

By Senator Rodriguez

39-00282-21

2021410__

1 A bill to be entitled
2 An act relating to materials harmful to minors;
3 amending s. 847.001, F.S.; revising the definitions of
4 the terms "child pornography," "harmful to minors,"
5 "obscene," and "person"; amending s. 847.012, F.S.;
6 prohibiting a person from selling or renting specified
7 materials to a minor for monetary consideration;
8 prohibiting a person from loaning specified materials
9 to a minor for any reason; requiring school districts
10 to proactively remove specified materials; requiring
11 school districts to remove such materials independent
12 of a parent or resident complaint; amending s.
13 1002.20, F.S.; providing that a public school student
14 may be exposed to certain teaching only in accordance
15 with a specified procedure; making a technical change;
16 amending s. 1003.42, F.S.; requiring school districts
17 or specified schools to notify and request the written
18 consent of parents before the teaching of reproductive
19 health or any sexually transmitted disease;
20 prohibiting schools from allowing students to be
21 exposed to such teaching without the written consent
22 of their parent; prohibiting a student whose parent
23 does not give such written consent from being
24 penalized; amending s. 1006.28, F.S.; adding certain
25 materials to the policy district school boards are
26 required to adopt which allows certain objections from
27 parents or county residents; requiring district school
28 boards to annually review specified materials and
29 immediately discontinue the use of any found to be

39-00282-21

2021410__

30 inappropriate or unsuitable, regardless of whether a
31 complaint was received; authorizing a student's parent
32 or a county resident to contest on specified grounds a
33 district school board's adoption of certain
34 instructional material; specifying a certain petition
35 to be filed and the form required for the filing;
36 requiring the school board to make the form available
37 to the public and to publish the form on the school
38 district's website; requiring the school board to
39 grant the petition or refer the matter to a hearing
40 within a certain timeframe; providing that an
41 administrative law judge has final order authority to
42 rule on the petition; providing for the award of
43 attorney fees and costs under certain circumstances;
44 reenacting ss. 92.561(1) and 288.1254(1)(b) and (j),
45 F.S., relating to the prohibition against reproducing
46 child pornography and the exclusion of obscene content
47 under the entertainment industry financial incentive
48 program, respectively, to incorporate the amendments
49 made to s. 847.001, F.S., in references thereto;
50 providing effective dates.

51
52 Be It Enacted by the Legislature of the State of Florida:

53
54 Section 1. Effective October 1, 2021, subsections (3), (6),
55 (10), and (11) of section 847.001, Florida Statutes, are amended
56 to read:

57 847.001 Definitions.—As used in this chapter, the term:

58 (3) "Child pornography" means any image depicting or text

39-00282-21

2021410__

59 describing a minor engaged in sexual conduct.

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

64 (a) Predominantly appeals to a prurient, shameful, or
65 morbid interest; and

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

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

71
72 ~~A mother's breastfeeding of her baby is not under any~~
73 ~~circumstance "harmful to minors."~~

74 (10) "Obscene" means the status of materials that ~~material~~
75 ~~which:~~

76 (a) 1. The average person, applying contemporary community
77 standards, would find, taken as a whole, appeals to the prurient
78 interest;

79 2. ~~(b)~~ Depicts or describes, in a patently offensive way,
80 sexual conduct as specifically defined herein; and

81 3. ~~(c)~~ Taken as a whole, lacks serious literary, artistic,
82 political, or scientific value; or

83 (b)1. The average person, applying contemporary community
84 standards for appropriate materials for minors, would object to
85 as depicting or describing, in a patently offensive way, sexual
86 conduct as defined herein which is harmful to minors; and

87 2. Taken as a whole, lacks serious literary, artistic,

39-00282-21

2021410__

88 political, or scientific value for minors.

89

90 A mother's breastfeeding of her baby is not under any
91 circumstance "obscene."

92 (11) "Person" includes individuals, minors ~~children~~, firms,
93 associations, joint ventures, partnerships, estates, trusts,
94 business trusts, syndicates, fiduciaries, corporations, and all
95 other groups or combinations.

96 Section 2. Effective October 1, 2021, section 847.012,
97 Florida Statutes, is amended to read:

98 847.012 Harmful materials; sale or distribution to minors
99 or using minors in production prohibited; use in public schools
100 prohibited; penalty.—

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

104 (a) The character and content of any material described in
105 this section which is reasonably susceptible of examination by
106 the defendant; and

107 (b) The age of the minor.

