

Commerce Committee

Friday, March 24, 2023
8:00 AM - 10:30 AM
Webster Hall (212 Knott)

Meeting Packet

Paul Renner
Speaker

Bob Rommel
Chair

The Florida House of Representatives

Commerce Committee

Paul Renner
Speaker

Bob Rommel
Chair

Meeting Agenda

Friday, March 24, 2023
8:00 AM – 10:30 AM
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- HB 1423 Protection of Children by Fine

V. Closing Remarks

VI. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, FL 32399-1300
(850) 717-4870

HB 1423

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1423 Protection of Children
SPONSOR(S): Fine and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1438

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Commerce Committee		Hamon	Hamon
2) State Administration & Technology Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The bill prohibits a person from knowingly admitting a child to an adult live performance. The penalty for violating this prohibition is a first-degree misdemeanor which is punishable by imprisonment that does not exceed 1 year and a fine that does not exceed $1,000.

The bill defines "adult live performance" as:

> "any show, exhibition, or other presentation in front of a live audience which, in whole or in part, depicts or simulates "nudity," "sexual conduct," "sexual excitement," "specific sexual activities" as those terms are defined in s. 847.001, F.S., "lewd conduct," or the "lewd exposure of prosthetic or imitation genitals or breasts" when it:
>
> - Predominately appeals to a prurient, shameful, or morbid interest;
> - Is patently offense to prevailing standards in the adult community of this state as a whole with respect to what is suitable material or conduct for the age of the child present; and
> - Taken as a whole, is without serious literary, artistic, political or scientific value for the age of the child present."

If any person that has a license to operate a public lodging establishment or a public food service establishment or an establishment that has an alcoholic beverage license, knowingly admits a child to an "adult live performance" such licensee is subject to license suspension or revocation and a fine.

Such violation is considered an "immediate, serious danger to the public health, safety, or welfare and an emergency action may be taken against such licensee by DBPR.

The fine for a first violation is $5,000 and the fine for a second or subsequent violation is $10,000.

The bill will have an indeterminate fiscal impact on state and local government.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Lodging And Public Food Service Establishments

The Division of Hotels and Restaurants (H&R), within the Department of Business and Professional Regulation (DBPR), is responsible for inspecting and regulating public lodging and public food service establishments to safeguard the public health, safety, and welfare.[1] In order to fulfill its responsibilities of inspecting and enforcing the pertinent provisions of law, the division is granted the right of entry and access to those establishments at any reasonable time.[2]

"Public lodging establishment" includes:[3]

- "Transient public lodging establishments," which means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days, or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests; and
- "Nontransient public lodging establishments," which means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

Classifications of public lodging establishments include hotels, motels, vacation rentals, apartments, bed and breakfast inns, and timeshare projects.[4]

"Public food service establishments" means any building, vehicle, place, or structure, or any room or division thereof, where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption, with certain exceptions.[5]

Classifications of public food service establishments include permanent food service restaurants, catering services, mobile food dispensing vehicles, vending machines, theme park carts, culinary education programs, and temporary food service events.[6]

Each public lodging and food service establishment operating in the state is required to obtain a license from the division before operating. The license must be conspicuously displayed in the office or lobby of the establishment.[7]

Disciplinary Actions

The division is authorized to fine, suspend, or revoke the license of a public lodging establishment or public food service if:

---

[1] S. 509.032(1), F.S.
[2] S. 509.032(2)(b), F.S.
[3] S. 509.013(4), F.S.
[4] S. 509.242, F.S.
[5] S. 509.013(5), F.S.
[6] R. 61C-1.002, F.A.C.; Florida Department of Business and Professional Regulation, *Hotels and Restaurants – Licensing Guides*, http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/licensing-guides/ (last visited Feb. 24, 2023).
[7] S. 509.241(1) and (2), F.S.

