

By Senator Siplin

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1 A bill to be entitled

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

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

22
23 Section 1. Florida commercial anti-pornography act.--

24 (1) SHORT TITLE.--This section may be cited as the "Florida
25 Commercial Anti-Pornography Act."

26 (2) LEGISLATIVE FINDINGS.--

27 (a) The Legislature finds that pornography has a
28 deleterious effect on the health and morals of the people of this
29 state. Pornography is demeaning to the men and women of this

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30 state and it panders to the basest desires of a minority of the
31 residents of this state.

32 (b) The Legislature further finds that pornography is
33 offensive and a nuisance and that affording the people of this
34 state a civil remedy to enjoin the distribution of pornographic
35 materials for profit and commercial purposes within their
36 community, and to recover civil penalties and damages, will
37 result in a general benefit to the health and welfare of the
38 people of the state.

39 (c) The Legislature further finds that extending the
40 remedies provided under this act to any church or religious
41 organization, or other representative group or organization
42 within this state, will further the purposes of this act and
43 result in a general benefit to the health and welfare of the
44 people of the state.

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

46 (a) "Commercial" means profit-seeking production, buying,
47 selling, or distribution of any motion picture, exhibition, show,
48 representation, performance, or other product.

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

51 (c) "Exhibit" means to show.

52 (d) "Knowingly" means an awareness, whether actual or
53 constructive, of the character of material or of a performance. A
54 person has constructive knowledge if a reasonable inspection or
55 observation under the circumstances would have disclosed the
56 nature of the subject matter and if a failure to inspect or
57 observe is for the purpose of avoiding the disclosure.

58 (e) "Material" means anything printed or written; any

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59 picture, drawing, photograph, motion picture, or pictorial
60 representation; any statue or other figure; any recording or
61 transcription; any mechanical, chemical, or electrical
62 reproduction; or anything that is or may be used as a means of
63 communication. The term includes undeveloped photographs, molds,
64 printing plates, and other latent representational objects.

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

69 (g) "Pornography" or "pornographic" means a specifically
70 described or depicted sexual act or conduct that a person,
71 applying contemporary community standards, would consider, taken
72 as a whole, to appeal to the prurient interest, and that the
73 work, when taken as a whole, lacks serious literary, artistic,
74 political, or scientific value.

75 (h) "Specifically described or depicted sexual act or
76 conduct" means a sexual act or conduct depicting:

77 1. Rape; sexual battery; or nonconsensual intercourse,
78 sodomy, or oral sodomy;

79 2. Incest;

80 3. The involvement of an actual minor in sexual acts or
81 conduct;

82 4. Bestiality;

83 5. Multiple penetration by multiple partners of body
84 orifices;

85 6. Visible penetration during intercourse, sodomy, or oral
86 sodomy;

87 7. Visible ejaculation, urination, menstruation, bowel

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88 movements, ejaculate, or feces;

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

91 9. Sexual acts or conduct involving the dead.

92 (4) CIVIL PENALTY.--

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

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

100 (c) A violation occurs each time the person, or an agent or
101 employee of a person, buys, sells, exhibits, or distributes
102 pornographic material, and a violation occurs for each item of
103 pornographic material bought, sold, exhibited, or distributed by
104 the person or an agent or employee of a person.

105 (5) ENFORCEMENT.--

106 (a) Any person, including a church or religious
107 organization, or other representative group or organization, may
108 bring an action in the circuit court to enforce this section.

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

112 (6) LIMITATIONS.--This section does not apply to the
113 noncommercial distribution of materials through Internet service
114 providers, Internet users, or others, and does not regulate,
115 limit, or prohibit residents from possessing obscene material for
116 personal use in their own homes.

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117 (7) FREE SPEECH.--

118 (a) It is the intent of the Legislature to preserve,
119 protect, and foster protected free speech, and to minimize the
120 costs associated with defending a multiplicity of suits brought
121 under this section.

122 (b) In order to ensure that the application and enforcement
123 of this section is consistent with this intent, when a motion is
124 filed by any party, the court may stay any other suit filed in
125 this state which involves the same defendant, pending a final
126 determination.

127 (c) In an action brought under this section, upon a motion
128 filed by the party against whom the action is brought alleging
129 that the action is frivolous, without legal or factual merit, or
130 brought for the purpose of harassment, the court may, after
131 hearing evidence as to the necessity therefor, and after review
132 of the alleged pornographic materials, require the party
133 instituting the action to post a bond, in an amount not to exceed
134 \$10,000, which the court finds reasonable to indemnify the
135 defendant for any damages incurred, including reasonable
136 attorney's fees.

137 (8) RELIEF.--

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

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

142 (9) INJUNCTIVE PROCEEDINGS.--

143 (a) After a complaint is filed, the court may grant a
144 temporary order restraining the person or persons complained of
145 upon an application for a temporary restraining order. A hearing

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146 must be conducted no later than 3 days after the temporary
147 restraining order is issued by the court. A temporary restraining
148 order may not be issued unless it is manifest to the court, after
149 review of the alleged pornographic material and from the
150 allegations of a complaint or affidavit sworn to by the plaintiff
151 or the plaintiff's representative, that the apprehended violation
152 will be committed if an immediate remedy is not afforded.

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

156 (c) Except as otherwise provided in this section, a bond or
157 undertaking is not required of the state or other plaintiff in
158 any action brought under this section before a temporary
159 restraining order is issued. The state or other plaintiff is not
160 liable for costs or damages sustained by reason of the temporary
161 restraining order in any case in which a final decree is rendered
162 in favor of the person or persons sought to be enjoined.

163 (10) DAMAGES.--

164 (a) Anyone aggrieved by a violation of this section may
165 bring an action for declaratory relief that a sexual act or
166 conduct violates this act or to enjoin a person who has violated,
167 is violating, or is otherwise likely to violate this section,
168 without regard to any other remedy or relief to which a person is
169 entitled.

170 (b) A person may recover actual damages and attorney's fees
171 and court costs in any action brought by a person who has
172 suffered a loss as a result of a violation of this section.

173 Section 2. This act shall take effect July 1, 2008.