

The SunDial



Special Edition – Florida Legislature 2007 Session Report – April 25, 2007

Starting at the beginning of April this year, SFFB began circulating information on several Florida legislative bills of concern, requesting that Florida residents write in opposition.

While the FL legislative session will not end till May 4th, we can report that we believe the bills are now effectively dead. Therefore we are publishing this preliminary report to keep you informed.

A final report will be published online at the end of session in May at www.sffb.com, and will be included either in the next regular issue of the *SunDial*, or as a supplement.

Summary of Legislation:

This year's Florida regular legislative session featured three groups of bills attempting to alter the definition, intent, and/or penalties relating to Florida Statute 800.03: *Exposure of the sexual organs*, a misdemeanor with a maximum one-year sentence.

- House Bill 41 / Senate Bill 2544, a repeat sexual offender bill, in its final wording approved by the House, lumped 800.03 with violent offences like rape, child molestation, and sexual assault, for which second and third convictions would result in mandatory escalating felony sentences. (In amending this bill in committee in the House, the original 51-line text had grown to 145 lines!)
- SB 1800 permitted warrantless arrests under FS 800.03.
- HB 269, perhaps most troubling, altered the very text of 800.03, and called for a mandatory second-degree felony penalty for a first-time conviction under FS 800.03, if the offence occurred within 1,000 feet of a list of locations, including a day care facility, a school, a public park, a public beach, or a public recreational facility. (One may here note that 800.04 has already for many years made lewd exhibition a second-degree felony if minors are present.)

There were two companion Senate bills to HB 269: SB 1842 and SB 2058, not identical to each other, and also differing from the House version. The wording in SB 1842 removed *beaches* from the list; SB 2058 removed *parks, beaches and recreational facilities*, adding *community centers* and *public playgrounds*; the latter was thought by some naturist interests to offer a pragmatic solution to our issue. However, ultimately one could not judge in advance what locations would remain in any final list produced in a House-Senate conference, and SB 2058 still established the troubling precedent of a felony penalty for a non-violent offence.

We first became aware of HB 269 when it was spotted by Ramon Maury, SFFB/FNA's legislative lobbyist, and the first Naturist Action Committee (NAC) online advisory was issued 1/21/07, as well as an alert on the SFFB website. A discussion of the legislation also shortly appeared in the American Association for Nude Recreation's *The Bulletin*.

Our Concerns with the Legislation:

Why the concern from all naturist interests? Established case law on 800.03 dictated that mere nudity was not the offence covered in 800.03, but conviction required both lewd action and intent. Here's why:

Changes in committee: HB 41, in its original wording, did not reference FS 800.03, and we would not have opposed the original text that escalated penalties for violent sexual offences; however, the House committee added 800.03 to the list of offences, and this caused concern. Committee changes to HB 269 might be even more troubling, possibly altering the definition of the offence to include mere nudity.

Case law invalidation: Case law is tenuous, and even a small change in the text of a law opens it up to reinterpretation by the courts. HB 269 altered the text of 800.03, and while the original draft did not seem likely to result in a challenge to existing case law, you never know what alteration might be made in committee at the last moment, before a floor vote – as witness the extensive committee changes to HB 41. This consideration applied specifically to HB 269/SB 1842/SB 2058.

Misapplication: Innocent skinny-dippers are still today sometimes arrested under 800.03, because police officers sometimes interpret a statute's text subjectively, and without knowing the case law precedent. (Practically, it is hardly to be expected that police officers will have a full knowledge of all case law.) Prosecutors will sometimes charge without examining, or in defiance of, this precedent. A few of these arrests have led to a conviction, due to inadequate defense, while more often those so charged have pled guilty to 800.03 or a lesser offence. Making 800.03 a felony would thus have a chilling effect on naturists. This consideration applied to all the bills. Obviously, SB 1800 would have made any misapplication even easier, and was also opposed on Constitutional grounds.

Scaling of penalties: Even if the necessary components of lewd intent and action are present, 800.03 is a non-violent crime, and often a crime instigated by drunkenness or party behavior. It made no sense to us that a first offence, or even a second one, required a felony penalty of many years in prison, at considerable cost to taxpayers. Penalties need to be scaled to the seriousness of the offence. As noted, we already had 800.04 to protect children, and other statutes provided for felony penalties for crimes of sexual assault against adults. This consideration applied to all the bills except SB 1800.

A Worst-Case Scenario:

Thus, the following scenario, if these laws were passed: Someone might walk past your backyard hedge and see you briefly through a gap. The passerby sees you standing up nude, touching your genitals. (You are actually applying sunscreen prior to sunbathing.) He might tell a cop that he saw you performing a lewd exhibition. *That officer could enter your yard on this report, find you lying out on your back nude, and arrest you.* Your back yard is 900 feet from a school; *you can be charged with felony 800.03.* Fifteen years ago, you had pled guilty to 800.03 when a sheriff's deputy charged you with the offence for skinny-dipping in a river while you were camping in the woods. *You can also be charged with an additional felony as a repeat sex crime offender.*

The italicized text shows just how much more serious the situation would have become with the proposed new laws. Even if you were eventually acquitted, you would likely have hired a lawyer at some expense, and the state (the taxpayers) would incur the expense of prosecution. Needless to say, this is even without contemplating additional committee amendments to 800.03 that might have changed case law to make mere nudity a sufficient condition for conviction, a situation that could have ended naturism in Florida and closed Haulover's naturist beach.