- A person with a direct financial interest in the establishment has, within the preceding 5 years, been adjudicated guilty or forfeited a bond when charged with soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, illegally dealing in controlled substances, or any other crime reflecting on professional character.
- The establishment has been deemed an imminent danger to the public health and safety by the division or a local health authority for failure to meet sanitation standards or the premises have been determined to be unsafe or unfit for human occupancy.[8]

If a public lodging or food service establishment operates in violation of ch. 509, F.S., or the rules of the division, it is subject to:
- Fines not to exceed $1,000 per offense;
- Mandatory completion of a remedial program; and
- Suspension, revocation, or refusal of a license issued under ch. 509.[9]

A license may not be suspended for more than 12 months and at the end of the suspension, the establishment may apply for its license to be reinstated or renewed.[10]

Beverage Law

The Division of Alcoholic Beverages and Tobacco (ABT) within DBPR is responsible for licensing and supervising the conduct, management, and operation of the manufacturing, packaging, distribution, and sale of all alcoholic beverages in the state. The division is also responsible for enforcing the provisions of the Beverage Law, the tobacco law, and the corresponding rules and regulations.[11]

Licenses are issued by the division to people who are of good moral character and at least 21 years old. Similarly, corporate licenses are issued to corporations whose officers are of good moral character and at least 21 years of age.[12]

However, a license may not be issued to:
- Anyone who has been convicted within the last 5 years of any offense against the beverage laws of this state, the United States, or any other state;
- Anyone convicted within the last 5 years in this state, any other state, or the United States, of soliciting for prostitution, pandering, letting premises for prostitution, or keeping a disorderly place or of any criminal violation of chapter 893, F.S., pertaining to drug abuse prevention and control, or the controlled substance act of any other state or the Federal Government; or
- Anyone who has been convicted in the last 15 years of any felony in this state or any other state; or to a corporation or any of the officers of whom shall have been so convicted.[13]

All licenses issued by the division are issued as annual licenses.[14]

Disciplinary Actions

Some of the reasons the division may revoke or suspend a license are:
- Violation of any state or federal laws or a municipal or county regulation relating to the hours of sale, service, or consumption of alcoholic beverages, permits disorderly conduct on the premises, or permits violations of any state or federal laws by other persons on the premises.
- Violation of any laws of this state or any state or territory of the United States.
- Maintaining a nuisance on the licensed premises.

[8] S. 509.261(6)(a) and (b), F.S.
[9] S. 509.261(1), F.S.
[10] S. 509.261(5)(a), F.S.
[11] S. 561.02, F.S.
[12] S. 561.15(1), F.S.
[13] S. 561.15(1) and (2), F.S.
[14] S. 561.26, F.S.

- Maintaining premises that are unsanitary or are not approved as sanitary.
- Violation any rule promulgated by the division in accordance with the provisions of chapter 561, F.S., or laws relating to the activities on the premises.
- Failing to maintain the licensed premises in an active manner in which the licensed premises are open for the sale of authorized alcoholic beverages during regular business hours for specified times.
- Failing to maintain records of all monthly sales and all monthly purchases of alcoholic beverages and to produce the records for inspection by any division employee within 10 days of written request.
- Failing to comply with a stipulation, consent order, or final order.[15]

If a licensee violates any provisions of the Beverage Law, or its rules, the division may impose a civil penalty that does not exceed $1,000 for violations that arise from a single transaction. If the licensee does not pay the civil penalty, the license will be suspended for a period of time to be determined by the division. However, the division may suspend the imposition of a penalty when the division, in its discretion, deems it appropriate.[16]

Emergency Suspension of a License under the Administrative Procedures Act

Chapter 120, F.S., The Administrative Procedure Act (APA)[17] provides uniform procedures for agencies to exercise their authority.[18] The APA is applicable to every administrative agency in Florida.[19]

Section 120.60(6), F.S., provides procedures for an agency to issue an emergency suspension, restriction, or limitation of a license if that agency finds an immediate serious danger to the public health, safety, or welfare. The agency may take such action by any procedure that is fair under the circumstances if:

- The procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution;
- The agency takes only that action necessary to protect the public interest under the emergency procedure; and
- The agency states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency's findings of immediate danger, necessity, and procedural fairness are judicially reviewable. Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding must also be promptly instituted and acted upon.

