

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/CS/SB 1690

INTRODUCER: Appropriations Committee on Criminal and Civil Justice; Criminal Justice Committee; and Senator Yarborough and others

SUBJECT: Human Trafficking

DATE: February 26, 2024 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Parker</u>	<u>Stokes</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Atchley</u>	<u>Harkness</u>	<u>ACJ</u>	<u>Fav/CS</u>
3.	<u>Parker</u>	<u>Yeatman</u>	<u>FP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1690 creates s. 787.30, F.S., which provides that an owner, manager, employee, or contractor of an adult entertainment establishment who knowingly employs, contracts with, contracts with another person to employ, or otherwise permits a person younger than 21 years of age to perform or work in an adult entertainment establishment, commits a first degree misdemeanor.¹ An owner, manager, employee or contractor of an adult entertainment establishment, who knowingly employs, contracts with, contracts with another person to employ, or otherwise permits a person younger than 21 years of age to perform or work nude in an adult entertainment establishment, commits a second degree felony.²

The bill amends current law by providing that a minor who may qualify for one of the employment exceptions under s. 562.13, F.S., may not be employed as, or perform as, a professional entertainer or otherwise if such employment involves nudity, or be employed by an adult entertainment establishment.

The bill provides that an owner, manager, employee, or contractor of an adult entertainment establishment, that permits a person to perform as an entertainer or work in any capacity shall

¹ A first degree misdemeanor is punishable by a term of imprisonment not exceeding one year, as provided in s. 775.082 or s. 775.083, F.S.

² A second degree felony is punishable by a term of imprisonment of fifteen years, as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

carefully check the person's driver license or an identification card issued by this state or another state of the United States, a passport, or a United States Uniformed Services Identification Card presented by the person and act in good faith and in reliance upon the representation and appearance of the person in the belief that the person is 21 years of age or older.

The bill provides that a person's ignorance of a person's age or a person's misrepresentation of his or her age cannot be used a defense in a prosecution for certain violations.

This bill may have a positive indeterminate impact on prison beds. See Section V., Fiscal Impact Statement.

The bill is effective July 1, 2024.

II. Present Situation:

Victims of sex trafficking are frequently recruited to work in strip clubs across the United States. Such persons may be recruited to work in strip clubs as hostesses, servers or dancers, but are then required to perform sex acts with customers. Such strip clubs may be designed to provide the space and environment in which buyers may purchase commercial sex.³

Commercial Sexual Activity

Strip clubs are considered adult entertainment establishments under Florida law. Section 847.001, F.S., defines "adult entertainment establishment," to include adult bookstores, adult theaters, special cabaret, and unlicensed massage establishments.

- An adult bookstore is any corporation, partnership, or business of any kind which restricts or purports to restrict admission only to adults, which has as part of its stock book, magazines, other periodicals, videos, discs, or other graphic media and which offers, sells, provides, or rents for a fee any sexually oriented material.
- Adult theaters are enclosed buildings or enclosed spaces within a building used for presenting either film, 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, and which restricts or purports to restrict admission only to adults, or any business that features a person who engages in specific sexual activities for observation by a patron, and which restricts or purports to restrict admission to only adults.
- Special cabaret is any business that features persons who engage in specific sexual activities for observation by patrons, and which restricts or purports to restrict admission only to adults.
- An unlicensed massage establishment is any business or enterprise that offers, sells, or provides, or that 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 or attendants, by

³ National Human Trafficking Hotline, *Hostess/Strip Club-Based*, available at, <https://humantraffickinghotline.org/en/sex-trafficking-venuesindustries/hostessstrip-club-based> (last visited January 31, 2024).

hand or by any electrical or mechanical device, on or off the premises. This term does not include an establishment licensed under s. 480.043, F.S.

Several states have enacted laws prohibiting persons under 21 years of age from working or performing in certain adult entertainment establishments. These laws have been challenged, and courts have found that the state has a compelling interest in protecting victims from human trafficking, and that there is often a link between human trafficking and certain adult entertainment establishments. In *Jane Doe I v. Landry*, the United States Court of Appeals, Fifth Circuit upheld a Louisiana law that prohibited establishments licensed to serve alcohol from employing nearly nude entertainers younger than 21 years of age on the grounds that the law furthered the state's interests in curbing human trafficking and prostitution.⁴

