

1 A bill to be entitled

2 An act relating to material harmful to minors; amending s.
3 847.001, F.S.; redefining the term "harmful to minors";
4 amending s. 847.011, F.S.; providing that it is a third-
5 degree felony for any person to sell, distribute,
6 transmit, advertise, or possess with the intent to sell,
7 distribute, transmit, or advertise certain materials to
8 minors; providing that ignorance of a minor's age or the
9 minor's consent is not a defense in a prosecution for such
10 a violation; providing penalties; amending s. 847.012,
11 F.S.; prohibiting a person from knowingly using a minor in
12 the production of certain materials, regardless of whether
13 those materials are intended for distribution to minors or
14 actually distributed to minors; providing a penalty;
15 providing that ignorance of a minor's age or the minor's
16 consent is not a defense in a prosecution for specified
17 violations; amending s. 847.013, F.S.; providing that
18 ignorance of a minor's age or the minor's consent is not a
19 defense in a prosecution for specified violations;
20 revising legislative intent concerning the enforcement of
21 such laws with respect to minors; amending s. 847.0133,
22 F.S.; revising terminology; amending s. 921.0022, F.S.,
23 relating to the offense severity ranking chart of the
24 Criminal Punishment Code; establishing offense levels to
25 conform to changes made by the act; providing an effective
26 date.

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

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

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

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

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

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

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

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

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

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

(1) (a) Except as provided in paragraph (c), any person who knowingly sells, lends, gives away, distributes, transmits, shows, or transmutes, or offers to sell, lend, give away, distribute, transmit, show, or transmute, or has in his or her possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise in any

57 | manner, any obscene book, magazine, periodical, pamphlet,
58 | newspaper, comic book, story paper, written or printed story or
59 | article, writing, paper, card, picture, drawing, photograph,
60 | motion picture film, figure, image, phonograph record, or wire
61 | or tape or other recording, or any written, printed, or recorded
62 | matter of any such character which may or may not require
63 | mechanical or other means to be transmuted into auditory,
64 | visual, or sensory representations of such character, or any
65 | article or instrument for obscene use, or purporting to be for
66 | obscene use or purpose; or who knowingly designs, copies, draws,
67 | photographs, poses for, writes, prints, publishes, or in any
68 | manner whatsoever manufactures or prepares any such material,
69 | matter, article, or thing of any such character; or who
70 | knowingly writes, prints, publishes, or utters, or causes to be
71 | written, printed, published, or uttered, any advertisement or
72 | notice of any kind, giving information, directly or indirectly,
73 | stating, or purporting to state, where, how, of whom, or by what
74 | means any, or what purports to be any, such material, matter,
75 | article, or thing of any such character can be purchased,
76 | obtained, or had; or who in any manner knowingly hires, employs,
77 | uses, or permits any person knowingly to do or assist in doing
78 | any act or thing mentioned above, commits ~~is guilty of~~ a
79 | misdemeanor of the first degree, punishable as provided in s.
80 | 775.082 or s. 775.083. A person who, after having been convicted
81 | of a violation of this subsection, thereafter violates any of
82 | its provisions, commits ~~is guilty of~~ a felony of the third
83 | degree, punishable as provided in s. 775.082, s. 775.083, or s.
84 | 775.084.

85 (b) The knowing possession by any person of three or more
86 identical or similar materials, matters, articles, or things
87 coming within the provisions of paragraph (a) is prima facie
88 evidence of the violation of the said paragraph.

89 (c) A person who commits a violation of paragraph (a) or
90 subsection (2) which is based on materials that depict a minor
91 engaged in any act or conduct that is harmful to minors commits
92 a felony of the third degree, punishable as provided in s.
93 775.082, s. 775.083, or s. 775.084.

94 (d) A person's ignorance of a minor's age, a minor's
95 misrepresentation of his or her age, a bona fide belief of a
96 minor's age, or a minor's consent may not be raised as a defense
97 in a prosecution for one or more violations of paragraph (a) or
98 subsection (2).