Obscenity

It is well established that obscenity is not protected by the First and Fourteenth Amendments and is subject to limited regulation under the police power of states.[20] The United States Supreme Court developed the test for determining whether material is obscene in *United States v. Miller*.[21] Florida uses the ***Miller* test** to define obscene material, which refers to the status of material that:

- **The average person,** applying contemporary community standards, would find appeals to the prurient interest;
- Depicts or describes, in a patently offensive way, sexual conduct; **and**

[15] S. 561.29(1), F.S.
[16] S. 561.29(3), F.S.
[17] S. 120.51, F.S.
[18] S. 120.515, F.S.
[19] S. 120.50, F.S., states that only the Legislature and the courts are exempt from the APA.
[20] *Johnson v. State*, 351 So.2d 10, 11 (Fla. 1977); See also, FCC v. Pacifica Foundation, 438 U.S. 726 (1978) (Audience, medium, time of day, and method of transmission are relevant factors.).
[21] 413 U.S. 15 (1973).

- Taken as a whole, lacks serious literary, artistic, political, or scientific value.[22]

The Florida Supreme Court has determined that the applicable community standard to be used in determining obscenity is **the local county standard**, explaining that such a standard "permits maximum protection of materials acceptable in cosmopolitan areas while not forcing more conservative areas to accept public depiction of conduct they find obscene."[23]

For the purposes of determining obscenity, s. 847.001, F.S., defines the following: [24]

- "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother's breastfeeding of her baby does not under any circumstance constitute "nudity," irrespective of whether or not the nipple is covered during or incidental to feeding."
- "Sexual conduct" means:
    - actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse;
    - actual or simulated lewd exhibition of the genitals;
    - actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or
    - any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed.
    - A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."
- "Sexual excitement" means the condition of the human male or female genitals when in a state of sexual stimulation or arousal.
- "Simulated" means the explicit depiction of sexual conduct which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.
- "Specific sexual activities" to include the following "sexual activities and the exhibition of the following anatomical areas:
  (a) Human genitals in the state of sexual stimulation or arousal.
  (b) Acts of human masturbation, sexual intercourse, sodomy, cunnilingus, fellatio, or any excretory function, or representation thereof.
  (c) The fondling or erotic touching of human genitals, the pubic region, the buttocks, or the female breasts.
  (d) Less than completely and opaquely covered:
    1. Human genitals or the pubic region.
    2. Buttocks.
    3. Female breasts below the top of the areola.
    4. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Section 847.011, F.S., prohibits a person from the doing any of the following acts, when knowingly committed, relating to specified obscene materials:[25]

- Selling;
- Giving away;
- Distributing;

[22] S. 847.001(12), F.S.
[23] *Supra* note 1.
[24] S. 847.001, F.S.
[25] Enumerated materials are a 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, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter, or sensory representations, or any article or instrument for obscene use. S. 847.011(1), F.S.

- Showing;
- Offering or possessing with the intent to sell, lend, give away, distribute, transmit, show, or transmute;
- Designing;
- Drawing;
- Photographing;
- Posing for;
- Writing;
- Publishing;
- Manufacturing;
- Preparing;
- Advertising; or
- Hiring, employing, using, or permitting another person to do any such act.

Additionally, s. 847.011(4), F.S., prohibits a person from knowingly promoting, conducting, performing, or participating in an obscene show, exhibition, or performance by live persons or a live person before an audience. A violation of the prohibition is a first degree misdemeanor[26] for a first violation and a third degree felony[27] for any second or subsequent conviction.

Under s. 847.011(9), F.S., a circuit court has jurisdiction to enjoin a threatened violation of s. 847.011, F.S., when the state attorney or an attorney for the municipality in which the threatened violation may occur files a complaint. After the filing of a such a complaint, a court may grant an order restraining the respondent until a final hearing or subsequent court order.[28] The enjoined person is entitled to an expedited trial and a court decision within two days of the trial.

