

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2118

SPONSOR: Comprehensive Planning, Local and Military Affairs and Senator Crist

SUBJECT: Educational facilities

DATE: April 10, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bowman	Yeatman	CA	Favorable/CS
2.	_____	_____	CJ	_____
3.	_____	_____	APJ	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill prohibits the location of adult entertainment establishments within 2,500 feet of a public or private elementary school, middle school, or secondary school unless the county or city approves the location under proceedings specified in statute.

This bill amends section 847.001, F.S., and creates section 847.0134, F.S.

II. Present Situation:

Section 847.0133, F.S., provides that it is unlawful for any person to knowingly sell, rent, distribute, transmit or show any obscene material to a minor. Section 847.013, F.S., prohibits exposing minors to “harmful” motion pictures that depict nudity or sexual conduct.

Section 847.001, F.S., includes definitions relevant to the chapter. “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:

- Predominately appeals to the prurient, shameful, or morbid interest of minors;
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
- Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

“Obscene” means the status of material which:

- The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
- Depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and
- Taken as a whole, lacks serious literary, artistic, political or scientific value.

III. Effect of Proposed Changes:

Section 1 amends s. 847.001, F.S., to expand the list of definitions for several of the terms used in Section 2 of the bill. Adult entertainment establishment is defined as any commercial establishment, business or service, or portion thereof, which offers sexually-oriented material, devices, paraphernalia, or specific sexual activities, services or performances in any combination or in any other form, whether printed, filmed, recorded or live. The term also includes the following terms:

- Adult bookstore is defined as any business that restricts or purports to restrict admission to adults, which has as part of its stock, books or magazines and which sells or rents for a fee:
 - Any sexually oriented material.
 - Any sexually oriented material that is available for viewing by patrons by use of movie machines, VCRs or slide projectors
 - Any sexually oriented material that has a substantial portion of its contents devoted to the pictorial depiction of sadism, masochism or bestiality or
 - Any sexually oriented material that has as its principal theme the depiction of sexual activity by, or lascivious exhibition of, the uncovered genitals, public region, or buttocks of child who are or appear to be under the age of 18.
- Adult motion picture theatre is defined as an enclosed space used for presenting either films, live plays, dances or other performances that are distinguished or characterized by an emphasis on matter depicting, describing or relating to specific sexual activities for observation by patrons.
- Unlicensed massage establishment is defined as a business or enterprise which offers, sells or provides, or which holds itself out as offering, selling or providing massages that include bathing, physical massage, rubbing kneading, anointing, stroking, manipulating, or other tactile stimulation of the human body by either male or female employees, by hand or by any electrical or mechanical device, on or off the premises. The term does not include an establishment licensed under s. 480.43, F.S., that routinely provides medical services by state-licensed health care practitioners and massage therapists licensed under s. 480.041, F.S.

Sexually oriented material is defined as any book, article, magazine, publication, or written matter of any kind or any drawing, etching, painting, photograph, motion picture film, or sound recording that depicts sexual activity, actual or simulated, involving human beings or human beings and animals, that exhibits uncovered human genitals or the pubic region in a lewd or lascivious manner, or that exhibits human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specific sexual activities is defined to include the following sexual activities and the exhibition of the following anatomical areas:

- Human genitals in the state of sexual stimulation or arousal.
- Acts of human masturbation, sexual intercourse, sodomy, cunnilingus, felatio, or any excretory function or representation thereof.
- The fondling or erotic touching of human genitals, the pubic region, the buttocks or the human breasts.
- Less than completely and opaquely covered: Human genitals or the pubic region; Buttocks; Female breasts below the top of the areola; and Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

The bill also adds definitions for the terms “masochism” and “sadism”.

Section 2 creates s. 847.0134, F.S., to prohibit an adult entertainment establishment or other adult establishment that sells, rents, loans, distributes, transmits, shows or exhibits any obscene material, as described in s. 847.0133, F.S., or presents live entertainment or a motion picture, slide, or other exhibit that, in whole or in part, depicts nudity, sexual conduct, sexual excitement, sexual battery, sexual bestiality, or sadomasochistic abuse and that is harmful to minors, from being located within 2,500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school unless the county or municipality approves the location under proceedings as provided in s. 125.66(4) or s. 166.041(3)(c), F.S. A violation of this section is a third degree felony.

