

By Senator McClain

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1 A bill to be entitled
2 An act relating to material that is harmful to minors;
3 amending s. 847.001, F.S.; revising the definition of
4 the term "harmful to minors"; amending s. 1006.28,
5 F.S.; revising the list of materials used in a
6 classroom which are subject to the objection process
7 by parents or residents; reenacting ss. 847.012(3),
8 847.0134(1), 847.0138(2) and (3), and 847.0141(1),
9 F.S., relating to harmful materials and the
10 prohibition against the sale or distribution to minors
11 or using minors in a production, the prohibition
12 against adult entertainment establishments that
13 display, sell, or distribute materials harmful to
14 minors within 2,500 feet of a school, the prohibition
15 against transmission to a minor of material harmful to
16 minors by electronic device or equipment, and sexting
17 and related prohibited acts, respectively, to
18 incorporate the amendment made to s. 847.001, F.S., in
19 references thereto; reenacting s. 1014.05(1)(c), F.S.,
20 relating to school district notifications on parental
21 rights, to incorporate the amendment made to s.
22 1006.28, F.S., in a reference thereto; providing an
23 effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Subsection (7) of section 847.001, Florida
28 Statutes, is amended to read:
29 847.001 Definitions.—As used in this chapter, the term:

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

34 (a) Predominantly appeals to a prurient, shameful, or
35 morbid interest;

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

39 (c) Taken as a whole, is without serious literary,
40 artistic, political, or scientific value for minors. This
41 paragraph does not apply to such reproduction, imitation,
42 characterization, description, exhibition, presentation, or
43 representation in an educational setting or to a determination
44 made by an employee of any kindergarten, elementary school,
45 middle school, junior high school, or secondary school, whether
46 public or private, with regard to such material if the material
47 is possessed by a person with the intent to send, sell,
48 distribute, exhibit, represent, or display it to a minor and is
49 not part of an approved instructional or library material.

50
51 A mother's breastfeeding of her baby is not under any
52 circumstance "harmful to minors."

53 Section 2. Paragraph (a) of subsection (2) of section
54 1006.28, Florida Statutes, is amended to read:

55 1006.28 Duties of district school board, district school
56 superintendent; and school principal regarding K-12
57 instructional materials.—

58 (2) DISTRICT SCHOOL BOARD.—The district school board has

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59 the constitutional duty and responsibility to select and provide
60 adequate instructional materials for all students in accordance
61 with the requirements of this part. The district school board
62 also has the following specific duties and responsibilities:

63 (a) *Courses of study; adoption.*—Adopt courses of study,
64 including instructional materials, for use in the schools of the
65 district.

66 1. Each district school board is responsible for the
67 content of all instructional materials and any other materials
68 used in a classroom, made available in a school or classroom
69 library, or included on a reading list, whether adopted and
70 purchased from the state-adopted instructional materials list,
71 adopted and purchased through a district instructional materials
72 program under s. 1006.283, or otherwise purchased or made
73 available.

74 2. Each district school board must adopt a policy regarding
75 an objection by a parent or a resident of the county to the use
76 of a specific material, which clearly describes a process to
77 handle all objections and provides for resolution. The objection
78 form, as prescribed by State Board of Education rule, and the
79 district school board's process must be easy to read and
80 understand and be easily accessible on the homepage of the
81 school district's website. The objection form must also identify
82 the school district point of contact and contact information for
83 the submission of an objection. The process must provide the
84 parent or resident the opportunity to proffer evidence to the
85 district school board that:

86 a. An instructional material does not meet the criteria of
87 s. 1006.31(2) or s. 1006.40(3)(c) if it was selected for use in

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88 a course or otherwise made available to students in the school
89 district but was not subject to the public notice, review,
90 comment, and hearing procedures under s. 1006.283(2)(b)8., 9.,
91 and 11.

92 b. Any material used in a classroom, made available in a
93 school or classroom library, or included on a reading list
94 contains content which:

95 (I) Is pornographic or prohibited under s. 847.012;

96 (II) Depicts or describes sexual conduct as defined in s.
97 847.001(19), unless such material is specifically authorized as
98 part of a health education course required under s. 1003.46; as
99 part of comprehensive health education required under s.
100 1003.42(2)(o)1.g. or 3.; or as approved through for a course
101 required by s. 1003.46 or s. 1003.42(2)(o)1.g. or 3., or
102 identified by State Board of Education rule for specific
103 educational purposes.

104 (A) Upon receipt of an objection under this sub-sub-
105 subparagraph regarding material that depicts or describes sexual
106 conduct, the material must be removed within 5 school days; the
107 material must remain unavailable throughout the objection review
108 process; and the school board may not consider potential
109 literary, artistic, political, or scientific value as a basis
110 for retaining the material.