Material Harmful to Minors

For the purposes of ch. 847, F.S., material which is "harmful to minors" is defined as any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

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

Section 847.012, F.S., prohibits a person from knowingly selling, renting, or loaning for monetary consideration to a minor:

- Any 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[29] or sexual conduct, sexual excitement,[30] sexual battery,[31] bestiality,[32] or sadomasochistic abuse[33] and which is harmful to minors; or

[26] A first degree misdemeanor is punishable by up to one year in county jail and a $1,000 fine. S. 775.082 or s. 775.083, F.S.
[27] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. S. 775.082, s. 775.083, or s. 775.084, F.S.
[28] The court must set a hearing within 3 days of a request for hearing by the state attorney or municipal attorney. S. 847.011(9), F.S.
[29] "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother's breastfeeding of her baby does not under any circumstance constitute "nudity," irrespective of whether or not the nipple is covered during or incidental to feeding. S. 847.001(11), F.S.
[30] "Sexual excitement" means the condition of the human male or female genitals when in a state of sexual stimulation or arousal. S. 847.001(20), F.S.
[31] "Sexual battery" means oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object; however, "sexual battery" does not include an act done for a bona fide medical purpose. S. 847.001(17), F.S.
[32] "Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other. S. 847.001(18), F.S.

- Any book, pamphlet, magazine, printed matter however reproduced, or sound recording that contains any matter defined in s. 847.011, F.S., explicit and detailed verbal descriptions or narrative accounts of sexual excitement, or sexual conduct that is harmful to minors.

A violation of the prohibition is a third degree felony and a court may grant an order restraining a violation of this section following the same process described for restraining orders under s. 847.011, F.S.[34]

Section 847.013(3), F.S., prohibits a person from knowingly exhibiting for monetary consideration to a minor or knowingly selling or renting a videotape of a motion picture to a minor or knowingly selling to a minor an admission ticket or pass or knowingly admitting a minor for monetary compensation to premises upon which a motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts nudity, sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors. However, such prohibitions do not apply to a minor when he or she is accompanied by his or her parent.[35]

Additionally, a person may not knowingly rent or sell, or loan to a minor for monetary consideration, a videocassette or videotape of a motion picture, or similar presentation, which, in whole or in part, depicts nudity, sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors. A person who violates any of these prohibitions commits a first degree misdemeanor.

The State's Authority to Regulate in Order to Protect Minors

The United States Supreme Court has determined that the state has a "compelling interest in protecting the physical and psychological well-being of minors," which "extends to shielding minors from the influence of literature that is not obscene by adult standards."[36]

In doing so, however, the means must be narrowly tailored to achieve that end so as not to unnecessarily deny adults access to material which is constitutionally protected indecent material. No similar tailoring is required when the material is obscene material, which is not protected by the First Amendment.[37]

In 2004, Florida's First District Court of Appeal stated:

> It is within the Legislature's power to determine that certain matter is harmful for all minors. There is no indication that the definition of harmful matter will change depending on the age of the minor. … The Legislature has the responsibility and authority to protect all of our children, even the older ones.[38]

Prosthetic Breasts and Genitalia

The Food and Drug Administration (FDA) regulates the sale of medical device products in the United States and monitors the safety of all regulated medical products.[39] Medical devices includes prosthetic