Section 3 provides an effective date of July 1, 2001.

IV. **Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

If enacted, this statute may face a challenge that it violates the First Amendment of the federal constitution. In *City of Renton v. Playtime Theatres*, 475 U.S. 41, 106 S.Ct. 925 (1986), the city of Renton, Washington enacted a zoning ordinance which prohibited adult motion picture theatres from locating within 1,000 feet of any residential zone, single or multiple family dwelling, church, park or school. The term “adult motion picture theater” was defined as:

An enclosed building used for presenting motion picture films, video cassettes, cable television, or any other such visual media, distinguished or characteri[zed] by an emphasis on matter depicting, describing or relating to ‘specified sexual activities’ or ‘specified anatomical areas’..... for observation by patrons therein.

Playtime Theatres challenged the ordinance under a claim that it violated the First and Fourteenth Amendment to the federal constitution. The court stated:

This Court has long held that regulations enacted for the purpose of restraining speech on the basis of its content presumptively violate the First Amendment. On the other hand, so-called “content-neutral” time, place, and manner regulations are acceptable so long as they are designed to serve a substantial governmental interest and do not unreasonably limit alternative avenues of communication. (citations omitted)

The Supreme Court recognized that the ordinance did not ban adult theatres altogether but merely provided that such theatres could not be located within 1,000 feet of certain specified locations. The court then held that the ordinance could be analyzed “as a form of time, place and manner regulation.” *Id.* at 928. The court recognized that the Renton ordinance was not aimed at the content of the films shown at the theatres but on the “secondary effects of such theatres on the surrounding community.” *Id.* at 929. The court held that the ordinance was designed to “prevent crime, protect the city’s retail trade, maintain property values, and generally ‘protect and preserve the quality of the city’s neighborhoods, commercial districts, and the quality of urban life not to suppress the expression of unpopular views.’” *Id.* The court further held that the proper inquiry was whether the ordinance was designed to serve a substantial governmental interest and allowed for reasonable alternative avenues of communication. The court found that the ordinance attempted to preserve the quality of life in Renton, a substantial governmental interest, and that the ordinance did not deny Playtime Theatres a reasonable opportunity to open and operate an adult theatre within the city. *Id.* at 932.

In the Renton case, an adult motion picture theatre could not be located within 1,000 feet of a school. The bill expands that limit to 2,500 feet but unlike the ordinance in Renton does not restrict the location of adult entertainment establishments in relation to residential zones, single or multiple family dwellings, churches or parks.

In the recent case of *City of Erie v. Pap’s A.M. TDBA “Kandyland,”* 529 U.S.____ (March 29, 2000), the United States Supreme Court set forth the standard of review for secondary effects legislation; that is, legislation that seeks to regulate the “time, place, and manner” of adult businesses based on the impact of the business on the community (for example, increased crime) rather than on the content of the products they sell. In order to pass constitutional scrutiny, the legislation or ordinance must meet the following criteria:

- 1) The regulation is within the constitutional power of the government;
- 2) The regulation is designed to further an important or substantial state interest;
- 3) The government interest is unrelated to the suppression of free expression; and

- 4) The regulation is narrowly tailored to further the government interest in preventing the unwanted secondary impact.

The fourth criterion is critical in determining the constitutionality of the bill. The United States Supreme Court characterizes the fourth criterion as requiring that the restriction be no greater than is essential to the furtherance of the governmental interest. In the Pap's case, for example, the court held that the requirement of the City of Erie that exotic dancers wear pasties and G-strings "is a minimal restriction in furtherance of the asserted government interests, and the restriction leaves ample capacity to convey the dancer's erotic message." *Id* at p. 20.

As the bill specifically defines the meaning of "Adult entertainment establishment" to include: "adult motion picture theaters," "adult bookstores," and "unlicensed massage establishments" within the definition of "adult entertainment establishments," the application of the regulation is narrowly tailored to address the undesired secondary effect, the exposure of children to sexually provocative material.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill does not affect adult entertainment establishments that are in operation before July 1, 2001. It may have some fiscal impact on adult establishments that were planning on locating within 2,500 feet of a school.

C. Government Sector Impact:

Local governments would need to monitor the request for licenses of adult entertainment establishments to ensure the location is not within 2,500 feet from a school.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.