



881582

CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: RCS	.	
4/8/2008	.	
	.	
	.	

1 The Committee on Criminal Justice (Bennett) recommended the
 2 following **amendment**:

3
 4 **Senate Amendment** (with title amendment)

5 Delete everything after the enacting clause
 6 and insert:

7 Section 1. Subsection (6) of section 847.001, Florida
 8 Statutes, is amended to read:

9 847.001 Definitions.--As used in this chapter, the term:

10 (6) "Harmful to minors" means any reproduction, imitation,
 11 characterization, description, exhibition, presentation, or
 12 representation, of whatever kind or form, depicting nudity,
 13 sexual conduct, or sexual excitement when it:

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

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

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

21
22 A mother's breastfeeding of her baby is not under any
23 circumstance "harmful to minors."

24 Section 2. Subsections (1) and (2) of section 847.011,
25 Florida Statutes, are amended to read:

26 847.011 Prohibition of certain acts in connection with
27 obscene, lewd, etc., materials; penalty.--

28 (1) (a) Except as provided in paragraph (c), any person who
29 knowingly sells, lends, gives away, distributes, transmits,
30 shows, or transmutes, or offers to sell, lend, give away,
31 distribute, transmit, show, or transmute, or has in his or her
32 possession, custody, or control with intent to sell, lend, give
33 away, distribute, transmit, show, transmute, or advertise in any
34 manner, any obscene book, magazine, periodical, pamphlet,
35 newspaper, comic book, story paper, written or printed story or
36 article, writing, paper, card, picture, drawing, photograph,
37 motion picture film, figure, image, phonograph record, or wire
38 or tape or other recording, or any written, printed, or recorded
39 matter of any such character which may or may not require
40 mechanical or other means to be transmuted into auditory,
41 visual, or sensory representations of such character, or any
42 article or instrument for obscene use, or purporting to be for
43 obscene use or purpose; or who knowingly designs, copies, draws,

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44 photographs, poses for, writes, prints, publishes, or in any
45 manner whatsoever manufactures or prepares any such material,
46 matter, article, or thing of any such character; or who
47 knowingly writes, prints, publishes, or utters, or causes to be
48 written, printed, published, or uttered, any advertisement or
49 notice of any kind, giving information, directly or indirectly,
50 stating, or purporting to state, where, how, of whom, or by what
51 means any, or what purports to be any, such material, matter,
52 article, or thing of any such character can be purchased,
53 obtained, or had; or who in any manner knowingly hires, employs,
54 uses, or permits any person knowingly to do or assist in doing
55 any act or thing mentioned above, commits ~~is guilty of~~ a
56 misdemeanor of the first degree, punishable as provided in s.
57 775.082 or s. 775.083. A person who, after having been convicted
58 of a violation of this subsection, thereafter violates any of
59 its provisions, commits ~~is guilty of~~ a felony of the third
60 degree, punishable as provided in s. 775.082, s. 775.083, or s.
61 775.084.

62 (b) The knowing possession by any person of three or more
63 identical or similar materials, matters, articles, or things
64 coming within the provisions of paragraph (a) is prima facie
65 evidence of the violation of that ~~said~~ paragraph.

66 (c) A person who commits a violation of paragraph (a) or
67 subsection (2) which is based on materials that depict a minor
68 engaged in any act or conduct that is harmful to minors commits
69 a felony of the third degree, punishable as provided in s.
70 775.082, s. 775.083, or s. 775.084.

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71 (d) A person's ignorance of a minor's age, a minor's
72 misrepresentation of his or her age, a bona fide belief of a
73 minor's age, or a minor's consent may not be raised as a defense
74 in a prosecution for one or more violations of paragraph (a) or
75 subsection (2).

76 (2) Except as provided in paragraph (1)(c), a person who
77 knowingly has in his or her possession, custody, or control any
78 obscene book, magazine, periodical, pamphlet, newspaper, comic
79 book, story paper, written or printed story or article, writing,
80 paper, card, picture, drawing, photograph, motion picture film,
81 film, any sticker, decal, emblem or other device attached to a
82 motor vehicle containing obscene descriptions, photographs, or
83 depictions, any figure, image, phonograph record, or wire or
84 tape or other recording, or any written, printed, or recorded
85 matter of any such character which may or may not require
86 mechanical or other means to be transmuted into auditory,
87 visual, or sensory representations of such character, or any
88 article or instrument for obscene use, or purporting to be for
89 obscene use or purpose, without intent to sell, lend, give away,
90 distribute, transmit, show, transmute, or advertise the same,
91 commits is guilty of a misdemeanor of the second degree,
92 punishable as provided in s. 775.082 or s. 775.083. A person
93 who, after having been convicted of violating this subsection,
94 thereafter violates any of its provisions commits is guilty of a
95 misdemeanor of the first degree, punishable as provided in s.
96 775.082 or s. 775.083. In any prosecution for such possession,
97 it is shall not be necessary to allege or prove the absence of
98 such intent.

