

By Senator Garcia

36-01597-23

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1                   A bill to be entitled  
2       An act relating to protection of exploited persons;  
3       amending s. 450.045, F.S.; providing criminal  
4       penalties for the failure to verify and maintain  
5       specified documentation of an adult theater employee  
6       or contractor; amending s. 796.07, F.S.; requiring a  
7       mandatory minimum term of incarceration for a person  
8       convicted of solicitation of prostitution, lewdness,  
9       or assignation; authorizing a judicial circuit to  
10      offer an educational program to such a person;  
11      providing topics for the educational program;  
12      providing legislative intent; creating s. 847.126,  
13      F.S.; providing definitions; requiring a commercial  
14      entity that publishes or distributes material harmful  
15      to minors on the Internet from a website that contains  
16      a substantial portion of such material to perform  
17      reasonable age verification; providing for damages for  
18      minors who access such sites; prohibiting such sites  
19      from retaining identifying information; providing for  
20      damages for violations; providing exceptions;  
21      providing construction; amending s. 943.0433, F.S.;  
22      conforming cross-references; providing effective  
23      dates.

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

26  
27       Section 1. Paragraph (e) is added to subsection (3) of  
28       section 450.045, Florida Statutes, and paragraphs (a), (b), and  
29       (c) of that subsection are republished, to read:

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30 450.045 Proof of identity and age; posting of notices.—

31 (3) (a) In order to provide the department and law  
32 enforcement agencies the means to more effectively identify,  
33 investigate, and arrest persons engaging in human trafficking,  
34 an adult theater, as defined in s. 847.001(2) (b), shall obtain  
35 proof of the identity and age of each of its employees or  
36 independent contractors, and shall verify the validity of the  
37 identification and age verification document with the issuer,  
38 before his or her employment or provision of services as an  
39 independent contractor.

40 (b) The adult theater shall obtain and keep on record a  
41 photocopy of the person's driver license or state or federal  
42 government-issued photo identification card, along with a record  
43 of the verification of the validity of the identification and  
44 age verification document with the issuer, during the entire  
45 period of employment or business relationship with the  
46 independent contractor and for at least 3 years after the  
47 employee or independent contractor ceases employment or the  
48 provision of services.

49 (c) The department and its agents have the authority to  
50 enter during operating hours, unannounced and without prior  
51 notice, and inspect at any time a place or establishment covered  
52 by this subsection and to have access to age verification  
53 documents kept on file by the adult theater and such other  
54 records as may aid in the enforcement of this subsection.

55 (e) A person who owns, operates, or manages an adult  
56 theater in violation of the requirements of this subsection  
57 commits a misdemeanor of the first degree, punishable as  
58 provided in s. 775.082 or s. 775.083.

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59 Section 2. Subsection (5) of section 796.07, Florida  
60 Statutes, is amended, subsection (8) is added to that section,  
61 and paragraph (f) of subsection (2) of that section is  
62 republished, to read:

63 796.07 Prohibiting prostitution and related acts.—

64 (2) It is unlawful:

65 (f) To solicit, induce, entice, or procure another to  
66 commit prostitution, lewdness, or assignation.

67 (5) (a) A person who violates paragraph (2) (f) commits:

68 1. A misdemeanor of the first degree for a first violation,  
69 punishable as provided in s. 775.082 or s. 775.083.

70 2. A felony of the third degree for a second violation,  
71 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

72 3. A felony of the second degree for a third or subsequent  
73 violation, punishable as provided in s. 775.082, s. 775.083, or  
74 s. 775.084.

75 (b) In addition to any other penalty imposed, the court  
76 shall order a person convicted of a violation of paragraph  
77 (2) (f) to:

78 1. Perform 100 hours of community service. ~~and~~

79 2. Pay for and attend an educational program as described  
80 ~~in subsection (8) about the negative effects of prostitution and~~  
81 ~~human trafficking, such as a sexual violence prevention~~  
82 ~~education program, including such programs offered by faith-~~  
83 ~~based providers, if such a program exists~~ programs exist in the  
84 judicial circuit in which the offender is sentenced.

85 3. Serve a minimum of:

86 a. Ten days in county jail for a first violation.

87 b. Thirty days in county jail for a second or subsequent

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88 violation.

89 ~~(c) In addition to any other penalty imposed, the court~~  
90 ~~shall sentence a person convicted of a second or subsequent~~  
91 ~~violation of paragraph (2) (f) to a minimum mandatory period of~~  
92 ~~incarceration of 10 days.~~

93 (c)~~(d)~~1. If a person who violates paragraph (2) (f) uses a  
94 vehicle in the course of the violation, the judge, upon the  
95 person's conviction, may issue an order for the impoundment or  
96 immobilization of the vehicle for a period of up to 60 days. The  
97 order of impoundment or immobilization must include the names  
98 and telephone numbers of all immobilization agencies meeting all  
99 of the conditions of s. 316.193(13). Within 7 business days  
100 after the date that the court issues the order of impoundment or  
101 immobilization, the clerk of the court must send notice by  
102 certified mail, return receipt requested, to the registered  
103 owner of the vehicle, if the registered owner is a person other  
104 than the defendant, and to each person of record claiming a lien  
105 against the vehicle.