The Court found that the State of Louisiana sufficiently demonstrated its reasonable belief that there was a link between Louisiana statutes that prohibited women aged 18 to 21 years old from nude erotic dancing in establishments that served alcohol and curbing the secondary effects of human trafficking and prostitution such that the statutes furthered substantial governmental interest, as required for statutes to survive intermediate scrutiny on erotic dancers' First Amendment free speech challenge.⁵

In *Valadez v. Paxton*, the United States District Court, W.D. Texas, Austin Division held that the State of Texas sufficiently demonstrated that it held reasonable belief that the law prohibiting all working relationships between persons between the ages of 18 and 20 years old and sexually-oriented businesses would serve to curb harmful secondary effects of sexually-oriented businesses, including trafficking and sexual exploitation.⁶

The United States District Court denied a motion for a preliminary injunction against the enforcement of the Texas bill prohibiting "all working relationships between 18-20 year olds and sexually-oriented businesses" because the plaintiff's failed to show that the age restrictions were not rationally related to the state's interest in curbing human trafficking.⁷

In *DC Operating, LLC v. Paxton*, the United States District Court, W.D. Texas, Austin Division, denied a motion for a preliminary injunction in part, finding that the state's recently enacted bill relating to restrictions on the age of person employed by or allowed on the premises of a sexually oriented business is rationally related to the state's interest in curbing human trafficking.⁸ The Court ruled that the plaintiff's failed to establish a likelihood of success on the merits of their claims under the First Amendment, Fourteenth Amendment Due Process and Equal Protection Clauses of the United States Constitution, and Texas Constitution's equivalent provisions.⁹

In *Wacko's Too, Inc. v. City of Jacksonville*, the United States District Court, M.D. Florida upheld age restrictions in a City of Jacksonville ordinance requiring performers at adult entertainment establishments to be at least 21 years of age based, at least in part, on evidence that

⁴ *Doe I v. Landry*, 909 F.3d 99, 109 (5th Cir. 2018).

⁵ *Id.*

⁶ *Valadez v. Paxton*, 553 F. Supp.3d 387 (W.D. Tex. 2021).

⁷ *Id.*

⁸ *Dc Operating, LLC v. Paxton*, 586 F.Supp.3d 554, 572 (W.D. Tex. 2022).

⁹ *Id.*

there was a reasonable basis to believe that the age restrictions would further the City's interest in preventing human and sex trafficking.¹⁰ The city ordinance provisions forbid anyone under age 21 from receiving the requisite license to perform at adult entertainment establishments in the city. The Eleventh Circuit upheld the requirement that adult entertainment establishments maintain rosters as a "permissible way to keep track of licensed performers, secondary to combating human trafficking."¹¹ The performer disclosure requirement under the ordinance also relates to preventing human trafficking by allowing law enforcement to keep track of performers.

Human Trafficking

The Florida Legislature recognizes human trafficking as a form of modern-day slavery whose victims include young children, teenagers, and adults who may be citizens that are trafficked domestically within the borders of the United States or smuggled across international borders worldwide.¹² While victims of human trafficking are forced to work in prostitution or sexual entertainment, trafficking also occurs in forms of labor exploitation, such as domestic servitude, restaurant work, janitorial work, factory work, and agricultural work.¹³

Florida law defines "human trafficking" as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining,¹⁴ purchasing, patronizing, procuring, or obtaining¹⁵ another person for the purpose of exploitation of that person.¹⁶

Human trafficking includes two types of exploitation: commercial sexual exploitation (CSE) and forced labor.¹⁷ In 2022, according to the Department of Children and Families, 354 youth were verified as victims of commercial sexual exploitation (CSE) in Florida. The number has decreased from 2021, when 379 youth were verified.¹⁸

Soliciting or Purchasing Prostitution

Section 796.07, F.S., defines prostitution as the giving or receiving of the body for sexual activity for hire.¹⁹

Under s. 796.07(2)(a)-(e) and (g)-(i), F.S., it is a second-degree misdemeanor.²⁰

¹⁰ *Wacko's Too Inc. v. City of Jacksonville*, 658 F.Supp.3d 1086 (11th Cir. 2023).

¹¹ *Id.* at 1127.

¹² Section 787.06, F.S.

¹³ *Id.*

¹⁴ Section 787.06(2)(f), F.S., provides "maintain" means, in relation to labor or services, to secure or make possible continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type service. Section 787.06(2)(h), F.S., defines "services" as any act committed at the behest of, under the supervision of, or for the benefit of another, including forced marriage, servitude, or the removal of organs.

