

STORAGE NAME: h2311z.ca  
DATE: May 12, 2000

**\*\*FAILED TO PASS THE LEGISLATURE\*\***

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
COMMUNITY AFFAIRS  
FINAL ANALYSIS**

**BILL #:** HB 2311  
**RELATING TO:** Adult Entertainment Establishments  
**SPONSOR(S):** Representative Murman and others  
**TIED BILL(S):** None

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) COMMUNITY AFFAIRS (PRC) YEAS 9 NAYS 0
  - (2) CRIMINAL JUSTICE APPROPRIATIONS (FRC) (W/D)
  - (3)
  - (4)
  - (5)
- 

I. SUMMARY:

This bill prohibits adult entertainment businesses from selling and showing obscene materials to minors and also from operating within 2,500 feet of any public or private, elementary, middle, or secondary school.

This bill excludes those businesses in existence as of July 1, 2000.

This bill imposes a third degree felony on anyone who violates the provisions of this bill.

There is an indeterminate fiscal impact.

**The Committee on Community Affairs adopted one amendment that is traveling with the bill. As indicated in the "AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES" section the amendment qualifies the definition of a movie theater.**

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |  |   |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill creates new governmental interference with a presently lawful activity.

B. PRESENT SITUATION:

Currently, there is no law that addresses the location of adult entertainment businesses near a school.

Current law, at Section 847.0133, F.S., provides, in part, as follows:

- (1) It is unlawful for any person knowingly to sell, rent, loan, give away, distribute, transmit, or show any obscene material to a minor. For purposes of this section "obscene material" means any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing paper, card, picture, drawing, photograph, motion picture film, figure, image, videotape, videocassette, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose.
- (2) ....A minor is any person under the age of 18 years.

Section 847.001, F.S., provides, in part, as follows:

- (3) "Harmful to minors" means that quality of any description, exhibition, presentation, or representation, in whatever form, of nudity, sexual conduct, or sexual excitement when it:
  - (a) Predominantly appeals to 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 for minors; and
  - (c) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

Currently, a third degree felony may result in fines and imprisonment as follows:

Section 775.082 (3) (d) provides the following term of imprisonment:

For a felony of the third degree, by a term of imprisonment not exceeding 5 years.

Section 775.083 (1) (c) provides the following maximum fine:

\$5,000, when the conviction is a felony of the third degree.

**C. EFFECT OF PROPOSED CHANGES:**

This bill prohibits an adult entertainment business, whose activities are harmful to persons under eighteen years of age, from being located within 2,500 feet of public and private, elementary, middle, or secondary schools.

This bill exempts those businesses in operation on or before July 1, 2000.

This bill creates a criminal penalty for violators, which is a third degree felony.

This bill may have the unintended consequence of applying to an ordinary movie theater, given the description of activities in an adult entertainment establishment, provided in this bill.

**D. SECTION-BY-SECTION ANALYSIS:**

Section 1 -- Creates 847.0134, to prohibit an adult entertainment establishment or other adult establishment (Establishment) from displaying, selling, or distributing harmful materials to minors within 2,500 feet of a school.

(1) Excluding existing establishments on or before July 1, 2000, prohibits an Establishment from selling, renting, loaning, distributing, transmitting, showing or exhibiting obscene material, pursuant to s. 847.0133, F.S., or presenting live or taped entertainment or other exhibit that contains nudity, sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochism that is harmful to minors, from being located within 2,500 feet of a school, including a public or private elementary school, middle school, or secondary school, unless approved by the county or municipality pursuant to s. 286.0115, F.S.

(2) Imposes a penalty of a third degree felony when someone violates this section.

(3) Provides for an effective date of October 1, 2000.

**III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

N/A

2. Expenditures:

This bill may result in an increased need for prison beds. Also, increases in the number of persons on state probation may increase the need for additional state probation officers.

Section 921.001 (9) (b), F.S., requires the Criminal Justice Estimating Conference (CJEC) to review any legislation that creates or modifies a criminal penalty to determine the bill's impact on the state prison system. The CJEC will review this bill.

This bill may result in certain fiscal impacts on the courts, assistant public defenders and state attorneys.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

It is difficult to determine how many adult entertainment establishments may anticipate locating within 2,500 feet of a school as defined in this bill. However, this bill may impose a negative economic impact on the private sector, specifically on the adult entertainment industry.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the amount of a state tax shared with counties or municipalities.

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V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

This bill might be clarified to prohibit not only the sale and exhibition of obscene material to minors, but also the operation of an adult establishment within 2,500 feet of a school.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

**Committee on Community Affairs**

The Committee on Community Affairs met on April 19, 2000 and adopted one amendment. This amendment clarifies the type of movie theater that qualifies as an adult entertainment establishment, to preclude application to an ordinary, commercial movie theater.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Cindy M. Brown, J.D.

Staff Director:

Joan Highsmith-Smith

**FINAL ANALYSIS PREPARED BY THE COMMITTEE ON COMMUNITY AFFAIRS:**

Prepared by:

Cindy M. Brown, J.D.

Staff Director:

Joan Highsmith-Smith