SFFB Action Plan:

Working with our professional lobbyist, Ramon Maury, and the Naturist Action Committee (NAC), The Naturist Society's political action adjunct, particularly Board Member Morley Schloss (also an owner of Sunsport Gardens Naturist Resort) and Executive Director Bob Morton, and members of a number of other concerned groups like Tampa Area Naturists and Central Florida Naturists, SFFB/FNA sought to counter the passage of these bills.

After two prior alerts on the situation, with the passage of HB 41 in the House, the Naturist Action Committee issued an online call for naturists in Florida to write the Senate Criminal Justice Committee members in opposition to the bills, and SFFB printed 5,000 copies of this request for circulation at Haulover Beach.

SFFB concurred with NAC that our attention needed to focus on the Senate, where the four Senate bills had been referred to the Criminal Justice Committee, but not yet acted upon, prior to the Easter/Passover holiday recess. We decided we needed to oppose all the bills, except we could accept HB 41 / SB 2544 if it was restored to its original version that dealt with violent sexual offences and offences involving minor victims, omitting the added references to 800.02 and 800.03. We did not believe in any way that this position was inconsistent with true family-values legislation, since we were not opposing felony penalties for violent sexual offences or offences committed against children; rather, our position was protective of the rights of those families that chose to practice wholesome naturist recreation. Letters addressed to 23 Senators detailing our position and arguments along these lines were forwarded to our lobbyist for hand delivery in Tallahassee.

An informal discussion was held at Lake Como Resort on 4/13/07 between AANR Government Affairs team members Patricia Orner and Debra Hedding, NAC area representatives and Tampa Area Naturist (TAN) members Ken Kushman and Rich Pasco, and Michael Kush of SFFB/FNA. In this discussion the AANR representatives revealed that while there were two tactical differences of opinion – AANR had not yet reached a decision to call for member letters to the legislators, and it had decided on support of SB 2058 as a fall-back position if there was strong movement on SB 1842 – AANR was also working in opposition to all the bills as its prime objective.

Current Status:

As earlier noted, HB 41 had already passed the House. Criminal Justice Committee Chair Nancy Argenziano notified companion bill SB 2544 sponsor Senator Ronda Storms that her bill would be considered, but in an amended form proposed by Senator Stephen Wise, replacing a 90-line block of quite intricate conditionals with two concise lines, essentially restoring the intent of the original House version, and deleting all references to FS 800.02 and 800.03 – precisely addressing the concerns expressed by SFFB and NAC. The revised language was adopted by the committee by a vote of 8 to 1 on April 23rd. The bill has now moved to the Judiciary Committee.

SB 2058, SB 1842 and SB 1800 do not seem likely at this point to receive consideration by the CJ committee.

Comments from Senators and staffers indicate a significant number of letters, emails and phone calls from naturists were of influence in amending SB 2544, and not moving the other bills forward.

Our Thanks to other Naturist Organizations & Individuals:

SFFB/FNA would like to thank the officials and members of all organizations that have been working against the passage, or for the amendment, of these bills, as well as those individuals who sent letters to the Senate Criminal Justice Committee members.

Because of a greatly increased workload, SFFB/FNA is increasing the payment to our lobbyist this year, the cost of whose services is in any case far less than the value of his expertise and commitment. We would like to thank the Naturist Action Committee for voting to contribute \$1,000 this year toward the payment of our lobbyist.

Preparing for Next Year's Legislative Session:

The same legislators will return to Tallahassee in the next session, when there is a possibility of legislation similar to the bills that did not leave the committee process this year being introduced again.

Contributions to the SFFB/FNA Legal Defense/Political Action Fund toward our current and future legislative lobbying costs may be made online at www.sffb.com/sponsors or by mail to: SFFB/FNA, PO Box 530306, Miami Shores, FL 33153. Checks should be made payable to *SFFB/FNA LDPA Fund*.

The Naturist Action Committee is the political adjunct organization of The Naturist Society. To make a contribution to NAC, go to www.naturistaction.org

A Special Message from Richard Mason, President, SFFB/FNA

The bills introduced this year in the Florida legislature were a surprise, but they didn't take us by surprise.

That's because since 1994 SFFB/FNA has employed a professional legislative lobbyist to watch out for naturist interests in Florida. That's when then Representative Randy Ball first attempted to introduce legislation making mere nudity illegal. He failed, that year, but tried again for many years running.

Additionally, I and other members of the SFFB/FNA Government Affairs Committee annually meet with many Florida legislators to discuss our issues, making friends willing to aid us behind the scenes when problems arise.

Our conditional announcement of success this year does not guarantee similar attempts will not be made next year, or in the future. .

Please help us to support your right to wholesome naturist recreation by contributing to the SFFB/FNA Legal Defense / Political Action Fund. Use the form below, or go online to: www.sffb.com/sponsors

Richard Mason

SFFB/FNA LEGAL DEFENSE/POLITICAL ACTION FUND CONTRIBUTION FORM

Yes, I would like to contribute \$ _____ to the SFFB/FNA Legal Defense/Political Action Fund to support SFFB/FNA's professional legislative lobbyist and other legislative programs to protect Haulover Beach and naturist recreation in Florida.

Name(s): _____ Date: _____

Address: _____ Email: _____

City/State/Zip: _____ Phone: _____

Check enclosed Visa MasterCard Discover American Express

Card number: _____ Expiration Date: ____/____

Signature: _____ Billing address zip code _____
If other than above

Make checks payable to: SFFB/FNA LDPA Fund

Mail to: SFFB/FNA, PO Box 530306, Miami Shores, FL 33153-0306