

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1379 Human Trafficking
SPONSOR(S): Judiciary Committee, Amesty
TIED BILLS: IDEN./SIM. **BILLS:** SB 1690

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|------------------|---------|--|
| 1) Regulatory Reform & Economic Development Subcommittee | 13 Y, 2 N | Wright | Anstead |
| 2) Judiciary Committee | 17 Y, 2 N, As CS | Leshko | Kramer |
| 3) Commerce Committee | | | |

SUMMARY ANALYSIS

Human trafficking is a form of modern day slavery which involves the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining of another person for the purpose of exploiting that person.

Section 562.13, F.S., provides that it is unlawful for any licensed alcohol vendor to employ any person under 18 years of age, with certain exceptions. However, a minor to whom these exceptions otherwise apply may not be employed if the employment, whether as a professional entertainer or otherwise, involves nudity on the part of the minor and such nudity is intended as a form of adult entertainment.

Section 847.001, F.S., defines "adult entertainment establishment," to include adult bookstores, adult theaters, special cabaret, and unlicensed massage establishments.

In an effort to prevent minors from becoming victims of human trafficking and being exploited, s. 450.021, F.S., prohibits a person under the age of 18, whether or not such person's disabilities of nonage have been removed by marriage or otherwise, from being employed, permitted, or suffered to work in an adult theater.

Several states have enacted laws prohibiting persons under 21 years of age from working or performing in certain adult entertainment establishments. Some of these laws have been challenged, and some 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.

CS/HB 1379 creates s. 787.30, F.S., to prohibit an owner, manager, employee, or contractor of an adult entertainment establishment from knowingly employing, contracting with, contracting with another person to employ, or otherwise permitting a person under the age of 21 years to perform or work in an adult entertainment establishment. A violation of this prohibition is a first-degree misdemeanor.

The bill also prohibits an owner, manager, employee, or contractor of an adult entertainment establishment from knowingly employing, contracting with, contracting with another person to employ, or otherwise permitting a person under the age of 21 years to perform or work *while nude* in an adult entertainment establishment. A violation of this prohibition is a second-degree felony.

The bill amends s. 562.13, F.S., to prohibit a minor who may otherwise meet an exception to work for an alcohol vendor from being employed by an adult entertainment establishment, as defined in s. 847.001, F.S.

The bill may have a positive impact on jail and prison beds. The bill may have additional fiscal impact on certain private entities. See Fiscal Analysis.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Adult Establishments

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 books, magazines, other periodicals, videos, discs, or other graphic media and which offers, sells, provides, or rents for a fee any sexually oriented material.¹

An adult theater is an enclosed building or 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 activities² 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 hand or by any electrical or mechanical device, on or off the premises. This term does not include a massage therapy establishment licensed under s. 480.043, F.S.

Minors Working at a Licensed Alcohol Vendor

¹ “Sexually oriented material” means any book, article, magazine, publication, or written matter of any kind or any drawing, etching, painting, photograph, motion picture film, or sound recording that depicts sexual activity, actual or simulated, involving human beings or human beings and animals, that exhibits uncovered human genitals or the pubic region in a lewd or lascivious manner, or that exhibits human male genitals in a discernibly turgid state, even if completely and opaquely covered. S. 847.001(21), F.S.

² Section 847.001(23), F.S, defines “specific sexual activities” as the following sexual activities and the exhibition of the following anatomical areas:

- Human genitals in the state of sexual stimulation or arousal.
- Acts of human masturbation, sexual intercourse, sodomy, cunnilingus, fellatio, or any excretory function, or representation thereof.
- The fondling or erotic touching of human genitals, the pubic region, the buttocks, or the female breasts.
- Less than completely and opaquely covered:
 - Human genitals or the pubic region.
 - Buttocks.
 - Female breasts below the top of the areola.
 - Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

In Florida, the Beverage Law³ regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.⁴ The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.⁵