106 2. The owner of the vehicle may request the court to  
107 dismiss the order. The court must dismiss the order, and the  
108 owner of the vehicle will incur no costs, if the owner of the  
109 vehicle alleges and the court finds to be true any of the  
110 following:

111 a. The owner's family has no other private or public means  
112 of transportation;

113 b. The vehicle was stolen at the time of the offense;

114 c. The owner purchased the vehicle after the offense was  
115 committed, and the sale was not made to circumvent the order and  
116 allow the defendant continued access to the vehicle; or

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117 d. The vehicle is owned by the defendant but is operated  
118 solely by employees of the defendant or employees of a business  
119 owned by the defendant.

120 3. If the court denies the request to dismiss the order,  
121 the petitioner may request an evidentiary hearing. If, at the  
122 evidentiary hearing, the court finds to be true any of the  
123 circumstances described in sub-subparagraphs (c)2.a.-d. ~~sub-~~  
124 ~~subparagraphs (d)2.a.-d.~~, the court must dismiss the order and  
125 the owner of the vehicle will incur no costs.

126 (d) ~~(e)~~ The Soliciting for Prostitution Public Database  
127 created pursuant to s. 943.0433 must include the criminal  
128 history record of a person who is found guilty as a result of a  
129 trial or who enters a plea of guilty or nolo contendere,  
130 regardless of whether adjudication is withheld, of paragraph  
131 (2) (f), and there is evidence that such person provided a form  
132 of payment or arranged for the payment of such services. Upon  
133 conviction, the clerk of the court shall forward the criminal  
134 history record of the person to the Department of Law  
135 Enforcement, pursuant to s. 943.052(2), for inclusion in the  
136 database. This paragraph shall stand repealed on January 1,  
137 2024, unless reviewed and saved from repeal by the Legislature.

138 (8) A judicial circuit may establish an educational program  
139 for persons convicted of or charged with a violation of  
140 paragraph (2) (f), to include education on:

141 (a) The relationship between demand for commercial sex and  
142 human trafficking.

143 (b) The impact of human trafficking on victims.

144 (c) Coercion, consent, and sexual violence.

145 (d) The health and legal consequences of commercial sex.

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146 (e) The negative impact of commercial sex on prostituted  
147 persons and the community.

148 (f) The reasons and motivations for engaging in  
149 prostitution.

151 An educational program under this subsection may include a  
152 program offered by a faith-based provider.

153 Section 3. Section 847.126, Florida Statutes, is intended  
154 to provide a civil remedy for damages against commercial  
155 entities who distribute material harmful to minors. Pornography  
156 is creating a public health crisis and is having a corroding  
157 influence on minors. Due to advances in technology, the  
158 universal availability of the Internet, and limited age  
159 verification requirements, minors are exposed to pornography  
160 younger in age. Pornography contributes to the  
161 hypersexualization of teens and prepubescent children and may  
162 lead to low self-esteem, body image disorders, problematic  
163 sexual activity at a young age, and desire among adolescents to  
164 engage in risky sexual behavior. Pornography may also impact  
165 brain development and functioning, contribute to emotional and  
166 medical illnesses, shape deviant sexual arousal, lead to  
167 difficulty in forming or maintaining positive intimate  
168 relationships, and promote problematic or harmful sexual  
169 behaviors and addiction.

170 Section 4. Effective January 1, 2024, section 847.126,  
171 Florida Statutes, is created to read:

172 847.126 Liability for publishers and distributors of  
173 material harmful to minors.-

174 (1) As used in this section, the term:

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175 (a) "Commercial entity" includes corporations, limited  
176 liability companies, partnerships, limited partnerships, sole  
177 proprietorships, and any other legally recognized entities.

178 (b) "Distribute" means to issue, sell, give, provide,  
179 deliver, transfer, transmute, circulate, or disseminate by any  
180 means.

181 (c) "Internet" means the international computer network of  
182 both federal and nonfederal interoperable packet-switched data  
183 networks.

184 (d) "Material harmful to minors" means all of the  
185 following:

186 1. Any material that the average person applying  
187 contemporary community standards would find, taken as a whole  
188 and with respect to minors, appeals to or panders to the  
189 prurient interest.

190 2. Any material that exploits, is devoted to, or  
191 principally consists of descriptions of actual, simulated, or  
192 animated display or depiction of any of the following, in a  
193 manner patently offensive with respect to minors:

194 a. Pubic hair, anus, vulva, genitals, or nipple of the  
195 female breast.