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99 Section 3. Section 847.012, Florida Statutes, is amended
100 to read:

101 847.012 Harmful materials; Prohibition of sale or other
102 distribution of harmful materials to minors or using minors in
103 production prohibited persons under 18 years of age; penalty.--

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

107 (a) The character and content of any material described in
108 this section herein which is reasonably susceptible of
109 examination by the defendant;7 and

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

114 (2) A person's ignorance of a minor's age, a minor's
115 misrepresentation of his or her age, a bona fide belief of a
116 minor's age, or a minor's consent may not be raised as a defense
117 in a prosecution for a violation of this section.

118 (3)(2) A ~~It is unlawful for any person may not~~ knowingly
119 ~~to~~ sell, rent, or loan for monetary consideration to a minor:

120 (a) Any picture, photograph, drawing, sculpture, motion
121 picture film, videocassette, or similar visual representation or
122 image of a person or portion of the human body which depicts
123 nudity or sexual conduct, sexual excitement, sexual battery,
124 bestiality, or sadomasochistic abuse and which is harmful to
125 minors;7 or



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126 (b) Any book, pamphlet, magazine, printed matter however
127 reproduced, or sound recording that ~~which~~ contains any matter
128 defined in s. 847.001, explicit and detailed verbal descriptions
129 or narrative accounts of sexual excitement, or sexual conduct
130 and that ~~which~~ is harmful to minors.

131 (4) A person may not knowingly use a minor in the
132 production of any material described in subsection (3),
133 regardless of whether the material is intended for distribution
134 to minors or is actually distributed to minors.

135 (5) ~~(3)~~ Any person violating any provision of this section
136 commits ~~is guilty of~~ a felony of the third degree, punishable as
137 provided in s. 775.082, s. 775.083, or s. 775.084.

138 (6) ~~(4)~~ Every act, thing, or transaction forbidden by this
139 section constitutes a separate offense and is punishable as
140 such.

141 (7) ~~(5)~~ (a) The circuit court has jurisdiction to enjoin a
142 violation of this section upon complaint filed by the state
143 attorney in the name of the state upon the relation of such
144 state attorney.

145 (b) After the filing of the ~~such~~ a complaint, the judge to
146 whom it is presented may grant an order restraining the person
147 complained of until final hearing or further order of the court.
148 If ~~Whenever~~ the relator state attorney requests a judge of such
149 court to set a hearing upon an application for ~~such~~ a
150 restraining order, the ~~such~~ judge shall set the ~~such~~ hearing for
151 a time within 3 days after the making of the ~~such~~ request. The
152 ~~No-such~~ order may not ~~shall~~ be made unless the ~~such~~ judge is
153 satisfied that sufficient notice of the application ~~therefor~~ has

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154 been given to the party restrained of the time when and place
155 where the application for the ~~such~~ restraining order is to be
156 made.

157 (c) The person sought to be enjoined is ~~shall be~~ entitled
158 to a trial of the issues within 1 day after joinder of issue,
159 and a decision shall be rendered by the court within 2 days
160 after ~~of~~ the conclusion of the trial.

161 (d) If ~~In the event that~~ a final decree of injunction is
162 entered, it must ~~shall~~ contain a provision directing the
163 defendant having the possession, custody, or control of the
164 materials, matters, articles, or things affected by the
165 injunction to surrender the same to the sheriff and requiring
166 the sheriff to seize and destroy the same. The sheriff shall
167 file a certificate of her or his compliance.

168 (e) In any action brought under ~~as provided in~~ this
169 section, a ~~no~~ bond or undertaking may not ~~shall~~ be required of
170 the state or the state attorney before the issuance of a
171 restraining order provided for by paragraph (b), and ~~there shall~~
172 ~~be no liability on the part of~~ the state or the state attorney
173 is not liable for costs or for damages sustained by reason of
174 the ~~such~~ restraining order in any case where a final decree is
175 rendered in favor of the person sought to be enjoined.