¹⁵ Section 787.06(2)(g), F.S., provides "obtain" means, in relation to labor, commercial sexual activity, or services, to receive, take possession of, or take custody of another person or secure performance thereof. Section 787.06(2)(e), F.S., provides "labor" means work of economic or financial value.

¹⁶ Section 787.06(2)(d), F.S.

¹⁷ Section 787.06, F.S.

¹⁸ Office of Program Policy Analysis & Government Accountability, *Annual Report on Commercial Sexual Exploitation of Children in Florida, 2023*, available at <https://oppaga.fl.gov/Documents/Reports/23-08.pdf> (last visited December 13, 2023).

¹⁹ This definition excludes sexual activity between spouses. s. 796.07(1)(b), F.S.

²⁰ A second-degree misdemeanor is punishable by up to 60 days in county jail and a fine not exceeding \$500. Sections 775.082(4)(b) and 775.083(1)(e), F.S.

- To own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness,²¹ assignation,²² or prostitution;
- To offer, or to offer or agree to secure, another for the purpose of prostitution or for any other lewd or indecent act;
- To receive, or to offer or agree to receive, any person into any place, structure, building, or conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose;
- To direct, take, or transport, or to offer or agree to direct, take, or transport, any person to any place, structure, or building, or to any other person, with knowledge or reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation;
- For a person 18 years of age or older to offer to commit, or to commit, or to engage in, prostitution, lewdness, or assignation;
- To reside in, enter, or remain in, any place, structure, or building, or to enter or remain in any conveyance, for the purpose of prostitution, lewdness, or assignation;
- To aid, abet, or participate in any of the acts or things listed above; or
- To purchase the services of any person engaged in prostitution.²³

Additionally, under s. 796.07(2)(f), F.S., a person who solicits, induces, entices, or procures another person to commit prostitution, lewdness, or assignation commits a first-degree misdemeanor for a first violation, a third-degree felony for a second violation, and a second-degree felony for a third or subsequent violation.²⁴ An offender convicted for soliciting another person to commit prostitution is also subject to additional penalties including:

- One hundred hours of community service;²⁵
- Being required to pay for and attend an educational program about the negative effects of prostitution and human trafficking, such as a sexual violence prevention education program, including such programs offered by faith-based providers, if such a program is offered in the circuit in which the offender is sentenced;²⁶
- A 10-day mandatory minimum jail sentence for a second or subsequent violation;²⁷
- Vehicle impoundment up to 60 days if the offender used a car to commit the violation;²⁸
- Inclusion of the offender's name on the Soliciting for Prostitution Public Database in certain situations;²⁹ and
- A \$5,000 civil fine.³⁰

²¹ "Lewdness" means any indecent or obscene act. Section 796.07(1)(c), F.S.

²² "Assignation" means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement. Section 796.07(1)(d), F.S.

²³ Section 796.07(2), F.S.

²⁴ Section 796.07(2)(f) and (5)(a), F.S.

²⁵ Section 796.07(5)(b)1., F.S.

²⁶ Section 796.07(5)(b)2., F.S.

²⁷ Section 796.07(5)(c), F.S.

²⁸ Section 796.07(5)(d), F.S.

²⁹ Section 796.07(5)(e), F.S.

³⁰ Section 796.07(6), F.S.

III. Effect of Proposed Changes:

The bill amends s. 562.13, F.S., providing that a minor who may qualify for one of the exceptions may not be employed as or perform as a professional entertainer or otherwise if such employment involves nudity, or be employed by an adult entertainment establishment. Section 563.13, F.S., provides a list of exceptions that allows a minor to be employed by alcohol venders.

The bill creates s. 787.30, F.S., to prohibit a person under the age of 21 from working in an adult entertainment establishment.³¹ Under the bill, adult entertainment establishments include adult bookstores, adult theaters, special cabarets, and unlicensed massage establishments as defined by statute. Specifically, the bill provides that an owner, manager, employee, or contractor of an adult entertainment establishment, who knowingly employs, contracts with, contracts with another person to employ, or otherwise permits a person younger than 21 years of age to perform or work in an adult entertainment establishment, commits a first degree misdemeanor.³²

Furthermore, the bill provides that an owner, manager, employee or contractor of an adult entertainment establishment, who knowingly employs, contracts with, contracts with another person to employ, or otherwise permits a person younger than 21 years of age to perform or work nude in an adult entertainment establishment, commits a second degree felony.³³ The bill defines the term “nude” to mean the showing of the human male or female genitals, pubic area, or buttock 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.