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

112 (3) A person may not knowingly sell or ~~rent~~ for monetary
113 consideration ~~or loan for any reason~~ ~~monetary consideration~~ to
114 a minor:

115 (a) Any picture, photograph, drawing, sculpture, motion
116 picture film, videocassette, or similar visual representation or

39-00282-21

2021410__

117 image of a person or portion of the human body which depicts
118 nudity or sexual conduct, sexual excitement, sexual battery,
119 bestiality, or sadomasochistic abuse and which is harmful to
120 minors; ~~or~~

121 (b) Any book, pamphlet, magazine, printed matter however
122 reproduced, or sound recording that contains any matter defined
123 in s. 847.001, explicit and detailed verbal descriptions or
124 narrative accounts of sexual excitement, or sexual conduct and
125 that is harmful to minors; or

126 (c) Any material used in a public K-12 school classroom,
127 made available in a public K-12 school library, or included on a
128 public K-12 school recommended reading list which contains
129 obscene content or is harmful to minors or is prohibited as
130 conduct inappropriate for minors. Such materials are not
131 acceptable and the school district shall proactively remove all
132 such materials. If the district school board finds that any
133 instructional material, including any materials used in the
134 classroom or assigned or offered as reading material, violates
135 this section, the material shall be proactively removed. This
136 required action is not dependent on a parent or resident
137 complaint.

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

142 (5) An adult may not knowingly distribute to a minor on
143 school property, or post on school property, any material
144 described in subsection (3). As used in this subsection, the
145 term "school property" means the grounds or facility of any

39-00282-21

2021410__

146 kindergarten, elementary school, middle school, junior high
147 school, or secondary school, whether public or nonpublic. This
148 subsection does not apply to the distribution or posting of
149 school-approved instructional materials that by design serve as
150 a major tool for assisting in the instruction of a subject or
151 course by school officers, instructional personnel,
152 administrative personnel, school volunteers, educational support
153 employees, or managers as those terms are defined in s. 1012.01.

154 (6) Any person violating any provision of this section
155 commits a felony of the third degree, punishable as provided in
156 s. 775.082, s. 775.083, or s. 775.084.

157 (7) Every act, thing, or transaction forbidden by this
158 section constitutes a separate offense and is punishable as
159 such.

160 (8) (a) The circuit court has jurisdiction to enjoin a
161 violation of this section upon complaint filed by the state
162 attorney in the name of the state upon the relation of such
163 state attorney.

164 (b) After the filing of such a complaint, the judge to whom
165 it is presented may grant an order restraining the person
166 complained of until final hearing or further order of the court.
167 Whenever the relator state attorney requests a judge of such
168 court to set a hearing upon an application for a restraining
169 order, the judge shall set the hearing for a time within 3 days
170 after the making of the request. The order may not be made
171 unless the judge is satisfied that sufficient notice of the
172 application therefor has been given to the party restrained of
173 the time when and place where the application for the
174 restraining order is to be made.

39-00282-21

2021410__

175 (c) The person sought to be enjoined is entitled to a trial
176 of the issues within 1 day after joinder of issue, and a
177 decision shall be rendered by the court within 2 days after the
178 conclusion of the trial.

179 (d) If a final decree of injunction is entered, it must
180 contain a provision directing the defendant having the
181 possession, custody, or control of the materials, matters,
182 articles, or things affected by the injunction to surrender the
183 same to the sheriff and requiring the sheriff to seize and
184 destroy the same. The sheriff shall file a certificate of her or
185 his compliance.

186 (e) In any action brought as provided in this section, a
187 bond or undertaking may not be required of the state or the
188 state attorney before the issuance of a restraining order
189 provided for by paragraph (b), and the state or the state
190 attorney may not be held liable for costs or for damages
191 sustained by reason of the restraining order in any case where a
192 final decree is rendered in favor of the person sought to be
193 enjoined.

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

200 (9) The several sheriffs and state attorneys shall
201 vigorously enforce this section within their respective
202 jurisdictions.

203 (10) This section does not apply to the exhibition of

39-00282-21

2021410__

204 motion pictures, shows, presentations, or other representations
205 regulated under s. 847.013.

