Florida Senate - 2006

By the Committee on Criminal Justice; and Senator Posey

591-1717-06

1	A bill to be entitled
2	An act relating to the transmission of sexually
3	oriented material or material harmful to a
4	minor; creating s. 847.01385, F.S.; providing a
5	definition relating to the transmission of
6	materials to a minor or person believed to be a
7	minor; prohibiting a person in this state or
8	another jurisdiction from transmitting, by
9	means of electronic mail or computer pop-up,
10	sexually oriented material or material that is
11	harmful to minors to an individual in this
12	state who is a minor or is believed to be a
13	minor; providing that a violation of the act is
14	a felony of the third degree; precluding a
15	defense to prosecution for a violation of the
16	act; providing that the act shall not be
17	construed to prohibit prosecution of a person
18	in this state or another jurisdiction for a
19	violation of any law of this state; exempting
20	list servers from application of the act;
21	providing that the act does not create a cause
22	of action or provide for criminal charges
23	against an interactive computer service,
24	telephone company, or cable provider whose
25	equipment is used in violation of this act;
26	providing an effective date.
27	
28	Be It Enacted by the Legislature of the State of Florida:
29	
30	Section 1. Section 847.01385, Florida Statutes, is
31	created to read:

1

CODING: Words stricken are deletions; words <u>underlined</u> are additions.

-	
1	847.01385 Transmission of sexually oriented material
2	or material harmful to minors by electronic mail or computer
3	pop-up prohibited; penalties
4	(1) As used in this section, the terms "transmits" and
5	"transmission" mean the act of sending any image, information,
6	or data by use of any electronic equipment or device.
7	(2) Notwithstanding ss. 847.012 and 847.0133, any
8	person in this state who knows, should know, or believes that
9	an individual in this state is a minor and who transmits, by
10	means of electronic mail or a computer pop-up, sexually
11	<u>oriented material, as defined in s. 847.001, or an image,</u>
12	information, or data that is harmful to minors, as defined in
13	s. 847.001, to such individual commits a felony of the third
14	degree.
15	(3) Notwithstanding ss. 847.012 and 847.0133, a person
16	in a jurisdiction other than this state who knows, should
17	know, or believes that an individual in this state is a minor
18	and who transmits, by means of electronic mail or a computer
19	pop-up, sexually oriented material, as defined in s. 847.001,
20	or an image, information, or data that is harmful to minors,
21	as defined in s. 847.001, to such individual commits a felony
22	of the third degree.
23	(4) The fact that an undercover operative or law
24	enforcement officer was involved in the detection and
25	investigation of an offense under this section shall not
26	constitute a defense to a prosecution under this section.
27	(5) This section shall not be construed to prohibit
28	prosecution of a person in this state or another jurisdiction
29	for a violation of any law of this state, including a law
30	providing for greater penalties than prescribed in this
31	

2

CODING: Words stricken are deletions; words <u>underlined</u> are additions.

1 section, for the transmission of sexually oriented material or 2 material harmful to minors. 3 (6) This section does not apply to subscription-based 4 transmissions such as list servers. 5 (7) This section does not create a cause of action or 6 provide for criminal charges against an interactive computer 7 service as defined in s. 668.602, a telephone company, or a 8 cable provider whose equipment is used to transport, handle, or retransmit an unsolicited electronic mail or a computer 9 10 pop-up that violates this section. Section 2. This act shall take effect July 1, 2006. 11 12 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN 13 COMMITTEE SUBSTITUTE FOR Senate Bill 1220 14 15 16 Provides that a person in this state or in another jurisdiction who "believes" that an individual in this 17 state is a minor and who transmits, by means of electronic mail or a computer pop-up, sexually oriented 18 material or an image, information, or data that is harmful to a minor to such individual commits a third 19 degree felony. 20 Provides that the fact that an undercover operative or law enforcement officer was involved in the detection and investigation of a violation of the act shall not 21 constitute a defense to prosecution under the act. 22 Specifies that the act shall not be construed to prohibit 23 prosecution of a person in this state or another jurisdiction for a violation of any law of this state 2.4 providing penalties for electronic transmission of sexually oriented materials or material harmful to 25 minors. Provides that the act does not create a cause of action 26 or provide criminal charges against an interactive computer service, telephone company, or cable provider whose equipment is used in violation of the act. 27 2.8 29 30 31

CODING: Words stricken are deletions; words underlined are additions.