176 (f) Every person who has possession, custody, or control
177 of, or otherwise deals with, any of the materials, matters,
178 articles, or things described in this section, after the service
179 upon her or him of a summons and complaint in an action for
180 injunction brought under this section, is chargeable with
181 knowledge of the contents and character thereof.

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182 ~~(8)(6)~~ The several sheriffs and state attorneys shall
183 vigorously enforce this section within their respective
184 jurisdictions.

185 ~~(9)(7)~~ This section does not apply to the exhibition of
186 motion pictures, shows, presentations, or other representations
187 regulated under ~~the provisions of~~ s. 847.013.

188 Section 4. Section 847.013, Florida Statutes, is amended
189 to read:

190 847.013 Exposing minors to harmful motion pictures,
191 exhibitions, shows, presentations, or representations.--

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

196 (a) The character and content of any motion picture
197 described herein which is reasonably susceptible of examination
198 by the defendant, or the character of any exhibition,
199 presentation, representation, or show described herein, other
200 than a motion picture show, which is reasonably susceptible of
201 being ascertained by the defendant;; and

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

206 (2) MINOR'S AGE.--A person's ignorance of a minor's age, a
207 minor's misrepresentation of his or her age, a bona fide belief
208 of a minor's age, or a minor's consent may not be raised as a
209 defense in a prosecution for a violation of this section.



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210 (3)~~(2)~~ OFFENSES AND PENALTIES.--

211 (a) A ~~It is unlawful for any person~~ may not knowingly ~~to~~
212 exhibit for a monetary consideration to a minor or knowingly ~~to~~
213 sell or rent a videotape of a motion picture to a minor or
214 knowingly sell to a minor an admission ticket or pass or
215 knowingly admit a minor for a monetary consideration to premises
216 whereon there is exhibited a motion picture, exhibition, show,
217 representation, or other presentation which, in whole or in
218 part, depicts nudity, sexual conduct, sexual excitement, sexual
219 battery, bestiality, or sadomasochistic abuse and which is
220 harmful to minors.

221 (b) A ~~It is unlawful for any person~~ may not knowingly ~~to~~
222 rent or sell, or loan to a minor for monetary consideration, a
223 videocassette or a videotape of a motion picture, or similar
224 presentation, which, in whole or in part, depicts nudity, sexual
225 conduct, sexual excitement, sexual battery, bestiality, or
226 sadomasochistic abuse and which is harmful to minors.

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

230 (d) A ~~It is unlawful for any minor~~ may not ~~to~~ falsely
231 represent to the owner of any premises mentioned in paragraph
232 (a), or to the owner's agent, or to any person mentioned in
233 paragraph (b), that the ~~such~~ minor is 17 years of age or older,
234 with the intent to procure the ~~such~~ minor's admission to the
235 ~~such~~ premises, or the ~~such~~ minor's purchase or rental of a
236 videotape, for a monetary consideration.



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237 (e) ~~A~~ ~~It is unlawful for any person~~ may not ~~to~~ knowingly
238 make a false representation to the owner of any premises
239 mentioned in paragraph (a), or to the owner's agent, or to any
240 person mentioned in paragraph (b), that he or she is the parent
241 of any minor or that any minor is 17 years of age or older, with
242 intent to procure the ~~such~~ minor's admission to the ~~such~~
243 premises or to aid the ~~such~~ minor in procuring admission
244 thereto, or to aid or enable the ~~such~~ minor's purchase or rental
245 of a videotape, for a monetary consideration.

246 (f) A violation of any provision of this subsection
247 constitutes a misdemeanor of the first degree, punishable as
248 provided in s. 775.082 or s. 775.083.

249 (4) ~~(3)~~ INJUNCTIVE PROCEEDINGS.--

250 (a) The circuit court has jurisdiction to enjoin a
251 threatened violation of subsection (2) upon complaint filed by
252 the state attorney in the name of the state upon the relation of
253 such state attorney.