196 b. Touching, caressing, or fondling of nipples, breasts,  
197 buttocks, anuses, or genitals.

198 c. Sexual intercourse, masturbation, sodomy, bestiality,  
199 oral copulation, flagellation, excretory functions, exhibitions,  
200 or any other sexual act.

201 3. The material taken as a whole lacks serious literary,  
202 artistic, political, or scientific value for minors.

203 (e) "News-gathering organization" means any of the

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204 following:

205 1. An employee of a newspaper, news publication, or news  
206 source, printed or on an online or mobile platform, of current  
207 news and public interest, while operating as an employee as  
208 provided in this subparagraph, who can provide documentation of  
209 such employment.

210 2. An employee of a radio broadcast station, television  
211 broadcast station, cable television operator, or wire service  
212 while operating as an employee as provided in this subparagraph,  
213 who can provide documentation of such employment.

214 (f) "Publish" means to communicate or make information  
215 available to another person or entity on a publicly available  
216 Internet website.

217 (g) "Reasonable age verification methods" include verifying  
218 that the person seeking to access the material is 18 years of  
219 age or older by using any of the following methods:

220 1. Providing a digital proof of driver license or  
221 identification card as provided in s. 322.032.

222 2. Requiring the person to comply with a commercial age  
223 verification system that verifies age in one or more of the  
224 following ways:

225 a. Government-issued identification.

226 b. Any commercially reasonable method that relies on public  
227 or private transactional data to verify the age of the person is  
228 at least 18 years of age or older.

229 (h) "Substantial portion" means more than 33 1/3 percent of  
230 total material on a website is material harmful to minors.

231 (i) "Transactional data" means a sequence of information  
232 that documents an exchange, agreement, or transfer between a



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233 person and a commercial entity or a third party used for the  
234 purpose of satisfying a request or event. Transactional data  
235 includes, but is not limited to, records from mortgage,  
236 education, and employment entities.

237 (2) (a) A commercial entity that knowingly and intentionally  
238 publishes or distributes material harmful to minors on the  
239 Internet on a website that contains a substantial portion of  
240 such material must perform reasonable age verification methods  
241 to verify the age of persons attempting to access the material.

242 (b) A commercial entity that fails to comply with paragraph  
243 (a) is liable to a minor for damages resulting from the minor  
244 accessing the material, including court costs and reasonable  
245 attorney fees as ordered by the court.

246 (3) (a) A commercial entity or third party that performs the  
247 required age verification may not retain any identifying  
248 information of the person after access has been granted to the  
249 material.

250 (b) A commercial entity that violates paragraph (a) is  
251 liable to the person for damages resulting from retaining the  
252 identifying information, including court costs and reasonable  
253 attorney fees as ordered by the court.

254 (4) (a) This section does not apply to any bona fide news or  
255 public interest broadcast, website video, report, or event and  
256 may not be construed to affect the rights of a news-gathering  
257 organization.

258 (b) An Internet service provider or its affiliates or  
259 subsidiaries, a search engine, or a cloud service provider may  
260 not be held to have violated this section solely for providing  
261 access or connection to or from a website or other information

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262 or content on the Internet or a facility, system, or network not  
263 under that provider's control, including transmission,  
264 downloading, intermediate storage, or access software, to the  
265 extent such provider is not responsible for the creation of the  
266 content of the communication that constitutes material harmful  
267 to minors.

268 Section 5. Subsection (1) and paragraphs (a) and (b) of  
269 subsection (2) of section 943.0433, Florida Statutes, are  
270 amended to read:

271 943.0433 Soliciting for Prostitution Public Database.—

272 (1) The department shall create and administer the  
273 Soliciting for Prostitution Public Database. The clerk of the  
274 court shall forward to the department the criminal history  
275 record of a person in accordance with s. 796.07(5)(d) ~~s.~~  
276 ~~796.07(5)(e)~~, and the department shall add the criminal history  
277 record to the database.

278 (2) (a) The department shall automatically remove the  
279 criminal history record of a person from the database if, after  
280 5 years following the commission of an offense that meets the  
281 criteria set forth in s. 796.07(5)(d) ~~s. 796.07(5)(e)~~, such  
282 person has not subsequently committed a violation that meets  
283 such criteria or any other offense within that time that would  
284 constitute a sexual offense, including, but not limited to,  
285 human trafficking, or an offense that would require registration  
286 as a sexual offender.

287 (b) The department may not remove a criminal history record  
288 from the database if a person commits a violation that meets the  
289 criteria set forth in s. 796.07(5)(d) ~~s. 796.07(5)(e)~~ a second  
290 or subsequent time.

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291           Section 6. Except as otherwise provided in this act, this  
292 act shall take effect July 1, 2023.