---

[33] "Sadomasochistic abuse" means flagellation or torture by or upon a person or animal, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself. S. 847.001(16), F.S.
[34] *See* s. 847.012(8), F.S.
[35] S. 847.013(3)(c), F.S.
[36] Sable Communications v. FCC, 492 U.S. 115 (1989).
[37] Ashcroft v. ACLU, 542 U.S. 656 (2004); Cashatt v. State, 873 So. 2d 430, 434 (Fla. 1st DCA 2004). But see, Erznoznik v. City of Jacksonville, 422 U.S. 205 (1975) (Determining regulation overly broad.)
[38] *Simmons v. State*, 886 So. 2d 399, 405 (Fla. 1st DCA 2004). But see, Ashcroft v. ACLU, 542 U.S. 656 (2004) (Determining regulations too restrictive in light of the first amendment.).
[39] U.S. Food and Drug Administration, *FDA's Role in Regulating Medical Devices*, https://www.fda.gov/medical-devices/home-use-devices/fdas-role-regulating-medical-

devices, which is an artificial substitute for a missing body part.[40] Breast prostheses,[41] or breast implants, are medical devices implanted under the breast tissue or chest muscle to increase breast size (augmentation) or to replace breast tissue that has been removed due to cancer or trauma or that has failed to develop properly due to a severe breast abnormality (reconstruction).[42]

Breast prosthesis is also a term used for an artificial breast designed to replicate the size, shape, feel, and weight of a person's breasts which are typically designed to fit inside a person's bra cup or stick to the chest.[43] Additionally, prosthetics, including prosthetic breasts and genitalia, are commonly used in the entertainment industry.[44]

Recent Events

According to recent news stories, at least three businesses with liquor licenses in the state are currently being administratively charged by DBPR with violating public nuisance, lewd activity and disorderly conduct laws. One business is a hotel associated with a performance center, and another is a performing arts center, which both hosted an event entitled "A Drag Queen Christmas"; and the other is a restaurant that hosted a drag queen weekend brunch. DBPR is seeking to revoke the liquor licenses of these businesses.[45]

According to the administrative complaint filed by the Director of the Division of Alcoholic Beverages and Tobacco, one case alleges that the alcoholic beverage licensee hosted "A Drag Queen Christmas," and such show did not provide notice about the sexually explicit nature of the performance but initially stated that all ages were welcome. The division claims it sent a letter to the licensee advising that the sexually explicit show would constitute "public nuisance, lewd activity, and disorderly conduct when minors are in attendance" and if the licensee failed to ensure "minors were prohibited" from performances, its license would be subject to penalties, including revocation.[46]

The complaint alleges that the licensee updated advertising to note performances were recommended for audiences 18 years of age and older. However, the licensee's admission policies permitted minor children to attend if they were accompanied by an adult. The complaint alleges that children younger than 16 years old were knowingly admitted to the show and then details what the performers wore or did not wear and the acts of "sexual conduct, simulated sexual activity, and lewd, vulgar, and indecent displays" that were performed.[47] The complaint alleges that the license holder violated six laws: lewd exhibition, operating a lewd establishment, public exposure, obscene exhibition, breach of the peace, and public nuisance.[48] The case is pending.

---

devices#:~:text=In%20the%20U.S.%2C%20FDA%20regulates,seek%20approval%20from%20the%20FDA. (last visited Mar. 21, 2023).

[40] Encyclopedia Britannica, *Prosthesis*, https://www.britannica.com/science/prosthesis (last visited Mar. 21, 2023).

[41] 21 C.F.R. § 878.3530, .3540

[42] U.S. Food and Drug Administration, *Breast Implants*, https://www.fda.gov/medical-devices/implants-and-prosthetics/breast-implants#:~:text=Breast%20implants%20are%20medical%20devices,severe%20breast%20abnormality%20(reconstruction). (last visited Mar. 21, 2023).

[43] Jenna Fletcher, MedicalNewsToday, Sep. 3, 2021, *What types of breast prostheses are available?*, https://www.medicalnewstoday.com/articles/breast-prosthesis (last visited Mar. 21, 2023).

[44] For example, *see* Jessica Harrington, PopSugar, *Confessions of a Movie Prosthetics Designer*, https://www.popsugar.com/beauty/movie-prosthetics-designers-interview-48740851 (last visited Mar. 22, 2023).

