

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 730

SPONSOR: Criminal Justice Committee and Senator Miller

SUBJECT: Adult Video Games

DATE: March 5, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Favorable/CS
2.	_____	_____	APJ	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for SB 730 creates a new section of the Florida Statutes prohibiting retail sales or rentals of video games that do not have an official rating clearly displayed on the outside of the case. The CS also prohibits retail sales or rentals of video games that are rated for mature audiences to persons under the age of eighteen. A prospective buyer or renter would be required to show an identification card including birth date in order to purchase or rent a video game that is rated for mature audiences.

The CS also requires that businesses in which video games rated for mature audiences are available for use (hereinafter referred to as an “arcade” for brevity, but including convenience stores, department stores, and other businesses as well as demonstration displays at video rental stores) must restrict such use to adults or minors accompanied by adults. Such games must be separated from other types of entertainment by a physical barrier. If a physical barrier is not possible, the game machines must be positioned so as not to be observable by minors. The CS requires that all video machines in an arcade must have an official rating if the arcade is patronized by users or prospective users who are minors. The CS gives the business owner or an employee the authority to request proof of age from a prospective user or observer.

Violation of any provision of the new statute would be a first degree misdemeanor.

The CS provides an effective date of July 1, 2002.

This CS creates section 847.301 of the Florida Statutes.

II. Present Situation:

Chapter 847 of the Florida Statutes regulates obscenity. Section 847.001, F.S., defines a minor as a person under the age of eighteen, and “harmful to minors” as:

[A]ny 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 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. . . .

Section 847.012(2)(a), F.S., makes it a third degree felony for a person to knowingly sell, rent or loan for monetary consideration material to a minor if the material is:

[A] picture, photograph, drawing, sculpture, motion picture film, videocassette, or similar visual representation or image of a person or portion of the human body which depicts nudity or sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors.

Section 847.013(2)(b), F.S., provides essentially the same prohibition as that in s. 847.012(7)(2)(a), F.S., but applies only to a videocassette or videotape of a motion picture, or similar presentation. Violation of s. 847.013(2)(b), F.S., is a first degree misdemeanor.

Under current law, it appears that the sale or rental of a video game to a person under 18 years old could be charged as a violation of s. 847.012(2)(a), F.S., if the video game included visual representation or images of nudity or certain types of sexual conduct and was harmful to minors. However, there is no current prohibition against the sale or rental of video games containing representations or images of non-sexual violence. There have been reports of some businesses voluntarily restricting sales or rentals of violent video games.

There is currently no law requiring display of ratings on the cover of video games. However, the Entertainment Software Ratings Board (ESRB) of the Interactive Digital Software Association (IDSA) rates video games by content and age-appropriateness. According to a September 2000, study by the Federal Trade Commission, the video game rating symbol is the most comprehensive of the three rating systems (motion picture, music, and video games) studied by the Commission. The FTC report noted that the ESRB rating is widely used by the video game industry and can be found on all console-based video games and nearly all personal computer software games.

The ESRB internet site lists more than 7000 games that have been rated. Almost 5000 are rated either “E” or “K-A,” meaning that they are suitable for everyone over 5 years old. Approximately 500 games are rated “M” for mature audiences, which is defined as persons 17 and older. Sixteen games are rated “A” for Adults Only, with all but one including sexual

content. In addition to the age-appropriateness rating, the ESRB system includes content descriptors such as “blood and gore,” “gambling,” and “violence.”

The internet site of the American Amusement Machine Association indicates that coin-operated video games are rated using the Coin-Operated Video Game Parental Advisory System. This advisory system is not age-based, but is color-coded based upon content. The site lists 624 games that have been rated. Of these, 369 are Suitable for All Ages (green); 140 have mild animated or lifelike violence (yellow); and 105 have strong animated or lifelike violence (red). There are also 7 games with mild sexual content (yellow) and 3 games with strong sexual content (red). Display of these ratings is not required, but depends upon the voluntary cooperation of game developers, manufacturers, and arcade owners. There is currently no statute preventing minors from playing or viewing violent video games at arcades.

III. Effect of Proposed Changes:

Current law arguably already prohibits selling or renting video games to a person under age 18 when the video game is harmful to minors because it contains representations or images of nudity or certain sexual acts. The CS would create a new section of the Florida Statutes to address video games. Section 1 would address retail sales or rentals of video games as follows:

- Specifically applies to video games;
- Requires that the ESRB rating or similar rating be displayed on the outside of the cover of the game;
- Prohibits retail sales or rentals of games rated for mature audiences (as defined in the statute) to persons under 18 years of age;
- Requires persons purchasing or renting a video game that is rated for mature audiences to show an identification card including their date of birth; and
- Provides that violation of the statute constitutes a first degree misdemeanor.

