ENROLLED HOUSE
BILL NO. 1048

By: Perry, Graves, O'Neal, Worthen, Cox, Breckinridge, Coleman, Cozort, Davis, Greenwood, Hastings, Kirby, Maddux, Reese, Sullivan (John), Thornbrugh and Vaughn of the House

and

Monson of the Senate

An Act relating to crimes and punishments; amending Sections 1, 2 and 3, Chapter 7, O.S.L. 1992 (21 O.S. Supp. 1994, Sections 1040.75, 1040.76 and 1040.77), which relate to materials harmful to minors; modifying and adding certain definitions; expanding category of persons prohibited from doing certain acts; clarifying penalties; prohibiting certain acts relating to minors and information obtained for certain purposes; providing penalties; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 1, Chapter 7, O.S.L. 1992 (21 O.S. Supp. 1994, Section 1040.75), is amended to read as follows:

Section 1040.75 As used in Sections ~~1~~ 1040.75 through ~~3~~ 1040.77 of this ~~act~~ title:

1. "Minor" means any unmarried person under the age of eighteen (18) years;

2. "Harmful to minors" means that quality of any description, exhibition, presentation or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when the material or performance, taken as a whole, has the following characteristics:

a. the average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest in sex to minors, and

b. the average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance depicts or describes nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult

community with respect to what is suitable for minors, and

c. the material or performance lacks serious literary, scientific, medical, artistic, or political value for minors;

3. "Nudity" means the:

a. showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering~~;~~,

b. showing of the female breast with less than a full opaque covering of any portion of the female breast below the top of the nipple~~;~~, or

c. depiction of covered male genitals in a discernibly turgid state;

4. "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person be a female, breast;

5. "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal;

6. "Sadomasochistic abuse" means flagellation or torture by or upon a person clothed or naked or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed or naked;

7. "Material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape, CD-ROM disk, Magnetic Disk Memory, Magnetic Tape Memory, or video tape;

8. "CD-ROM" means a compact disk with read only memory which has the capacity to store audio, video and written materials and may be used by computer to play or display materials harmful to minors;

9. "Magnetic Disk Memory" means a memory system that stores and retrieves binary data on record-like metal or plastic disks coated with a magnetic material, including but not limited to floppy diskettes;

10. "Magnetic Tape Memory" means a memory system that stores and retrieves binary data on magnetic recording tape;

11. "Performance" means any motion picture, film, video tape, played record, phonograph or tape, preview, trailer, play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, with or without consideration;

~~9.~~ 12. "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

a. the character and content of any material or performance which is reasonably susceptible of examination by the defendant, and

b. the age of the minor. However, an honest mistake, shall constitute an excuse from liability pursuant to this act if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor;

~~10.~~ 13. "Person" means any individual, partnership, association, corporation, or other legal entity of any kind; and

~~11.~~ 14. "A reasonable bona fide attempt" means an attempt to ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate or other governmental or educational identification card or paper and not relying solely on the oral allegations or apparent age of the minor.

SECTION 2. AMENDATORY Section 2, Chapter 7, O.S.L. 1992 (21 O.S. Supp. 1994, Section 1040.76), is amended to read as follows:

Section 1040.76 No person, including but not limited to any persons having custody, control or supervision of any commercial establishment, shall knowingly:

1. Display material which is harmful to minors in such a way that minors, as a part of the invited general public, will be exposed to view such material. Provided, however, a person shall be deemed not to have "displayed" material harmful to minors if the material is kept behind devices commonly known as "blinder racks" so that the lower two-thirds (2/3) of the material is not exposed to view;

2. Sell, furnish, present, distribute, allow to view, or otherwise disseminate to a minor, with or without consideration, any material which is harmful to minors; or

3. Present to a minor or participate in presenting to a minor, with or without consideration, any performance which is harmful to a minor.

SECTION 3. AMENDATORY Section 3, Chapter 7, O.S.L. 1992 (21 O.S. Supp. 1994, Section 1040.77), is amended to read as follows:

Section 1040.77 Any person convicted of violating any provision of Section ~~2~~ 1040.76 of this ~~act~~ title shall be guilty of a misdemeanor and shall be fined a sum not exceeding One Hundred Dollars ($100.00). Each day that any violation of Section ~~2~~ 1040.76 of this ~~act~~ title occurs or continues shall constitute a separate offense and shall be punishable as a separate violation. Every act or transaction prohibited by Section ~~2~~ 1040.76 of this ~~act~~ title shall constitute a separate offense as to each item, issue or title involved and shall be punishable as such. For the purpose of this section, multiple copies of the same identical title, monthly issue, volume and number issue or other such identical material as prohibited by Section 1040.76 of this title shall constitute a single offense.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1040.13a of Title 21, unless there is created a duplication in numbering, reads as follows:

A person is guilty of violating the provisions of this section if, for the purposes of facilitating, encouraging, offering or soliciting sexual conduct with any minor, the person knowingly transmits by means of computer, or prints, publishes or reproduces by other computerized means, or buys, sells, receives, exchanges, or disseminates, any notice, statement, or advertisement of any minor's name, telephone number, place of residence, physical characteristics or other descriptive or identifying information.

Any violation of the provisions of this section shall be a misdemeanor, punishable by the imposition of a fine not to exceed One Thousand Dollars ($1,000.00), or by imprisonment in the county jail not to exceed one (1) year, or by both such fine and imprisonment.

SECTION 5. This act shall become effective July 1, 1995.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 15th day of March, 1995.

Speaker of the House of Representatives

Passed the Senate the 5th day of April, 1995.

President of the Senate