99 (2) Except as provided in paragraph (1)(c), a person who
100 knowingly has in his or her possession, custody, or control any
101 obscene book, magazine, periodical, pamphlet, newspaper, comic
102 book, story paper, written or printed story or article, writing,
103 paper, card, picture, drawing, photograph, motion picture film,
104 film, any sticker, decal, emblem or other device attached to a
105 motor vehicle containing obscene descriptions, photographs, or
106 depictions, any figure, image, phonograph record, or wire or
107 tape or other recording, or any written, printed, or recorded
108 matter of any such character which may or may not require
109 mechanical or other means to be transmuted into auditory,
110 visual, or sensory representations of such character, or any
111 article or instrument for obscene use, or purporting to be for
112 obscene use or purpose, without intent to sell, lend, give away,

113 distribute, transmit, show, transmute, or advertise the same,
 114 commits ~~is guilty of~~ a misdemeanor of the second degree,
 115 punishable as provided in s. 775.082 or s. 775.083. A person
 116 who, after having been convicted of violating this subsection,
 117 thereafter violates any of its provisions commits ~~is guilty of~~ a
 118 misdemeanor of the first degree, punishable as provided in s.
 119 775.082 or s. 775.083. In any prosecution for such possession,
 120 it is ~~shall~~ not be necessary to allege or prove the absence of
 121 such intent.

122 Section 3. Section 847.012, Florida Statutes, is amended
 123 to read:

124 847.012 Harmful materials; Prohibition of sale or other
 125 distribution of harmful materials to minors or using minors in
 126 production prohibited ~~persons under 18 years of age; penalty.--~~

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

130 (a) The character and content of any material described in
 131 this section ~~herein~~ which is reasonably susceptible of
 132 examination by the defendant; 7 and

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

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

141 ~~(3)-(2)~~ A ~~It is unlawful for any person~~ may not knowingly
 142 ~~to~~ sell, rent, or loan for monetary consideration to a minor:

143 (a) Any picture, photograph, drawing, sculpture, motion
 144 picture film, videocassette, or similar visual representation or
 145 image of a person or portion of the human body which depicts
 146 nudity or sexual conduct, sexual excitement, sexual battery,
 147 bestiality, or sadomasochistic abuse and which is harmful to
 148 minors;; or

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

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

158 ~~(5)-(3)~~ Any person violating any provision of this section
 159 commits ~~is guilty of~~ a felony of the third degree, punishable as
 160 provided in s. 775.082, s. 775.083, or s. 775.084.

161 ~~(6)-(4)~~ Every act, thing, or transaction forbidden by this
 162 section constitutes a separate offense and is punishable as
 163 such.

164 ~~(7)-(5)~~(a) The circuit court has jurisdiction to enjoin a
 165 violation of this section upon complaint filed by the state
 166 attorney in the name of the state upon the relation of such
 167 state attorney.

168 (b) After the filing of such a complaint, the judge to

169 | whom it is presented may grant an order restraining the person
 170 | complained of until final hearing or further order of the court.
 171 | Whenever the relator state attorney requests a judge of such
 172 | court to set a hearing upon an application for ~~such~~ a
 173 | restraining order, the ~~such~~ judge shall set the ~~such~~ hearing for
 174 | a time within 3 days after the making of the ~~such~~ request. The
 175 | ~~No such~~ order may not ~~shall~~ be made unless the ~~such~~ judge is
 176 | satisfied that sufficient notice of the application therefor has
 177 | been given to the party restrained of the time when and place
 178 | where the application for the ~~such~~ restraining order is to be
 179 | made.

180 | (c) The person sought to be enjoined is ~~shall be~~ entitled
 181 | to a trial of the issues within 1 day after joinder of issue,
 182 | and a decision shall be rendered by the court within 2 days
 183 | after ~~of~~ the conclusion of the trial.

184 | (d) If ~~In the event that~~ a final decree of injunction is
 185 | entered, it must ~~shall~~ contain a provision directing the
 186 | defendant having the possession, custody, or control of the
 187 | materials, matters, articles, or things affected by the
 188 | injunction to surrender the same to the sheriff and requiring
 189 | the sheriff to seize and destroy the same. The sheriff shall
 190 | file a certificate of her or his compliance.

191 | (e) In any action brought as provided in this section, a
 192 | ~~no~~ bond or undertaking may not ~~shall~~ be required of the state or
 193 | the state attorney before the issuance of a restraining order
 194 | provided for by paragraph (b), and ~~there shall be no liability~~
 195 | ~~on the part of~~ the state or the state attorney may not be held
 196 | liable for costs or for damages sustained by reason of the ~~such~~

197 restraining order in any case where a final decree is rendered
 198 in favor of the person sought to be enjoined.

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

205 (8)~~(6)~~ The several sheriffs and state attorneys shall
 206 vigorously enforce this section within their respective
 207 jurisdictions.