Since the repeal of Prohibition, regulation of alcohol in the United States has traditionally been based upon what is termed the “three-tier system.” The system requires separation of the manufacture, distribution, and sale of alcoholic beverages.⁶ The manufacturer creates the beverages, the distributor obtains the beverages from the manufacturer and then delivers to the vendor, and the vendor makes the ultimate sale to the consumer.⁷

The license and registration classifications used in the Beverage Law include the following:

- “Manufacturers” are those “licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute.”
- “Distributors” are those “licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages.”
- “Vendors” are those “licensed to sell alcoholic beverages at retail only” and may not “purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law.”⁸

Under s. 562.13, F.S., it is unlawful for any vendor to employ any person under 18 years of age,⁹ with the following exceptions:¹⁰

- Professional entertainers 17 years of age who are not in school.
- Minors employed in the entertainment industry, under certain circumstances.
- Persons under the age of 18 years who are employed in drugstores, grocery stores, department stores, florists, specialty gift shops, or automobile service stations which have obtained licenses to sell beer or beer and wine, when such sales are made for consumption off the premises.
- Persons 17 years of age or over or any person who is a graduate of or a senior in high school, employed by a bona fide food service establishment where alcoholic beverages are sold, provided such persons do not participate in the sale, preparation, or service of the beverages and that their duties might lead to further advancement in food service establishments.
- Persons under the age of 18 years employed as bellhops, elevator operators, and others in hotels when such employees are engaged in work apart from the portion of the hotel property where alcoholic beverages are offered for sale for consumption on the premises.
- Persons under the age of 18 years employed in bowling alleys in which alcoholic beverages are sold or consumed, so long as such minors do not participate in the sale, preparation, or service of such beverages.
- Persons under the age of 18 years employed by a bona fide dinner theater, as long as their employment is limited to the services of an actor, actress, or musician.
- Persons under the age of 18 years who are employed at a theme park, provided such persons do not participate in the sale, preparation, or service of alcoholic beverages.

³ Section 561.01(6), F.S., provides that the “Beverage Law” includes chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

⁴ See s. 561.14, F.S.

⁵ S. 561.02, F.S.

⁶ Section 561.01, F.S., defines “alcoholic beverages” as “distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.”

⁷ S. 561.14, F.S.

⁸ S. 561.14, F.S.

⁹ S. 562.13(1), F.S.

¹⁰ S. 562.13(2), F.S.

However, a minor to whom these exceptions otherwise apply may not be employed if the employment, whether as a professional entertainer or otherwise, involves nudity,¹¹ on the part of the minor and such nudity is intended as a form of adult entertainment.¹²

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.¹³ Victims of human trafficking may be forced to work in prostitution or sexual entertainment; however, trafficking also occurs in the form of labor exploitation, such as domestic servitude, or through forced restaurant work, janitorial work, factory work, and agricultural work.¹⁴

Section 787.06, F.S., defines “human trafficking” as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining,¹⁵ purchasing, patronizing, procuring, or obtaining¹⁶ another person for the purpose of exploitation of that person.¹⁷

Human trafficking includes two types of exploitation: commercial sexual exploitation and forced labor.¹⁸ In 2022, according to the Department of Children and Families, 354 youth were verified as victims of commercial sexual exploitation in Florida. The number has decreased from 2021, when 379 youth were verified as victims.¹⁹

Soliciting or Purchasing Prostitution

Section 796.07, F.S., defines prostitution as the giving or receiving of the body for sexual activity²⁰ for hire.²¹

Under s. 796.07(2)(a)-(e) and (g)-(i), F.S., it is a second-degree misdemeanor:²²

- To own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness,²³ assignation,²⁴ or prostitution;

¹¹ Section 847.001(11), F.S., defines “nudity” as 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.

¹² S. 562.13(2), F.S.

¹³ Section 787.06, F.S.

¹⁴ *Id.*

¹⁵ 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.

¹⁶ 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.