111 (B) The State Board of Education shall monitor district
112 compliance with the requirements of this sub-sub-subparagraph
113 through regular audits and reporting. Upon finding that a
114 district has failed to comply with these requirements, the State
115 Board of Education shall provide written notice of noncompliance
116 to the district; may withhold the transfer of state funds,

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117 discretionary grant funds, discretionary lottery funds, or any
118 other funds specified by the Legislature until the school
119 district complies with the requirements; shall require the
120 district to submit a corrective action plan within 30 days after
121 receiving notice of noncompliance; and may impose additional
122 sanctions or requirements as conditions for the continued
123 receipt of state funds;

124 (III) Is not suited to student needs and their ability to
125 comprehend the material presented; or

126 (IV) Is inappropriate for the grade level and age group for
127 which the material is used.

128
129 A resident of the county who is not the parent or guardian of a
130 student with access to school district materials may not object
131 to more than one material per month. The State Board of
132 Education may adopt rules to implement this provision. Any
133 material that is subject to an objection on the basis of sub-
134 sub-subparagraph b.(I) or sub-sub-subparagraph b.(II) must be
135 removed within 5 school days after receipt of the objection and
136 remain unavailable to students of that school until the
137 objection is resolved. Parents shall have the right to read
138 passages from any material that is subject to an objection. If
139 the school board denies a parent the right to read passages due
140 to content that meets the requirements under sub-sub-
141 subparagraph b.(I), the school district shall discontinue the
142 use of the material in the school district. If the district
143 school board finds that any material meets the requirements
144 under sub-subparagraph a. or that any other material contains
145 prohibited content under sub-sub-subparagraph b.(I), the school

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146 district shall discontinue use of the material. If the district
147 school board finds that any other material contains prohibited
148 content under sub-sub-subparagraphs b.(II)-(IV), the school
149 district shall discontinue use of the material for any grade
150 level or age group for which such use is inappropriate or
151 unsuitable.

152 3. Each district school board must establish a process by
153 which the parent of a public school student or a resident of the
154 county may contest the district school board's adoption of a
155 specific instructional material. The parent or resident must
156 file a petition, on a form provided by the school board, within
157 30 calendar days after the adoption of the instructional
158 material by the school board. The school board must make the
159 form available to the public and publish the form on the school
160 district's website. The form must be signed by the parent or
161 resident, include the required contact information, and state
162 the objection to the instructional material based on the
163 criteria of s. 1006.31(2) or s. 1006.40(3)(c). Within 30 days
164 after the 30-day period has expired, the school board must, for
165 all petitions timely received, conduct at least one open public
166 hearing before an unbiased and qualified hearing officer. The
167 hearing officer may not be an employee or agent of the school
168 district. The hearing is not subject to the provisions of
169 chapter 120; however, the hearing must provide sufficient
170 procedural protections to allow each petitioner an adequate and
171 fair opportunity to be heard and present evidence to the hearing
172 officer. The school board's decision after convening a hearing
173 is final and not subject to further petition or review.

174 4. Meetings of committees convened for the purpose of

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175 ranking, eliminating, or selecting instructional materials for
176 recommendation to the district school board must be noticed and
177 open to the public in accordance with s. 286.011. Any committees
178 convened for such purposes must include parents of students who
179 will have access to such materials.

180 5. Meetings of committees convened for the purpose of
181 resolving an objection by a parent or resident to specific
182 materials must be noticed and open to the public in accordance
183 with s. 286.011. Any committees convened for such purposes must
184 include parents of students who will have access to such
185 materials.

186 6. If a parent disagrees with the determination made by the
187 district school board on the objection to the use of a specific
188 material, a parent may request the Commissioner of Education to
189 appoint a special magistrate who is a member of The Florida Bar
190 in good standing and who has at least 5 years' experience in
191 administrative law. The special magistrate shall determine facts
192 relating to the school district's determination, consider
193 information provided by the parent and the school district, and
194 render a recommended decision for resolution to the State Board
195 of Education within 30 days after receipt of the request by the
196 parent. The State Board of Education must approve or reject the
197 recommended decision at its next regularly scheduled meeting
198 that is more than 7 calendar days and no more than 30 days after
199 the date the recommended decision is transmitted. The costs of
200 the special magistrate shall be borne by the school district.
201 The State Board of Education shall adopt rules, including forms,
202 necessary to implement this subparagraph.

203 Section 3. For the purpose of incorporating the amendment

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204 made by this act to section 847.001, Florida Statutes, in a
205 reference thereto, subsection (3) of section 847.012, Florida
206 Statutes, is reenacted to read:

207 847.012 Harmful materials; sale or distribution to minors
208 or using minors in production prohibited; penalty.—

209 (3) A person may not knowingly sell, rent, or loan for
210 monetary consideration to a minor:

211 (a) Any picture, photograph, drawing, sculpture, motion
212 picture film, videocassette, or similar visual representation or
213 image of a person or portion of the human body which depicts
214 nudity or sexual conduct, sexual excitement, sexual battery,
215 bestiality, or sadomasochistic abuse and which is harmful to
216 minors; or

217 (b) Any book, pamphlet, magazine, printed matter however
218 reproduced, or sound recording that contains any matter defined
219 in s. 847.001, explicit and detailed verbal descriptions or
220 narrative accounts of sexual excitement, or sexual conduct and
221 that is harmful to minors.