[45] Tampa Bay Times, Ana Ceballos and Joey Flechas, *Florida goes after liquor license of Miami hotel over drag show*, March 14, 2023, https://www.tampabay.com/news/florida-politics/2023/03/14/drag-queen-minors-liquor-license-lgbtq-hotel-miami/

[46] Administrative Complaint, *Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, Petitioner, v. HRM Owner, LLC, d/b/a Hyatt Regency Miami*, March 14, 2023 (On file with the Senate Committee on Judiciary).

[47] *Id*. *See also*, Tampa Bay Times, Nicholas Nehamas and Ana Ceballos, *Florida undercover agents reported no 'lewd acts' at drag show targeted by DeSantis*, March 20, 2023, https://www.tampabay.com/news/florida-politics/2023/03/20/desantis-drag-show-lewd-liquor-license-complaint-lgbtq/

[48] The statutes that were allegedly violated and listed in the complaint were: Lewd or lascivious exhibition in the presence of a minor less than 16 years of age (s. 800.04(7)(a), F.S.); Operation of any place, structure, building, or conveyance for the purposes of lewdness (s. 796.07(2)(a), F.S.); The unlawful exposing or exhibiting of one's sexual organs in public or on the private premises of another in a vulgar or indecent manner (s. 800.03, F.S.); Knowingly promoting, conducting, performing, or participating in an obscene

Effect of the Bill

Exposing Children to an Adult Live Performance

The bill creates s. 827.11, F.S., to prohibit a person from "knowingly" admitting a child to an "adult live performance." A person who violates the prohibition commits a first degree misdemeanor, punishable by up to one year in jail and a $1,000 fine.

The bill defines "adult live performance" as:

- "any show, exhibition, or other presentation in front of a live audience which, in whole or in part, depicts or simulates "nudity," "sexual conduct," "sexual excitement," "specific sexual activities" as those terms are defined in s. 847.001, F.S., "lewd conduct," or the "lewd exposure of prosthetic or imitation genitals or breasts" when it:
    - Predominately appeals to a prurient, shameful, or morbid interest;
    - Is patently offense to prevailing standards in the adult community of this state as a whole with respect to what is suitable material or conduct for **the age of the child present**; and
    - Taken as a whole, is without serious literary, artistic, political or scientific value for **the age of the child present**."

Neither the bill, nor Florida law, defines "lewd exposure of prosthetic or imitation genitals or breasts."

The bill, in part, adopts the ***Miller* test** for obscenity when defining a prohibited adult live performance. However, the definition in the bill differs from the *Miller* test, differs from the definition of obscene material in s. 847.001, F.S., and also differs from the definition of material which is harmful to minors in s. 847.001, F.S., by requiring the fact-finder to consider:

- Prevailing standards in the adult community ***of the state***, rather than the local community;
- What is suitable material or conduct for the ***age of the child present***, rather than the average person or minor; and
- Whether the material, taken as a whole, is without serious literary, artistic, political, or scientific value for the ***age of the child present*****,** rather than whether the material generally has any such value or any such value for the average person or minor.

The bill defines "knowingly" as:

- "Having general knowledge of,
- Reason to know, or
- A belief or ground for belief which warrants further inspection or inquiry of both:
    - The character and content of any adult live performance which is reasonably susceptible of examination by the defendant; and
    - The age of the child."

The bill allows a fact-finder to find a person acted knowingly when a person admits a child to an adult live performance if he or she had knowledge or reason to know of the character and content of such a performance and of a child's age, rather than requiring proof that a person who admitted a child knew that any such performance legally met the definition of an adult live performance.

Similar to provisions in other crimes relating to obscene material, the bill prohibits a person from raising as a defense to prosecution:

- Ignorance of a child's age,
- A child's misrepresentation of his or her age, or

---

show, exhibition, or performance by live persons or a live person before an audience (s. 847.011(4), F.S.; Breach of the peace and disorderly conduct with acts that are of such nature as to corrupt the public morals, or outrage the sense of public decency (s. 877.03, F.S.); and Maintaining a nuisance by erecting or maintaining a structure that tends to annoy the community or injure the health or the community, or becomes manifestly injurious to the morals or manners of the people (s. 823.05(1), F.S.).

