCEEDINGS.--

168 (a) The circuit court has jurisdiction to enjoin a
169 threatened violation of subsection (3) ~~(2)~~ upon complaint filed
170 by the state attorney in the name of the state upon the relation
171 of such state attorney.

172 (b) After the filing of such a complaint, the judge to
173 whom it is presented may grant an order restraining the person
174 or persons complained of until final hearing or further order of
175 the court. Whenever the relator requests a judge of such court
176 to set a hearing upon an application for such a restraining
177 order, such judge shall set such hearing for a time within 3
178 days after the making of such request. No such order shall be
179 made unless such judge is satisfied that sufficient notice of
180 the application therefor has been given to the person or persons
181 restrained of the time when and place where the application for
182 such restraining order is to be heard. However, such notice
183 shall be dispensed with when it is manifest to such judge, from
184 the allegations of a sworn complaint or independent affidavit,
185 sworn to by the relator or by some person associated with him or
186 her in the field of law enforcement and filed by the relator,
187 that the apprehended violation will be committed if an immediate
188 remedy is not afforded.

189 (c) The person or persons sought to be enjoined shall be
190 entitled to a trial of the issues within 1 day after joinder of

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191 issue, and a decision shall be rendered by the court within 2
192 days after the conclusion of the trial.

193 (d) In any action brought as provided in this section, no
194 bond or undertaking shall be required of the state or the
195 relator state attorney before the issuance of a restraining
196 order provided for by this section, and there shall be no
197 liability on the part of the state or the relator state attorney
198 for costs or damages sustained by reason of such restraining
199 order in any case in which a final decree is rendered in favor
200 of the person or persons sought to be enjoined.

201 (e) Every person who has possession, custody, or control
202 of, or otherwise deals with, any motion picture, exhibition,
203 show, representation, or presentation described in this section,
204 after the service upon him or her of a summons and complaint in
205 an action for injunction brought under this section, is
206 chargeable with knowledge of the contents or character thereof.

207 (5)~~(4)~~ LEGISLATIVE INTENT.--In order to make the
208 application and enforcement of this section uniform throughout
209 the state, it is the intent of the Legislature to preempt the
210 field, to the exclusion of counties and municipalities, insofar
211 as it concerns exposing persons under 17 years of age to harmful
212 motion pictures, exhibitions, shows, representations, ~~and~~
213 presentations, and commercial or sexual exploitation. To that
214 end, it is hereby declared that every county ordinance and every
215 municipal ordinance adopted prior to July 1, 1969, and relating
216 to such subject shall stand abrogated and unenforceable on and
217 after such date and that no county, municipality, or
218 consolidated county-municipal government shall have the power to

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219 adopt any ordinance relating to that subject on or after such
 220 effective date.

221 Section 5. Paragraph (f) of subsection (3) of section
 222 921.0022, Florida Statutes, is amended to read:

223 921.0022 Criminal Punishment Code; offense severity
 224 ranking chart.--

225 (3) OFFENSE SEVERITY RANKING CHART

Florida	Felony	Description
Statute	Degree	
		(f) LEVEL 6
316.193 (2) (b)	3rd	Felony DUI, 4th or subsequent conviction.
499.0051 (3)	2nd	Forgery of pedigree papers.
499.0051 (4)	2nd	Purchase or receipt of legend drug from unauthorized person.
499.0051 (5)	2nd	Sale of legend drug to unauthorized person.

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232	775.0875 (1)	3rd	Taking firearm from law enforcement officer.
233	784.021 (1) (a)	3rd	Aggravated assault; deadly weapon without intent to kill.
234	784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.
235	784.041	3rd	Felony battery.
236	784.048 (3)	3rd	Aggravated stalking; credible threat.
237	784.048 (5)	3rd	Aggravated stalking of person under 16.
238	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
	784.074 (1) (b)	2nd	Aggravated assault on sexually violent

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239	784.08 (2) (b)	2nd	predators facility staff.
240	784.081 (2)	2nd	Aggravated assault on a person 65 years of age or older.
241	784.082 (2)	2nd	Aggravated assault on specified official or employee.
242	784.083 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
243	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
244	790.115 (2) (d)	2nd	Discharging firearm or weapon on school

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245	790.161 (2)	2nd	property.
246	790.164 (1)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
247	790.19	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
248	794.011 (8) (a)	3rd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
249	794.05 (1)	2nd	Solicitation of minor to participate in sexual activity by custodial adult.
			Unlawful sexual activity with

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250	800.04 (5) (d)	3rd	specified minor.
251	800.04 (6) (b)	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.
252	806.031 (2)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
253	810.02 (3) (c)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
254	812.014 (2) (b) 1.	2nd	Burglary of occupied structure; unarmed; no assault or battery.
			Property stolen \$20,000 or more, but less than \$100,000,

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255	812.015 (9)	2nd	grand theft in 2nd degree.
256	812.13 (2) (c)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
257	817.034 (4) (a) 1.	1st	Robbery, no firearm or other weapon (strong-arm robbery).
258	817.4821 (5)	2nd	Communications fraud, value greater than \$50,000.
259	825.102 (1)	3rd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
260			Abuse of an elderly person or disabled adult.

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261	825.102 (3) (c)	3rd	Neglect of an elderly person or disabled adult.
262	825.1025 (3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
263	825.103 (2) (c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.
264	827.03 (1)	3rd	Abuse of a child.
265	827.03 (3) (c)	3rd	Neglect of a child.
266	827.071 (2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
267	836.05	2nd	Threats; extortion.

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268	836.10	2nd	Written threats to kill or do bodily injury.
269	843.12	3rd	Aids or assists person to escape.
270	<u>847.011(1)(c)</u>	<u>3rd</u>	<u>Violations involving obscene or lewd materials depicting minors in certain conduct.</u>
271	<u>847.012(4)</u>	<u>3rd</u>	<u>Knowingly using minor in production of certain material.</u>
272	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
273	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.

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274	944.35 (3) (a) 2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
275	944.40	2nd	Escapes.
276	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
277	944.47 (1) (a) 5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
	951.22 (1)	3rd	Intoxicating drug, firearm, or weapon introduced into

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county facility.

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Section 6. This act shall take effect October 1, 2007.