222 Section 4. For the purpose of incorporating the amendment
223 made by this act to section 847.001, Florida Statutes, in a
224 reference thereto, subsection (1) of section 847.0134, Florida
225 Statutes, is reenacted to read:

226 847.0134 Prohibition of adult entertainment establishment
227 that displays, sells, or distributes materials harmful to minors
228 within 2,500 feet of a school.—

229 (1) Except for those establishments that are legally
230 operating or have been granted a permit from a local government
231 to operate as adult entertainment establishments on or before
232 July 1, 2001, an adult entertainment establishment that sells,

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233 rents, loans, distributes, transmits, shows, or exhibits any
234 obscene material, as described in s. 847.0133, or presents live
235 entertainment or a motion picture, slide, or other exhibit that,
236 in whole or in part, depicts nudity, sexual conduct, sexual
237 excitement, sexual battery, sexual bestiality, or
238 sadomasochistic abuse and that is harmful to minors, as
239 described in s. 847.001, may not be located within 2,500 feet of
240 the real property that comprises a public or private elementary
241 school, middle school, or secondary school unless the county or
242 municipality approves the location under proceedings as provided
243 in s. 125.66(5) for counties or s. 166.041(3)(c) for
244 municipalities.

245 Section 5. For the purpose of incorporating the amendment
246 made by this act to section 847.001, Florida Statutes, in
247 references thereto, subsections (2) and (3) of section 847.0138,
248 Florida Statutes, are reenacted to read:

249 847.0138 Transmission of material harmful to minors to a
250 minor by electronic device or equipment prohibited; penalties.—

251 (2) Notwithstanding ss. 847.012 and 847.0133, any person
252 who knew or believed that he or she was transmitting an image,
253 information, or data that is harmful to minors, as defined in s.
254 847.001, to a specific individual known by the defendant to be a
255 minor commits a felony of the third degree, punishable as
256 provided in s. 775.082, s. 775.083, or s. 775.084.

257 (3) Notwithstanding ss. 847.012 and 847.0133, any person in
258 any jurisdiction other than this state who knew or believed that
259 he or she was transmitting an image, information, or data that
260 is harmful to minors, as defined in s. 847.001, to a specific
261 individual known by the defendant to be a minor commits a felony

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262 of the third degree, punishable as provided in s. 775.082, s.
263 775.083, or s. 775.084.

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265 The provisions of this section do not apply to subscription-
266 based transmissions such as list servers.

267 Section 6. For the purpose of incorporating the amendment
268 made by this act to section 847.001, Florida Statutes, in a
269 reference thereto, subsection (1) of section 847.0141, Florida
270 Statutes, is reenacted to read:

271 847.0141 Sexting; prohibited acts; penalties.—

272 (1) A minor commits the offense of sexting if he or she
273 knowingly:

274 (a) Uses a computer, or any other device capable of
275 electronic data transmission or distribution, to transmit or
276 distribute to another minor any photograph or video of any
277 person which depicts nudity, as defined in s. 847.001, and is
278 harmful to minors, as defined in s. 847.001.

279 (b) Possesses a photograph or video of any person that was
280 transmitted or distributed by another minor which depicts
281 nudity, as defined in s. 847.001, and is harmful to minors, as
282 defined in s. 847.001. A minor does not violate this paragraph
283 if all of the following apply:

284 1. The minor did not solicit the photograph or video.

285 2. The minor took reasonable steps to report the photograph
286 or video to the minor's legal guardian or to a school or law
287 enforcement official.

288 3. The minor did not transmit or distribute the photograph
289 or video to a third party.

290 Section 7. For the purpose of incorporating the amendment

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291 made by this act to section 1006.28, Florida Statutes, in a
292 reference thereto, paragraph (c) of subsection (1) of section
293 1014.05, Florida Statutes, is reenacted to read:

294 1014.05 School district notifications on parental rights.—

295 (1) Each district school board shall, in consultation with
296 parents, teachers, and administrators, develop and adopt a
297 policy to promote parental involvement in the public school
298 system. Such policy must include:

299 (c) Procedures, pursuant to s. 1006.28(2)(a)2., for a
300 parent to object to instructional materials and other materials
301 used in the classroom. Such objections may be based on beliefs
302 regarding morality, sex, and religion or the belief that such
303 materials are harmful. For purposes of this section, the term
304 "instructional materials" has the same meaning as in s.
305 1006.29(2) and may include other materials used in the
306 classroom, including workbooks and worksheets, handouts,
307 software, applications, and any digital media made available to
308 students.

309 Section 8. This act shall take effect July 1, 2025.