¹⁷ S. 787.06(2)(d), F.S.

¹⁸ S. 787.06, F.S.

¹⁹ 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 Feb. 2, 2024).

²⁰ “Sexual activity” means oral, anal, or female genital penetration by, or union with, the sexual organ of another; anal or female genital penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation; however, the term does not include acts done for bona fide medical purposes. S. 796.07(1)(e), F.S.

²¹ This definition excludes sexual activity between spouses. s. 796.07(1)(d), F.S.

²² A second-degree misdemeanor is punishable by up to 60 days in county jail and a fine not exceeding \$500. Ss. 775.082(4)(b) and 775.083(1)(e), F.S.

²³ “Lewdness” means any indecent or obscene act. S. 796.07(1)(c), F.S.

²⁴ “Assignation” means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement. S. 796.07(1)(a), F.S.

- 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.²⁵

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 misdemeanor²⁶ for a first violation, a third-degree felony²⁷ for a second violation, and a second-degree felony²⁸ for a third or subsequent violation.²⁹ An offender convicted for soliciting another person to commit prostitution is also subject to additional penalties including:

- 100 hours of community service;³⁰
- 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;³¹
- A 10-day mandatory minimum jail sentence for a second or subsequent violation;³²
- Vehicle impoundment up to 60 days if the offender used a car to commit the violation;³³ and
- A \$5,000 civil fine.³⁴

Child Exploitation Offenses

The following crimes are related to child exploitation:

- Using a Child in Sexual Performance:
 - Section 827.071(2), F.S., prohibits a person from, knowing the character and content thereof, employing, authorizing, or inducing a child to engage in a sexual performance; or being a parent, legal guardian, or custodian of such child, consenting to the participation by such child in a sexual performance. A violation for using a child in a sexual performance is a second-degree felony.
- Promoting a Sexual Performance by a Child:
 - Under s. 827.071(3), F.S., a person commits a second-degree felony if, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a child.
- Possessing Child Pornography with Intent to Promote:

²⁵ S. 796.07(2), F.S.

²⁶ A first-degree misdemeanor is punishable by a term of imprisonment not exceeding one year and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

²⁷ A third-degree felony is punishable by five years' imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

²⁸ A second-degree felony is punishable by 15 years' imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

²⁹ S. 796.07(2)(f) and (5)(a), F.S.

³⁰ S. 796.07(5)(b)1., F.S.

³¹ S. 796.07(5)(b)2., F.S.

³² S. 796.07(5)(c), F.S.

³³ S. 796.07(5)(d), F.S.

³⁴ S. 796.07(6), F.S.

- Under s. 827.071(4), F.S., a person commits a second-degree felony if he or she possesses with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes child pornography. The possession of three or more copies of such photograph, motion picture, representation, or presentation is prima facie evidence of an intent to promote.
- Protection of Minors:
 - Section 847.0133, F.S., provides that a person may not knowingly sell, rent, loan, give away, distribute, transmit, or show any obscene material to a minor. A violation of the prohibition is a third-degree felony.

Section 827.071, F.S., defines the following relevant terms:

- “Child pornography” means any image depicting a minor engaged in sexual conduct, or any image that has been created, altered, adapted, or modified by electronic, mechanical, or other means, to portray an identifiable minor engaged in sexual conduct.³⁵
- “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.³⁶
- “Sexual performance” means any performance or part thereof which includes sexual conduct by a child.³⁷

Section 874.001, F.S., defines “obscene” as the status of material which:

- The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
- Depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and
- Taken as a whole, lacks serious literary, artistic, political, or scientific value.
- A mother’s breastfeeding of her baby is not under any circumstance “obscene.”

Minors Working in the Entertainment Industry

DBPR’s Division of Regulation administers and enforces the state’s Child Labor Law³⁸ through its Child Labor Program³⁹ to provide a program of education, enforcement, and administrative initiatives designed to achieve full compliance in the enforcement of child labor laws and ensure the health, education and welfare of Florida’s working minors.⁴⁰ The Child Labor Law includes restrictions on children working in the entertainment industry.⁴¹

³⁵ S. 827.071(1)(b), F.S.

