

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

HOUSE BILL NO. 1048

By: Perry

AS INTRODUCED

An Act relating to crimes and punishments; amending 21 O.S. 1991, Sections 1040.8 and 1040.13, and Sections 1 and 3, Chapter 7, O.S.L. 1992 (21 O.S. Supp. 1994, Sections 1040.75 and 1040.77), which relate to pornographic materials and materials harmful to minors; prohibiting computer materials, computer networks and electronic bulletin boards containing material which is pornographic or material harmful to minors; modifying certain definitions; prohibiting certain defenses; 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 21 O.S. 1991, Section 1040.8, is amended to read as follows:

Section 1040.8 No person shall knowingly photograph, act in, pose for, model for, print, sell, offer for sale, give away, exhibit, publish, offer to publish, or otherwise distribute, display, or exhibit any book, magazine, story, pamphlet, paper, writing, card, advertisement, circular, print, picture, photograph,

motion picture film, computer network, electronic bulletin board, computer software, computer disk, or any other computer material, electronic video game or recording, image, cast, slide, figure, instrument, statue, drawing, presentation, or other article which is obscene, filthy, indecent, lascivious, lewd, or unfit, as defined in Section 1040.12 of this title.

In the case of any unsolicited mailing of any of the material listed in this section, the offense is deemed complete from the time such material is deposited in any post office or delivered to any person with intent that it shall be forwarded. The party mailing such material may be indicted and tried in any county wherein such material is deposited or delivered, or in which it is received by the person to whom it is addressed.

In the case of any solicited or unsolicited sending or transmitting of, or giving of or otherwise providing access by computer network or electronic bulletin boards to any of the material listed in this section, the offense is deemed complete from the time such material is accessed by any person. The party sending, transmitting, or giving or otherwise providing access by computer networking or electronic bulletin boards to any person may be indicted and tried in any county wherein such material is sent, transmitted, or accessed.

Any person who violates any provision of this section, upon conviction, shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than one (1) year or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 1040.13, is amended to read as follows:

Section 1040.13 Every person who, with knowledge of its contents, sends, transmits, brings, or causes to be sent, transmitted or brought into this state for sale or commercial

distribution, or in this state prepares, sells, exhibits, commercially distributes, gives access to, gives away, offers to give away, or has in his possession with intent to sell, to commercially distribute, to give access to, to exhibit, to give away, or to offer to give away any obscene, lewd, lascivious, filthy, or indecent computer network, electronic bulletin board, computer software, computer disk, or any other computer material, electronic video game, printed or written matter or material or other article, or any article of obscene, lewd, lascivious, filthy, or indecent character or for indecent or immoral use, or any mailable or transmittable matter made subject to this section by virtue of the provisions of Section 1040.21 of this title or gives information stating when, where, how, or from whom, or by what means any of these things can be accessed, purchased or obtained, upon conviction, is guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than one (1) year or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine.

SECTION 3. 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 ~~±~~ 1040.75 through ~~∓~~ 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, 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, computer network, electronic bulletin board, computer software, computer disk and other computer material, or video tape;

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

11. "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 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1040.76a of Title 21, unless there is created a duplication in numbering, reads as follows:

No person shall send, transmit or give or otherwise provide access by computer network or electronic bulletin boards to any minor of any material which is harmful to minors.

In the case of any solicited or unsolicited sending or transmitting of, or giving or otherwise providing access by computer networking or electronic bulletin boards to any of the materials which are harmful to minors, the offense is deemed complete from the time such material is accessed by any minor. The party sending, transmitting, or giving or otherwise providing access by computer network or computer bulletin boards to any minor may be indicted and tried in any county wherein such material is sent, transmitted, or accessed.

The person sending or transmitting such material pursuant to this section shall be responsible for verifying that the person accessing such material is not a minor. It is no defense that the person sending or transmitting such material is not aware that the person accessing such material is a minor.

SECTION 5. 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 title or Section 4 of this act 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 title or Section 4 of this act 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 title or Section 4 of this act shall constitute a separate offense as to each transmission, 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 6. This act shall become effective July 1, 1995.

SECTION 7. 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.

45-1-5008

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