- The person's bona belief of a child's consent as a defense to prosecution for exposing a child to an adult live performance.

Public Lodging and Public Food Service Establishment Licenses

The bill authorizes H&R to fine, suspend, or revoke the license of a public lodging establishment or public food service establishment if the establishment admits a child to an adult live performance in violation of the newly created statute.

Admitting a child to the performance constitutes an immediate serious danger to the public health, safety, or welfare for the purposes of s. 120.60(6), F.S., which authorizes emergency suspension, restriction, or limitation of a license.

The division may issue a $5,000 fine for an establishment's first violation and may issue a $10,000 fine for a second or subsequent violation.

Beverage Law Licenses

In a manner similar to section 1, above, the bill authorizes ABT to revoke or suspend the beverage license, or fine the license holder, who is found to maintain a licensed premise that admits a child to an adult live performance in violation of the newly created s. 827.11, F.S.

A violation of this new provision constitutes an immediate, serious danger to the public health, safety, or welfare for purposes of s. 120.60(6), F.S., which allows for the emergency suspension, restriction, or limitation of a license.

The division may issue a $5,000 fine for a first violation and a $10,000 fine for a second or subsequent violation.

The bill takes effect upon becoming law.

B. SECTION DIRECTORY:

Section 1. Amends s. 509.261, F.S., relating to revocation or suspension of public lodging and public food service establishments.
Section 2. Amends s. 561.29, F.S., relating to revocation or suspension of alcoholic beverage licensees.
Section 3. Creating s. 827.11, F.S., relating to the crime of exposing children to an adult live performance.
Section 4. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Depending on the number of complaints issued, the state could see an increase in the amount of fines collected.

2. Expenditures:

   DBPR may have an increase in expenditures based on the investigation and prosecution of alcoholic beverage licensees, and public lodging and public food service establishments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Venues hosting "adult live performances" or other types of performances may have decreased revenues related to prohibiting such performances or discontinuing similar performances based on a fear or lack of understanding of the law or fear of violating the law.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Certain portions of the bill may be subject to a broad application analysis. A law is unconstitutionally broad when the law potentially captures activity protected and unprotected by the First Amendment of the United States Constitution, which impedes fundamental rights.[49] In addition, some of the language in the bill may be subject to vagueness analysis.[50]

Other provisions and protections may implicate constitutional analysis based on the U.S. and Florida Constitutions' Substantive Due Process Clause[51],U.S. and Florida Constitutions' Equal Protection Clause[52], the U.S. and Florida Constitutions' protections of the right to speech and assembly[53], and the Florida Constitution's Right of Privacy.[54]

B. RULE-MAKING AUTHORITY:

The Department has sufficient rule making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[49] *State v. Catalano*, 104 So. 3d 1069, 1077 (Fla. 2012).
[50] A law is void on the basis of vagueness, when an average person of intelligence would not be on notice of the prohibited criminal activity and the law does not promote arbitrary and discriminatory application. *Russ v. State*, 832 So. 2d 901, 906 (Fla. 1st DCA 2002); *see also, Kolender v. Lawson*, 461 U.S. 352, 357 (1983).
[51] U.S. Const. amend. XIV. and Art. I, § 9, Fla. Const.
[52] U.S. Const. amend. XIV and Art. I, § 2, Fla. Const.
[53] U.S. Const. amend. I and Art. I, §§ 4-5, Fla. Const.
[54] Art. I, § 23, Fla. Const.