208 (9)~~(7)~~ This section does not apply to the exhibition of
 209 motion pictures, shows, presentations, or other representations
 210 regulated under ~~the provisions of~~ s. 847.013.

211 Section 4. Section 847.013, Florida Statutes, is amended
 212 to read:

213 847.013 Exposing minors to harmful motion pictures,
 214 exhibitions, shows, presentations, or representations.--

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

219 (a) The character and content of any motion picture
 220 described herein which is reasonably susceptible of examination
 221 by the defendant, or the character of any exhibition,
 222 presentation, representation, or show described herein, other
 223 than a motion picture show, which is reasonably susceptible of
 224 being ascertained by the defendant;i~~r~~ and

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

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

233 (3) ~~(2)~~ OFFENSES AND PENALTIES.--

234 (a) A ~~It is unlawful for any person may not~~ knowingly ~~to~~
 235 exhibit for a monetary consideration to a minor or knowingly ~~to~~
 236 sell or rent a videotape of a motion picture to a minor or
 237 knowingly sell to a minor an admission ticket or pass or
 238 knowingly admit a minor for a monetary consideration to premises
 239 whereon there is exhibited a motion picture, exhibition, show,
 240 representation, or other presentation which, in whole or in
 241 part, depicts nudity, sexual conduct, sexual excitement, sexual
 242 battery, bestiality, or sadomasochistic abuse and which is
 243 harmful to minors.

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

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

253 (d) A ~~It is unlawful for any~~ minor may not ~~to~~ falsely
 254 represent to the owner of any premises mentioned in paragraph
 255 (a), or to the owner's agent, or to any person mentioned in
 256 paragraph (b), that the ~~such~~ minor is 17 years of age or older,
 257 with the intent to procure the ~~such~~ minor's admission to such
 258 premises, or the ~~such~~ minor's purchase or rental of a videotape,
 259 for a monetary consideration.

260 (e) A ~~It is unlawful for any~~ person may not ~~to~~ knowingly
 261 make a false representation to the owner of any premises
 262 mentioned in paragraph (a), or to the owner's agent, or to any
 263 person mentioned in paragraph (b), that he or she is the parent
 264 of any minor or that any minor is 17 years of age or older, with
 265 intent to procure the ~~such~~ minor's admission to the ~~such~~
 266 premises or to aid the ~~such~~ minor in procuring admission
 267 thereto, or to aid or enable the ~~such~~ minor's purchase or rental
 268 of a videotape, for a monetary consideration.

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

272 (4)~~(3)~~ INJUNCTIVE PROCEEDINGS.--

273 (a) The circuit court has jurisdiction to enjoin a
 274 threatened violation of subsection (2) upon complaint filed by
 275 the state attorney in the name of the state upon the relation of
 276 such state attorney.

277 (b) After the filing of such a complaint, the judge to
 278 whom it is presented may grant an order restraining the person
 279 or persons complained of until final hearing or further order of
 280 the court. Whenever the relator requests a judge of the ~~such~~

281 court to set a hearing upon an application for ~~such~~ a
 282 restraining order, the ~~such~~ judge shall set the ~~such~~ hearing for
 283 a time within 3 days after the making of the ~~such~~ request. An ~~No~~
 284 ~~such~~ order may not ~~shall~~ be made unless the ~~such~~ judge is
 285 satisfied that sufficient notice of the application therefor has
 286 been given to the person or persons restrained of the time when
 287 and place where the application for the ~~such~~ restraining order
 288 is to be heard. However, the ~~such~~ notice shall be dispensed with
 289 when it is manifest to the ~~such~~ judge, from the allegations of a
 290 sworn complaint or independent affidavit, sworn to by the
 291 relator or by some person associated with him or her in the
 292 field of law enforcement and filed by the relator, that the
 293 apprehended violation will be committed if an immediate remedy
 294 is not afforded.

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

299 (d) In any action brought as provided in this section, a
 300 ~~no~~ bond or undertaking is not ~~shall be~~ required of the state or
 301 the relator state attorney before the issuance of a restraining
 302 order provided for by this section, and there is ~~shall be~~ no
 303 liability on the part of the state or the relator state attorney
 304 for costs or damages sustained by reason of such restraining
 305 order in any case in which a final decree is rendered in favor
 306 of the person or persons sought to be enjoined.

307 (e) Every person who has possession, custody, or control
 308 of, or otherwise deals with, any motion picture, exhibition,

309 show, representation, or presentation described in this section,
 310 after the service upon him or her of a summons and complaint in
 311 an action for injunction brought under this section, is
 312 chargeable with knowledge of the contents or character thereof.