³⁶ A mother’s breastfeeding of her baby does not under any circumstance constitute “sexual conduct.” S. 827.071(1)(l), F.S.

³⁷ “Performance” means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience. S. 827.071(1)(m) and (g), F.S.

³⁸ See ss. 450.001-450.165, F.S.

³⁹ Section 450.155, F.S., provides that Child Labor Law program appropriations made by the Legislature shall be used to carry out the proper responsibilities of administering the Child Labor Law, to protect the working youth of the state, and to provide education about the Child Labor Law to employers, public school employees, the general public, and working youth.

⁴⁰ Florida Department of Business and Professional Regulation, *Child Labor*, <http://www.myfloridalicense.com/DBPR/child-labor/> (last visited Feb. 2, 2024).

⁴¹ S. 450.012(5), F.S.

Section 450.021, F.S., provides the following prohibition to prevent minors from being exploited and becoming victims of human trafficking:⁴²

- A person **under the age of 18**, whether or not such person's disabilities of nonage have been removed by marriage or otherwise, **may not be employed**, permitted, or suffered to work in an **adult theater**, as defined in s. 847.001(2)(b), F.S.

Section 450.141, F.S., provides that any person that violates child labor laws by employing or permitting or suffering any minor to be employed or to work in violation of the child labor laws, or by obstructing persons authorized to inspect places of employment commits a second-degree misdemeanor.⁴³ Additionally, each day during which any such violation continues constitutes a separate and distinct offense, and the employment of any minor in violation of the law, with respect to each minor so employed, constitutes a separate and distinct offense.⁴⁴

Section 450.151, F.S., prohibits any person, as a second-degree felony, from:⁴⁵

- Taking, receiving, hiring, employing, using, exhibiting, or, in any manner or under any pretense, causing or permitting any child less than 18 years of age to suffer;
- Inflicting upon any such child unjustifiable physical pain or mental suffering;
- Willfully causing or permitting the life of any such child to be endangered or his or her health to be injured or such child to be placed in such situation that his or her life may be endangered or health injured; or
- Having in his or her custody any such child for any of these purposes.

Local Government Prohibitions on Minors in Adult Entertainment Establishments

In general, counties and municipalities have the power to enforce zoning and such business regulations that are necessary for the protection of the public.⁴⁶

Local governments around the state limit minors from working in adult entertainment establishments. For example, an Orange County ordinance provides that it is unlawful for an operator or worker of an adult entertainment establishment to knowingly, or with reason to know, permit, suffer, or allow:⁴⁷

- Admittance to the establishment of a person under 18 years of age;
- A person under 18 years of age to remain at the establishment;
- A person under 18 years of age to purchase goods or services at the establishment; or
- A person to work at the establishment as a worker who is under 18 years of age.

Employee Age Minimums for Adult Entertainment Establishments

Several states have enacted laws prohibiting persons under 21 years of age from working or performing in certain adult entertainment establishments. Some of these laws have been challenged, and some 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.⁴⁸ 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

⁴² S. 450.021(5), F.S.

⁴³ S. 450.141(1), F.S.

⁴⁴ *Id.*

⁴⁵ S. 450.151, F.S.

⁴⁶ Ss. 125.01(1)(h) and 166.042, F.S.

⁴⁷ Ch. 3 § 3-131, Orange County Code of Ordinances.

⁴⁸ *Doe I v. Landry*, 909 F.3d 99, 109 (5th Cir. 2018).