A bill to be entitled

An act relating to the protection of children; amending s. 509.261, F.S.; authorizing the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to fine, suspend, or revoke the license of any public lodging establishment or public food service establishment if the establishment admits a child to an adult live performance; specifying that a specified violation constitutes an immediate, serious danger to the public health, safety, or welfare; authorizing the division to issue specified fines for first, second, and subsequent violations of certain provisions; amending s. 561.29, F.S.; specifying that the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation is given full power and authority to revoke or suspend the license of any person issued under the Beverage Law when it is determined or found by the division upon sufficient cause appearing that he or she is maintaining a licensed premises that admits a child to an adult live performance; specifying that a specified violation constitutes an immediate serious danger to the public health, safety, or welfare; authorizing the division to issue specified fines for first, second, and

subsequent violations of certain provisions; creating s. 827.11, F.S.; defining the terms "adult live performance" and "knowingly"; prohibiting the raising of specified arguments as a defense in a prosecution for certain violations; prohibiting a person from knowingly admitting a child to an adult live performance; providing criminal penalties; providing an effective date.

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

Section 1. Subsection (10) is added to section 509.261, Florida Statutes, to read:

509.261 Revocation or suspension of licenses; fines; procedure.—

(10)(a) The division may fine, suspend, or revoke the license of any public lodging establishment or public food service establishment if the establishment admits a child to an adult live performance, in violation of s. 827.11.

(b) A violation of this subsection constitutes an immediate serious danger to the public health, safety, or welfare for the purposes of s. 120.60(6).

(c) Notwithstanding subsection (1), the division may issue a $5,000 fine for an establishment's first violation of this subsection.

(d) Notwithstanding subsection (1), the division may issue a $10,000 fine for an establishment's second or subsequent violation of this subsection.

Section 2. Paragraph (l) is added to subsection (1) of section 561.29, Florida Statutes, to read:

561.29 Revocation and suspension of license; power to subpoena.—

(1) The division is given full power and authority to revoke or suspend the license of any person holding a license under the Beverage Law, when it is determined or found by the division upon sufficient cause appearing of:

(l) Maintaining a licensed premises that admits a child to an adult live performance in violation of s. 827.11.

1. A violation of this paragraph constitutes an immediate, serious danger to the public health, safety, or welfare for the purposes of s. 120.60(6).

2. The division may issue a $5,000 fine for a first violation of this paragraph.

3. The division may issue a $10,000 fine for a second or subsequent violation of this paragraph.

Section 3. Section 827.11, Florida Statutes, is created to read:

827.11 Exposing children to an adult live performance.—

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

(a) "Adult live performance" means any show, exhibition,

or other presentation in front of a live audience which, in whole or in part, depicts or simulates nudity, sexual conduct, sexual excitement, specific sexual activities as those terms are defined in s. 847.001, lewd conduct, or the lewd exposure of prosthetic or imitation genitals or breasts when it:

1. Predominantly appeals to a prurient, shameful, or morbid interest;

2. Is patently offensive to prevailing standards in the adult community of this state as a whole with respect to what is suitable material or conduct for the age of the child present; and

3. Taken as a whole, is without serious literary, artistic, political, or scientific value for the age of the child present.

(b) "Knowingly" means having general knowledge of, reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

1. The character and content of any adult live performance described in this section which is reasonably susceptible of examination by the defendant; and

2. The age of the child.

(2) A person's ignorance of a child's age, a child's misrepresentation of his or her age, or a bona fide belief of a child's consent may not be raised as a defense in a prosecution for a violation of this section.

(3) A person may not knowingly admit a child to an adult live performance.

(4) A violation of subsection (3) constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 4. This act shall take effect upon becoming a law.

COMMERCE COMMITTEE

HB 1423 by Rep. Fine
Protection of Children

AMENDMENT SUMMARY
March 24, 2023

Amendment 1 by Rep. Eskamani (line 105):

- Provides an exception to the prohibition related to admission of minors if accompanied by a parent.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Commerce Committee

Representative Eskamani offered the following:

Amendment (with title amendment)

Between lines 105 and 106, insert:

(5) Subsection (3) does not apply to admission of a minor when the minor is accompanied by his or her parents or either of them.

T I T L E A M E N D M E N T

Remove line 32 and insert:

performance; providing criminal penalties; providing an exception; providing