313 (5)~~(4)~~ LEGISLATIVE INTENT.--In order to make the
 314 application and enforcement of this section uniform throughout
 315 the state, it is the intent of the Legislature to preempt the
 316 field, to the exclusion of counties and municipalities, insofar
 317 as it concerns exposing persons under 17 years of age to harmful
 318 motion pictures, exhibitions, shows, representations, ~~and~~
 319 presentations, and commercial or sexual exploitation. To that
 320 end, it is hereby declared that every county ordinance and every
 321 municipal ordinance adopted prior to July 1, 1969, and relating
 322 to such subject shall stand abrogated and unenforceable on and
 323 after such date and that no county, municipality, or
 324 consolidated county-municipal government shall have the power to
 325 adopt any ordinance relating to that subject on or after such
 326 effective date.

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

329 847.0133 Protection of minors; prohibition of certain acts
 330 in connection with obscenity; penalty.--

331 (1) A ~~It is unlawful for any person~~ may not knowingly ~~to~~
 332 sell, rent, loan, give away, distribute, transmit, or show any
 333 obscene material to a minor. For purposes of this section
 334 "obscene material" means any obscene book, magazine, periodical,
 335 pamphlet, newspaper, comic book, story paper, written or printed
 336 story or article, writing paper, card, picture, drawing,

337 photograph, motion picture film, figure, image, videotape,
 338 videocassette, phonograph record, or wire or tape or other
 339 recording, or any written, printed, or recorded matter of any
 340 such character which may or may not require mechanical or other
 341 means to be transmuted into auditory, visual, or sensory
 342 representations of such character, or any article or instrument
 343 for obscene use, or purporting to be for obscene use or purpose.
 344 The term "obscene" has ~~shall have~~ the same meaning as set forth
 345 in s. 847.001.

346 Section 6. Paragraph (f) of subsection (3) of section
 347 921.0022, Florida Statutes, is amended to read:

348 921.0022 Criminal Punishment Code; offense severity
 349 ranking chart.--

350 (3) OFFENSE SEVERITY RANKING CHART

351 (f) LEVEL 6

352

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.

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357	499.0051 (5)	2nd	Sale of legend drug to unauthorized person.
358	775.0875 (1)	3rd	Taking firearm from law enforcement officer.
359	784.021 (1) (a)	3rd	Aggravated assault; deadly weapon without intent to kill.
360	784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.
361	784.041	3rd	Felony battery; domestic battery by strangulation.
362	784.048 (3)	3rd	Aggravated stalking; credible threat.
363	784.048 (5)	3rd	Aggravated stalking of person under 16.
364	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
365	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
366	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.

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367	784.081 (2)	2nd	Aggravated assault on specified official or employee.
368	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
369	784.083 (2)	2nd	Aggravated assault on code inspector.
370	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
371	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
372	790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
373	790.164 (1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
374	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
375	794.011 (8) (a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.

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376	794.05 (1)	2nd	Unlawful sexual activity with specified minor.
377	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.
378	800.04 (6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
379	806.031 (2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
380	810.02 (3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
381	812.014 (2) (b) 1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
382	812.014 (6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
383	812.015 (9) (a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
	812.015 (9) (b)	2nd	Retail theft; property stolen \$3,000 or

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more; coordination of others.

384

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

385

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

386

817.4821 (5) 2nd Possess cloning paraphernalia with
intent to create cloned cellular
telephones.

387

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

388

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

389

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

390

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

391

827.03 (1) 3rd Abuse of a child.

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393	827.03 (3) (c)	3rd	Neglect of a child.
394	827.071 (2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
395	836.05	2nd	Threats; extortion.
396	836.10	2nd	Written threats to kill or do bodily injury.
397	843.12	3rd	Aids or assists person to escape.
398	<u>847.011</u>	<u>3rd</u>	<u>Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.</u>
399	<u>847.012</u>	<u>3rd</u>	<u>Knowingly using a minor in the production of materials harmful to minors.</u>
400	847.0135 (2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
401	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.

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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.

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944.40 2nd Escapes.

404

944.46 3rd Harboring, concealing, aiding escaped
 prisoners.

405

944.47(1)(a)5. 2nd Introduction of contraband (firearm,
 weapon, or explosive) into correctional
 facility.

406

951.22(1) 3rd Intoxicating drug, firearm, or weapon
 introduced into county facility.

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Section 7. This act shall take effect July 1, 2008.