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 a substantial governmental interest, as required for the statutes to survive intermediate scrutiny following erotic dancers' First Amendment free speech challenge.⁴⁹

In *Valadez v. Paxton*, the United States District Court, W.D. Texas, Austin Division, denied a motion for a preliminary injunction against the enforcement of a Texas bill prohibiting "all working relationships between 18-20-year-olds and sexually-oriented businesses," holding that the State of Texas sufficiently demonstrated that it held a reasonable belief that the law prohibiting such working relationships would serve to curb harmful secondary effects of sexually-oriented businesses, including trafficking and sexual exploitation, and the plaintiff failed to show that the age restrictions were not rationally related to the state's interest in curbing human trafficking.⁵⁰

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 persons employed by or allowed on the premises of a sexually-oriented business was rationally related to the state's interest in curbing human trafficking.⁵¹ The court ruled that the plaintiff failed to establish a likelihood of success on the merits under the First Amendment, Fourteenth Amendment Due Process and Equal Protection Clauses of the United States Constitution, and Texas Constitution's equivalent provisions.⁵²

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 there was a reasonable basis to believe that the age restrictions would further the city's interest in preventing human and sex trafficking.⁵³ The city ordinance provisions forbid anyone under age 21 from receiving the requisite license to perform at adult entertainment establishments in the city.

General Employment Restrictions for Minors

Section 450.061, F.S., prohibits minors under 18 years of age, regardless of whether such person's disabilities of nonage have been removed, from being employed or permitted or suffered to work in any of the following places of employment or in any of the following occupations, with specified exceptions for student learners under certain conditions:⁵⁴

- In or around explosive or radioactive materials.
- On any scaffolding, roof, superstructure, residential or nonresidential building construction, or ladder above 6 feet.
- In or around toxic substances or corrosives, including pesticides or herbicides, unless proper field entry time allowances have been followed.
- Any mining occupation.
- In the operation of power-driven woodworking machines.
- In the operation of power-driven hoisting apparatus.
- In the operation of power-driven metal forming, punching, or shearing machines.
- Slaughtering, meat packing, processing, or rendering, except as provided in 29 C.F.R. s. 570.61(c).
- In the operation of power-driven bakery machinery.
- In the operation of power-driven paper products and printing machines.
- Manufacturing brick, tile, and like products.
- Wrecking or demolition.
- Excavation operations.

⁴⁹ *Id.*

⁵⁰ *Valadez v. Paxton*, 553 F. Supp.3d 387 (W.D. Tex. 2021).

⁵¹ *DC Operating, LLC v. Paxton*, 586 F.Supp.3d 554, 572 (W.D. Tex. 2022).

⁵² *Id.*

⁵³ *Wacko's Too Inc. v. City of Jacksonville*, 658 F.Supp.3d 1086 (11th Cir. 2023).

⁵⁴ S. 450.061(2), F.S.

- Logging or sawmilling.
- Working on electric apparatus or wiring.
- Firefighting.
- Operating or assisting to operate, including starting, stopping, connecting or disconnecting, feeding, or any other activity involving physical contact associated with operating, a tractor over 20 PTO horsepower, any trencher or earthmoving equipment, fork lift, or any harvesting, planting, or plowing machinery, or any moving machinery.

Florida law further prohibits the employment of minors under 18 years of age, whether such person's disabilities of nonage have been removed by marriage or otherwise, from being employed or permitted or suffered to work in any place of employment or at any occupation hazardous or injurious to the life, health, safety, or welfare of such minor, as such places of employment or occupations may be determined and declared by the department to be hazardous and injurious.⁵⁵

These prohibitions do not apply to minors employed in the entertainment industry.⁵⁶

Effect of the Bill

CS/HB 1379 creates s. 787.30, F.S., to prohibit an owner, manager, employee, or contractor of an adult entertainment establishment from knowingly employing, contracting with, contracting with another person to employ, or otherwise permitting a person under the age of 21 years to perform or work in an adult entertainment establishment. A violation of this prohibition is a first-degree misdemeanor.