The bill requires an owner, manager, employee, or contractor of an adult entertainment establishment that permits a person to perform as an entertainer or work in any capacity shall carefully check the person’s driver license or an identification card issued by this state or another

³¹ The bill defines “adult entertainment establishment” to have the same meaning as provided in s. 847.001.” Section 847.001, F.S., defines the term to mean any of the following terms as defined: “(a) “adult bookstore” means any corporation, partnership, or business of any kind which restricts or purports to restrict admission only to adults, which has as part of its stock books, magazines, other periodicals, videos, discs, or other graphic media and which offers, sells, provides, or rents for a fee any sexually oriented material; (b) “adult theater” means an enclosed building or an enclosed space within a building 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, and which restricts or purports to restrict admission only to adults, or any business that features a person who engages in specific sexual activities for observation by a patron, and which restricts or purports to restrict admission to only adults; (c) “special cabaret” means any business that features persons who engage in specific sexual activities for observation by patrons, and which restricts or purports to restrict admission only to adults; and (d) “Unlicensed massage establishment” means any business or enterprise that offers, sells, or provides, or that 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 or attendants, by hand or by any electrical or mechanical device, on or off the premises. The term “unlicensed massage establishment” does not include an establishment licensed under s. 480.043 which routinely provides medical services by state-licensed health care practitioners and massage therapists licensed under s. 480.041.”

³² A first degree misdemeanor is punishable by a term of imprisonment not exceeding one year, as provided in s. 775.082 or s. 775.083, F.S.

³³ A second degree felony is punishable by a term of imprisonment of fifteen years, as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

state of the United States, a passport, or a United States Uniformed Services identification card presented by the person and act in good faith and in reliance upon the representation and appearance of the person in the belief that the person is 21 years of age or older.

The bill provides that for purposes of this section, a person's ignorance of a person's age or a person's misrepresentation of his or her age may not be raised as a defense in a prosecution for a violation of this section.

The bill is effective July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The First Amendment of the U.S. Constitution prevents the government from creating laws that restrict the speech of citizens.³⁴ "Congress shall make no law ... abridging the freedom of speech." The rights guaranteed by the First Amendment apply with equal force to state governments through the due process clause of the Fourteenth Amendment.

The state has a compelling interest in safeguarding the community and children from trafficking and sexual exploitation. A statute regulating conduct with incidental effects on speech can be a reasonable restriction if, among other things, it is narrowly tailored to serve substantial government interests.³⁵

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

³⁴ U.S. Const., amend I.

³⁵ *Id.*

B. Private Sector Impact:

The bill may have an indeterminate impact on private businesses by excluding individuals under the age of 21 from working in all adult establishments including adult bookstores.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has determined the bill may have a positive indeterminate prison bed impact (an unquantifiable increase in prison beds) due to the unranked, 2nd degree felony (level 4 default) created in the bill. In FY 22-23, the incarceration rate for a Level 4, 2nd degree felony was 27.6%.³⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 562.13 and 787.30.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations Committee on Criminal and Civil Justice on February 13, 2024:

The committee substitute:

- Restores language in s. 562.13, F.S., prohibiting a minor who may otherwise qualify for an exemption to work for an alcohol vendor from being employed in a position that involves nudity on the part of the minor for purpose of adult entertainment, and that such a minor is also prohibited from being employed by an adult entertainment establishment, as defined in s. 847.001, F.S.
- Provides that a person's ignorance of a person's age or a person's misrepresentation of his or her age cannot be used as a defense in a prosecution for certain violations.

³⁶ *SB 1690-Human Trafficking*, Office of Economic and Demographic Research
<http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSSB1690.pdf>

CS by Criminal Justice on January 30, 2024:

The committee substitute:

- Provides that an owner, manager, employee, or contractor of an adult entertainment establishment who knowingly employs or contracts to employ a person younger than 21 years of age to perform or work in an adult entertainment establishment in any capacity commits a first degree misdemeanor.
- Provides that an owner, manager, employee, or contractor of an adult entertainment establishment who knowingly employs or contracts to employ a person younger than 21 years of age to perform nude in an adult entertainment establishment commits a second degree felony.
- Requires an owner, manager, employee, or contractor to carefully check the identification card or driver's license of a person hired to perform as an entertainer or work in any capacity in an adult entertainment establishment.
- Defines the term "nude."

B. Amendments:

None.