254 (b) After the filing of the ~~such~~ a complaint, the judge to
255 whom it is presented may grant an order restraining the person
256 or persons complained of until final hearing or further order of
257 the court. Whenever the relator requests a judge of the ~~such~~
258 court to set a hearing upon an application for ~~such~~ a
259 restraining order, the ~~such~~ judge shall set the ~~such~~ hearing for
260 a time within 3 days after the making of the ~~such~~ request. An ~~No~~
261 ~~such~~ order may not ~~shall~~ be made unless the ~~such~~ judge is
262 satisfied that sufficient notice of the application ~~therefor~~ has
263 been given to the person or persons restrained of the time when
264 and place where the application for the ~~such~~ restraining order

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265 is to be heard. However, the ~~such~~ notice shall be dispensed with
266 when it is manifest to the ~~such~~ judge, from the allegations of a
267 sworn complaint or independent affidavit, sworn to by the
268 relator or by some person associated with him or her in the
269 field of law enforcement and filed by the relator, that the
270 apprehended violation will be committed if an immediate remedy
271 is not afforded.

272 (c) The person or persons sought to be enjoined are ~~shall~~
273 ~~be~~ entitled to a trial of the issues within 1 day after joinder
274 of issue, and a decision shall be rendered by the court within 2
275 days after the conclusion of the trial.

276 (d) In any action brought as provided in this section, a
277 ~~no~~ bond or undertaking is not ~~shall be~~ required of the state or
278 the relator state attorney before the issuance of a restraining
279 order provided for by this section, and there is ~~shall be~~ no
280 liability on the part of the state or the relator state attorney
281 for costs or damages sustained by reason of such restraining
282 order in any case in which a final decree is rendered in favor
283 of the person or persons sought to be enjoined.

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

290 (5) ~~(4)~~ LEGISLATIVE INTENT.--In order to make the
291 application and enforcement of this section uniform throughout
292 the state, it is the intent of the Legislature to preempt the

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293 field, to the exclusion of counties and municipalities, insofar
294 as it concerns exposing persons under 17 years of age to harmful
295 motion pictures, exhibitions, shows, representations, ~~and~~
296 presentations, and commercial or sexual exploitation. To that
297 end, it is hereby declared that every county ordinance and every
298 municipal ordinance adopted prior to July 1, 1969, and relating
299 to such subject shall stand abrogated and unenforceable on and
300 after such date and that no county, municipality, or
301 consolidated county-municipal government shall have the power to
302 adopt any ordinance relating to that subject on or after such
303 effective date.

304 Section 5. Subsection (1) of section 847.0133, Florida
305 Statutes, is amended to read:

306 847.0133 Protection of minors; prohibition of certain acts
307 in connection with obscenity; penalty.--

308 (1) A ~~It is unlawful for any person~~ may not knowingly ~~to~~
309 sell, rent, loan, give away, distribute, transmit, or show any
310 obscene material to a minor. For purposes of this section
311 "obscene material" means any obscene book, magazine, periodical,
312 pamphlet, newspaper, comic book, story paper, written or printed
313 story or article, writing paper, card, picture, drawing,
314 photograph, motion picture film, figure, image, videotape,
315 videocassette, phonograph record, or wire or tape or other
316 recording, or any written, printed, or recorded matter of any
317 such character which may or may not require mechanical or other
318 means to be transmuted into auditory, visual, or sensory
319 representations of such character, or any article or instrument
320 for obscene use, or purporting to be for obscene use or purpose.



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321 The term "obscene" has ~~shall have~~ the same meaning as set forth
 322 in s. 847.001.

323 Section 6. Paragraph (f) of subsection (3) of section
 324 921.0022, Florida Statutes, is amended to read:

325 921.0022 Criminal Punishment Code; offense severity
 326 ranking chart.--

327 (3) OFFENSE SEVERITY RANKING CHART

328 (f) LEVEL 6

329

Florida Statute	Felony Degree	Description
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.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.

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336	784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.
337	784.041	3rd	Felony battery; domestic battery by strangulation.
338	784.048 (3)	3rd	Aggravated stalking; credible threat.
339	784.048 (5)	3rd	Aggravated stalking of person under 16.
340	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
341	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
342	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
343	784.081 (2)	2nd	Aggravated assault on specified official or employee.
344	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
345	784.083 (2)	2nd	Aggravated assault on code inspector.
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347	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
348	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
349	790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
350	790.164 (1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
351	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
352	794.011 (8) (a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
353	794.05 (1)	2nd	Unlawful sexual activity with specified minor.
354	800.04 (5) (d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.
	800.04 (6) (b)	2nd	Lewd or lascivious conduct; offender 18

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years of age or older.