206 Section 3. Paragraph (d) of subsection (3) of section
207 1002.20, Florida Statutes, is amended to read:

208 1002.20 K-12 student and parent rights.—Parents of public
209 school students must receive accurate and timely information
210 regarding their child's academic progress and must be informed
211 of ways they can help their child to succeed in school. K-12
212 students and their parents are afforded numerous statutory
213 rights including, but not limited to, the following:

214 (3) HEALTH ISSUES.—

215 (d) *Reproductive health and disease education.*—A public
216 school student ~~whose parent makes written request to the school~~
217 ~~principal shall be exempted from~~ may be exposed to the teaching
218 of reproductive health or any sexually transmitted disease,
219 including HIV/AIDS, only in accordance with ~~the provisions of~~ s.
220 1003.42(3).

221 Section 4. Subsection (3) of section 1003.42, Florida
222 Statutes, is amended to read:

223 1003.42 Required instruction.—

224 (3) School districts, or schools as defined in s.
225 1003.01(2), shall notify and request the written consent of
226 parents at least 10 instructional days before ~~Any student whose~~
227 ~~parent makes written request to the school principal shall be~~
228 ~~exempted from~~ the teaching of reproductive health or any
229 sexually transmitted disease, including HIV/AIDS, and its
230 symptoms, development, and treatment. A school may not allow a
231 student to be exposed to such teaching without the prior written
232 consent of his or her parent. A student whose parent does not

39-00282-21

2021410__

233 give written consent for such teaching ~~so exempted~~ may not be
234 penalized by reason of that withholding of consent ~~exemption~~.
235 Course descriptions for comprehensive health education may ~~shall~~
236 not interfere with the local determination of appropriate
237 curriculum which reflects local values and concerns.

238 Section 5. Paragraph (a) of subsection (2) of section
239 1006.28, Florida Statutes, is amended to read:

240 1006.28 Duties of district school board, district school
241 superintendent; and school principal regarding K-12
242 instructional materials.—

243 (2) DISTRICT SCHOOL BOARD.—The district school board has
244 the constitutional duty and responsibility to select and provide
245 adequate instructional materials for all students in accordance
246 with the requirements of this part. The district school board
247 also has the following specific duties and responsibilities:

248 (a) *Courses of study; adoption.*—Adopt courses of study,
249 including instructional materials, for use in the schools of the
250 district.

251 1. Each district school board is responsible for the
252 content of all instructional materials and any other materials
253 used in a classroom, made available in a school library, or
254 included on a reading list, whether adopted and purchased from
255 the state-adopted instructional materials list, adopted and
256 purchased through a district instructional materials program
257 under s. 1006.283, or otherwise purchased or made available.
258 Each district school board shall maintain on its website a
259 current list of instructional materials, by grade level,
260 purchased by the district.

261 2. Each district school board must adopt a policy regarding

39-00282-21

2021410__

262 an objection by a parent or a resident of the county to the use
263 of a specific instructional material, which clearly describes a
264 process to handle all objections and provides for resolution.
265 The process must provide the parent or resident the opportunity
266 to proffer evidence to the district school board that:

267 a. An instructional material does not meet the criteria of
268 s. 1006.31(2) or s. 1006.40(3)(d) if it was selected for use in
269 a course or otherwise made available to students in the school
270 district but was not subject to the public notice, review,
271 comment, and hearing procedures under s. 1006.283(2)(b)8., 9.,
272 and 11.

273 b. Any material used in a classroom, made available in a
274 school library, or included on a reading list contains content
275 that constitutes child pornography, is harmful to minors, or is
276 obscene, as those terms are defined in s. 847.001, is
277 pornographic or prohibited under s. 847.012, is not suited to
278 student needs and their ability to comprehend the material
279 presented, or is inappropriate for the grade level and age group
280 for which the material is used.

281
282 By July 1, 2022, and each July 1 thereafter, district school
283 boards shall complete a review of all instructional material
284 used in a public K-12 school classroom, made available in a
285 public K-12 school library, or included on a public K-12 school
286 reading list within the district. If the district school board
287 finds that an instructional material does not meet the criteria
288 under sub-subparagraph a. or that any other material contains
289 prohibited content under sub-subparagraph b., the school
290 district shall immediately discontinue use of the material for

39-00282-21

2021410__

291 any grade level or age group for which such use is inappropriate
292 or unsuitable, regardless of whether the district school board
293 has received any complaint about the material.