Section 2 of the CS would specifically address places where video games rated for mature audiences are available for use. This could include a traditional arcade as well as any other establishment that provides coin-operated video games. It also could include any store that has consoles available for play of games for demonstration purposes, such as many video rental stores.

The new restrictions relating to public display of video games intended for mature audiences include the following:

- Limits use of video games rated for mature audiences to persons who are 18 years of age or older, or persons under age 18 who are accompanied by a person over age 18;
- Requires that video games rated for mature audiences must be located away from the front of the business and separated from other types of entertainment by a physical barrier. If it is not possible to place such video games in a separate room, they must be positioned so that they cannot be observed by minors;
- Authorizes owners or employees to require proof of age before allowing use of video games rated for mature audiences;

- Requires an official rating for all video games that are designed for use in a place of business that is patronized by users and prospective users under 18 years of age; and
- Provides that violation of the statute constitutes a first degree misdemeanor.

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:

The First Amendment of the United States Constitution restricts the ability of government to regulate speech, which can include obscene and violent speech or representations. The United States Supreme Court has determined that children have First Amendment rights, *Erznoznik v. City of Jacksonville*, 422 U.S. 205 (1975), but that potential harm to children is a permissible ground for trying to shield them from sexual expression that does not rise to the level of obscenity. *Ginsberg v. New York*, 390 U.S. 629 (1968). However, violence (apart from violence in a sexual context) has not been considered as obscenity, and there are few if any cases that consider whether states can regulate depictions of violence as harmful to children. Recently, the United States Court of Appeals for the Seventh Circuit found that it was appropriate to issue a preliminary injunction against an Indianapolis ordinance that is very similar to the provisions of Section 2 of the CS. *American Amusement Machine Association v. Kendrick*, 244 F.3d 572 (4th Cir. 2001). The court noted that it was conceivable, although unlikely, that the City could establish the legality of the ordinance at a full trial on the merits.

There are also concerns with the adoption of ratings that are prepared by a non-governmental body. However, s. 847.202, F.S., requires that the cover of a video movie sold at retail or rented in Florida must clearly display the rating of the Motion Picture Association of America or other rating organization on its jacket. A person who attempts or accomplishes a retail sale or rental of a video movie without the clearly displayed rating is guilty of a first degree misdemeanor. There are no reported cases regarding prosecutions or challenges to s. 847.202, F.S. It should be noted that s. 847.202, F.S., only requires display of the rating and criminalizes sale or rental of videos that do not have the rating displayed. Unlike the CS, s. 847.202, F.S., does not criminalize the sale or rental of videos with certain ratings.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The CS could have a negative impact upon rental and sales of video games. However, the financial impact may not be significant since the games could be purchased by persons over the age of 18 for use by younger persons.

The CS also could negatively impact revenues derived from coin-operated video games. It is unclear how much revenues could be reduced by the requirement that minors cannot play games rated for mature audiences unless they are accompanied by an adult.

C. Government Sector Impact:

The CS creates a new criminal offense which could result in misdemeanor convictions. Also, there could be significant expenditure of funds to defend the constitutionality of the law if it is challenged. The American Amusement Machine Association indicates that the City of Indianapolis agreed to pay \$318,000 for costs associated with obtaining an injunction against its ordinance, and estimates the city's own legal costs at approximately \$400,000.

VI. Technical Deficiencies:

Although the CS includes a requirement to check identification prior to selling or renting a video game that is rated for mature audiences, proof of violation of the statute does not require knowledge that the buyer or renter is a minor. This could expose a shop owner or employee to criminal prosecution if the minor uses false identification.

The ESRB rating system includes an "M" (mature) rating that means that the video game has been evaluated and determined to be unsuitable for persons who are 16 years old and younger. The definition of "rated for mature audiences" in the CS is "any video game that has an official rating of 'restricted,' 'mature,' or another similar official designation that indicates that the video game shall be used only by adults." The ESRB has a rating of "A" (adult) which is intended for use by persons of age 18 or older, but only 16 video games fall into the "A" classification. The discrepancy between the ESRB rating system and the statute could create confusion for sellers or renters of video games as to what is restricted, and may provide a defense to a charge of violating the statute.

The advisory system for coin-operated video games does not include age-appropriateness categories, but is based on content. Therefore, a business owner would not have a readily identifiable means of determining whether a coin-operated video game is intended for adult use.

Section 2 of the CS requires that video games designed for use in a place of business that is patronized by minors must have an official rating. However, it does not require that the rating be displayed on the game.

The definition of “video game” would not include hand held games such as Game Boy, Game Boy Advance, Game Gear, and others. Currently, however, there are only 3 “M” rated games available for portable gaming platforms.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.