The bill also prohibits an owner, manager, employee, or contractor of an adult entertainment establishment from knowingly employing, contracting with, contracting with another person to employ, or otherwise permitting a person under the age of 21 years to perform or work *while nude* in an adult entertainment establishment. A violation of this prohibition is a second-degree felony.

The bill requires an owner, manager, employee, or contractor of an adult entertainment establishment who employs a person to perform as an entertainer or work in any capacity in an adult entertainment establishment to carefully check a driver license, identification card, passport, or United States Uniformed Services identification card presented by the person and to act in good faith and reliance upon such a representation and the appearance of the person in determining that he or she is 21 years of age or older.

The bill also amends s. 562.13, F.S., to prohibit a minor who may otherwise meet an exception to work for an alcohol vendor from being employed by an adult entertainment establishment, as defined in s. 847.001, F.S.

The bill defines "adult entertainment establishment" as it is defined in s. 847.001, F.S.

The bill defines "nude" as 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 the covered male genitals in a discernibly turgid state. A mother's breastfeeding of her baby does not under any circumstance constitute nudity, regardless of whether or not the nipple is covered during or incidental to feeding.

The bill makes the following findings:

- Florida is ranked third nationally for reported cases of human trafficking abuses, many of which involved sex trafficking;
- Adult entertainment establishments are widely recognized as being a significant part of the sex trafficking network used by traffickers to coerce and facilitate men, women, and children into performing sexual acts, which places the employees of these establishments in direct and frequent contact with the victims of human trafficking;

⁵⁵ S. 450.061(3), F.S.

⁵⁶ S. 450.061(4), F.S.

- Victims of sex trafficking are frequently recruited to work as performers or employees in adult entertainment establishments;
- Researchers have found that sex trafficking victims are more likely to be trafficked by someone from within her or his own community;
- Persons younger than 21 years of age are more likely to still remain within and dependent on the community in which they were raised;
- Research studies have identified the average age at which a person in the United States enters the sex trade for the first time is age 17;
- Sex trade at adult entertainment establishments is a common occurrence in Florida, thereby subjecting performers at these establishments to frequent propositions and enticements to engage in sex trade actions and sex trafficking from customers, as well as strip club employees, managers, and owners;
- An understanding of history and human nature reveals that there are sex criminals of various kinds who will prey on the young and vulnerable;
- Restricting the employment of persons younger than 21 years of age at adult entertainment establishments furthers an important state interest of protecting those vulnerable individuals from sex trafficking, drug abuse, and other harm;
- Many court opinions recognize that while expressive activities are entitled to some First Amendment protections at adult entertainment establishments, content neutral restrictions or regulations intended to minimize the secondary harmful effects of those businesses tend to be upheld;
- On November 16, 2018, the federal Fifth Circuit Court of Appeals, in the case of *Jane Doe I v. Landry*, 909 F.3d 99 (5th Cir. 2018), 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;
- The federal district court in *Valadez v. Paxton*, 553 F.Supp.3d 387 (W.D. Tex. 2021), denied a motion for a preliminary injunction against the enforcement of Texas Senate Bill 315 prohibiting "all working relationships between 18-20-year-olds and sexually-oriented businesses" because the plaintiffs failed to show that the age restrictions were not rationally related to the state's interest in curbing human trafficking;
- The federal district court in *DC Operating, LLC v. Paxton*, 586 F.Supp.3d 554 (W.D. Tex. 2022), denied a motion for a preliminary injunction against Texas Senate Bill 315, at least in part, because of the state's evidence of the correlation between raising the minimum employment age and reducing human trafficking; and
- The federal district court in *Wacko's Too, Inc., v. City of Jacksonville*, 658 F.Supp.3d 1086 (M.D. Fla. 2023), 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 there was a reasonable basis to believe that the age restrictions would further the city's interest in preventing human and sex trafficking.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 562.13, F.S.; relating to employment of minors or certain other persons by certain vendors prohibited; exceptions.
- Section 2:** Creates s. 787.30, F.S.; relating to employing persons under the age of 21 years in adult entertainment establishments prohibited.
- Section 3:** Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:
See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on adult entertainment establishments which the bill prohibits from employing any person younger than 21 years of age to work in such establishment to the extent that costs are incurred in replacing current employees who are under 21 years of age or in hiring new employees who are 21 years of age or older.