355

806.031(2) 2nd Arson resulting in great bodily harm to
firefighter or any other person.

356

810.02(3)(c) 2nd Burglary of occupied structure;
unarmed; no assault or battery.

357

812.014(2)(b)1. 2nd Property stolen \$20,000 or more, but
less than \$100,000, grand theft in 2nd
degree.

358

812.014(6) 2nd Theft; property stolen \$3,000 or more;
coordination of others.

359

812.015(9)(a) 2nd Retail theft; property stolen \$300 or
more; second or subsequent conviction.

360

812.015(9)(b) 2nd Retail theft; property stolen \$3,000 or
more; coordination of others.

361

812.13(2)(c) 2nd Robbery, no firearm or other weapon
(strong-arm robbery).

362

817.034(4)(a)1. 1st Communications fraud, value greater
than \$50,000.

363

817.4821(5) 2nd Possess cloning paraphernalia with



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intent to create cloned cellular
telephones.

364

825.102(1) 3rd Abuse of an elderly person or disabled
adult.

365

825.102(3)(c) 3rd Neglect of an elderly person or
disabled adult.

366

825.1025(3) 3rd Lewd or lascivious molestation of an
elderly person or disabled adult.

367

825.103(2)(c) 3rd Exploiting an elderly person or
disabled adult and property is valued
at less than \$20,000.

368

827.03(1) 3rd Abuse of a child.

369

827.03(3)(c) 3rd Neglect of a child.

370

827.071(2)&(3) 2nd Use or induce a child in a sexual
performance, or promote or direct such
performance.

371

836.05 2nd Threats; extortion.

372

836.10 2nd Written threats to kill or do bodily
injury.



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373	843.12	3rd	Aids or assists person to escape.
374	<u>847.011</u>	<u>3rd</u>	<u>Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.</u>
375	<u>847.012</u>	<u>3rd</u>	<u>Knowingly using a minor in the production of materials harmful to minors.</u>
376	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
377	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
378	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.
379	944.40	2nd	Escapes.
380	944.46	3rd	Harboring, concealing, aiding escaped prisoners.



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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 county facility.

Section 7. The amendments to ss. 847.012, 847.011, 847.013, and 847.0133, Florida Statutes, made by this act do not apply to providers of communications services as defined in s. 202.11, Florida Statutes, or to providers of information services, including, but not limited to, Internet access service providers and hosting service providers, when they provide only the transmission, storage, or caching of electronic communications or messages of others or provide other related communications or information services used by others in violation of such amended provisions. This exemption does not apply to providers of communications services as defined in s. 202.11, Florida Statutes, or providers of information services that knowingly for commercial advantage or private financial gain facilitate the specific violation of such amended provisions by others.

Section 8. This act shall take effect July 1, 2008.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

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404 Delete everything before the enacting clause

405 and insert:

406 A bill to be entitled

407 An act relating to material harmful to minors; amending s.
408 847.001, F.S.; redefining the term "harmful to minors";
409 amending s. 847.011, F.S.; providing that it is a third-
410 degree felony for any person to sell, distribute,
411 transmit, advertise, or possess with the intent to sell,
412 distribute, transmit, or advertise certain materials to
413 minors; providing that ignorance of a minor's age or the
414 minor's consent is not a defense in a prosecution for such
415 a violation; providing penalties; amending s. 847.012,
416 F.S.; prohibiting a person from knowingly using a minor in
417 the production of certain materials, regardless of whether
418 those materials are intended for distribution to minors or
419 actually distributed to minors; providing a penalty;
420 providing that ignorance of a minor's age or the minor's
421 consent is not a defense in a prosecution for specified
422 violations; amending s. 847.013, F.S.; providing that
423 ignorance of a minor's age or the minor's consent is not a
424 defense in a prosecution for specified violations;
425 revising legislative intent concerning the enforcement of
426 such laws with respect to minors; amending s. 847.0133,
427 F.S.; revising terminology; amending s. 921.0022, F.S.,
428 relating to the offense severity ranking chart of the
429 Criminal Punishment Code; establishing offense levels to
430 conform to changes made by the act; providing an exemption
431 to laws amended by the act for providers of communications

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432 | services and providers of information services in certain
433 | circumstances; providing an effective date.