294 3. Each district school board must establish a process by
295 which the parent of a public school student or a resident of the
296 county may contest the district school board's adoption of a
297 specific instructional material. The parent or resident must
298 file a petition, on a form provided by the school board, within
299 30 calendar days after the adoption of the material by the
300 school board. The school board must make the form available to
301 the public and publish the form on the school district's
302 website. The form must be signed by the parent or resident,
303 include the required contact information, and state the
304 objection to the instructional material based on the criteria of
305 s. 1006.31(2) or s. 1006.40(3)(d). Within 30 days after the 30-
306 day period has expired, the school board must, for all petitions
307 timely received, conduct at least one open public hearing before
308 an unbiased and qualified hearing officer. The hearing officer
309 may not be an employee or agent of the school district. The
310 hearing is not subject to ~~the provisions of~~ chapter 120;
311 however, the hearing must provide sufficient procedural
312 protections to allow each petitioner an adequate and fair
313 opportunity to be heard and present evidence to the hearing
314 officer. The school board's decision after convening a hearing
315 is final and not subject to further petition or review.

316 4. Notwithstanding subparagraph 3., the parent of a public
317 school student or a resident of the county may contest the
318 district school board's adoption of a specific instructional
319 material at any time before or after the material's adoption by

39-00282-21

2021410__

320 the district school board on the grounds that the material
321 constitutes child pornography, is harmful to minors, or is
322 obscene, as those terms are defined in s. 847.001, or is
323 pornographic or prohibited under s. 847.012. The parent or
324 resident must file a petition on a form provided by the school
325 board. The school board shall make the form available to the
326 public and publish the form on the school district's website.
327 The form must be signed by the parent or resident, include any
328 required contact information, and state the objection to the
329 instructional material, based on the criteria in s. 847.001 or
330 s. 847.012. Within 30 days, the school board must either grant
331 the petition or refer the matter to the Division of
332 Administrative Hearings for a hearing under chapter 120. The
333 administrative law judge has final order authority to rule on
334 the parent or resident's petition. The administrative law judge
335 shall award a prevailing parent or resident reasonable attorney
336 fees and costs incurred during the administrative proceeding and
337 any appeals.

338 Section 6. For the purpose of incorporating the amendments
339 made by this act to section 847.001, Florida Statutes, in a
340 reference thereto, subsection (1) of section 92.561, Florida
341 Statutes, is reenacted to read:

342 92.561 Prohibition on reproduction of child pornography.—

343 (1) In a criminal proceeding, any property or material that
344 portrays sexual performance by a child as defined in s. 827.071,
345 or constitutes child pornography as defined in s. 847.001, must
346 remain secured or locked in the care, custody, and control of a
347 law enforcement agency, the state attorney, or the court.

348 Section 7. For the purpose of incorporating the amendments

39-00282-21

2021410__

349 made by this act to section 847.001, Florida Statutes, in
350 references thereto, paragraphs (b) and (j) of subsection (1) of
351 section 288.1254, Florida Statutes, are reenacted to read:

352 288.1254 Entertainment industry financial incentive
353 program.—

354 (1) DEFINITIONS.—As used in this section, the term:

355 (b) "Digital media project" means a production of
356 interactive entertainment that is produced for distribution in
357 commercial or educational markets. The term includes a video
358 game or production intended for Internet or wireless
359 distribution, an interactive website, digital animation, and
360 visual effects, including, but not limited to, three-dimensional
361 movie productions and movie conversions. The term does not
362 include a production that contains content that is obscene as
363 defined in s. 847.001.

364 (j) "Qualified production" means a production in this state
365 meeting the requirements of this section. The term does not
366 include a production:

367 1. In which, for the first 2 years of the incentive
368 program, less than 50 percent, and thereafter, less than 60
369 percent, of the positions that make up its production cast and
370 below-the-line production crew, or, in the case of digital media
371 projects, less than 75 percent of such positions, are filled by
372 legal residents of this state, whose residency is demonstrated
373 by a valid Florida driver license or other state-issued
374 identification confirming residency, or students enrolled full-
375 time in a film-and-entertainment-related course of study at an
376 institution of higher education in this state; or

377 2. That contains obscene content as defined in s.

39-00282-21

2021410__

378 847.001(10).

379 Section 8. Except as otherwise expressly provided in this

380 act, this act shall take effect July 1, 2021.