D. FISCAL COMMENTS:

The bill may have a positive impact on jail and prison beds by creating a new misdemeanor and a new felony offense prohibiting a person from knowingly employing a person younger than 21 years of age in any adult entertainment establishment, which may result in increased jail and prison admissions.

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:

The First Amendment of the United States Constitution provides that "Congress shall make no law ... abridging the freedom of speech."⁵⁷ The rights guaranteed by the First Amendment apply with equal force to state governments through the due process clause of the Fourteenth Amendment.

"The Supreme Court has [] reaffirmed that nude dancing . . . is expressive conduct that falls within the outer ambit of the First Amendment."⁵⁸

The Supreme Court has identified a third category of regulation of expressive conduct. These regulations define the regulated conduct by its expressive content, and, to this extent, they are content-based. Their purpose, however, is not to ban the expressive conduct, but merely to establish restrictions on the time, place, and manner of its presentation. Although content-based, such a regulation will be treated as if it were content-neutral if it serves a substantial government purpose that is unrelated to the suppression of the expressive conduct. In the context of adult entertainment, the [Supreme] Court held

⁵⁷ U.S. Const., amend I.

⁵⁸ *Fly Fish, Inc. v. City of Cocoa Beach*, 337 F.3d 1301, 1305 (11th Cir. 2003).

that this purpose can be located in combating the harmful secondary effects of that conduct on the surrounding community.⁵⁹

“Harmful secondary effects can include the impacts on public health, safety, and welfare. Attempting to curtail human and sex trafficking constitutes a substantial government interest.”⁶⁰

Regulations that target undesirable secondary effects of protected expression deemed content-neutral are reviewed with an intermediate level of scrutiny known as the *O'Brien* test.⁶¹ “A law is valid under *O'Brien* if the law is grounded in a substantial governmental interest, and the incidental restriction on speech is no broader than necessary to further that interest.”⁶² “In *Ward*,⁶³ the Supreme Court explained that narrow tailoring is satisfied if the regulation of time, place, or manner of protected speech promotes a substantial government interest that would be achieved less effectively absent the regulation.”

3. RULE-MAKING AUTHORITY:

None.

4. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 7, 2024, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Restored 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 the purpose of adult entertainment; and specified that such a minor is also prohibited from being employed at an adult entertainment establishment.
- Created separate penalties for employing a person under the age of 21 to work in an adult entertainment establishment based on whether such a person is employed to perform or work nude, including:
 - A first-degree misdemeanor for employing, contracting with, contracting with another person to employ, or otherwise permitting a person under the age of 21 to perform or work in an adult entertainment establishment; and
 - A second-degree felony for employing, contracting with, contracting with another person to employ, or otherwise permitting a person under the age of 21 to perform or work *while nude* in such an establishment.
- Required an owner, manager, employee, or contractor of an adult entertainment establishment who employs a person to perform as an entertainer or work in any capacity in an adult entertainment establishment to carefully check a driver license, identification card, passport, or United States Uniformed Services identification card presented by the person and to act in good faith and reliance upon such a representation and the appearance of the person in determining that he or she is 21 years of age or older.
- Provided definitions.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.

⁵⁹ *Wacko's Too Inc.*, 658 F.Supp.3d at 1102.

⁶⁰ *Wacko's Too Inc.*, 658 F.Supp.3d at 1103-1104.

⁶¹ *Artistic Ent., Inc. v. City of Warner Robins*, 223 F.3d 1306, 1308–1309 (11th Cir. 2000).

⁶² *Wacko's Too Inc.*, 658 F.Supp.3d at 1103.

⁶³ 491 U.S. 781 (1989).