ENGROSSED HOUSE AMENDMENT
TO
ENGROSSED SENATE BILL NO. 755

By: Pruitt, Gumm, Brogdon, Aldridge, Reynolds, Branan, Myers and Coates of the Senate

and

Smith (Hopper) of the House

An Act relating to crimes and punishments; requiring internet service providers to remove child pornography items from services when discovered; setting time for certain removal of certain items; * * * defining terms; providing for codification; and declaring an emergency.

AUTHORS: Add the following House Coauthors: Vaughn, Davis, Maddux, Dank and Greenwood

AMENDMENT NO. 1. Strike the title, enacting clause and entire bill and insert

"An Act relating to crimes and punishments; defining terms; requiring Attorney General to contact interactive service provider; requiring interactive service providers to remove child pornography items from services when contacted by Attorney General; setting time for certain removal of certain items; providing for application for certain order to remove certain items; stating contents of application; providing for notification of issuance of order; specifying information to be in certain notification; providing for hearing; providing no duty for interactive service providers to monitor service; providing for penalties; authorizing jurisdiction of Attorney General; providing for removal of evidence without interference with business; authorizing ex parte orders; providing for contents of ex parte application; providing for contents of ex parte order; providing for relief from order by interactive service provider; making certain actions involving burning a cross unlawful; specifying penalties; providing for codification; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1040.80 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. As used in this section, the term:

1. "Interactive computer service provider" means any provider to the public of computer access via the Internet to a computer server or similar device used for the storage of graphic, video or images;

2. "Internet" means the international computer network of both federal and nonfederal interoperable packet-switched data networks;

3. "Controlled or owned by" with respect to a server or other storage device means a server or other such device that is entirely owned by the interactive computer service provider or is subject to exclusive management by the interactive computer service provider by agreement or otherwise; and

4. "Child pornography" means explicit child pornography as defined in Section 1024.1 of Title 21 of the Oklahoma Statutes.

B. The Attorney General or a law enforcement officer who receives information that an item of alleged child pornography resides on a server or other storage device controlled or owned by an interactive computer service provider shall:

1. Contact the interactive computer service provider that controls or owns the server or other storage device where the item of alleged child pornography is located;

2. Inform the interactive computer service provider of the provisions of this section; and

3. Request that the interactive computer service provider voluntarily comply with this section and remove the item of alleged child pornography from its server or other storage device expeditiously.

C. 1. If an interactive computer service does not voluntarily remove the item of alleged child pornography in a timely manner, the

Attorney General or law enforcement officer shall apply for a court order of authorization to remove the item of alleged child pornography under this section. The obligation to remove the item of alleged child pornography shall not apply to the transmitting or routing of, or the intermediate, temporary storage or caching of an image, information or data that is otherwise subject to this section.

2. The application for a court order shall include:

a. the authority of the applicant to make such an application,

b. the identity and qualifications of the investigative or law enforcement officer or agency that, in the official scope of that officer's duties or agency's authority, discovered the images, information, or data,

c. a particular statement of the facts relied upon by the applicant, including:

(1) the identity of the interactive computer service,

(2) identification of the item of alleged child pornography discovered on the server or other storage device controlled or owned by an interactive computer service provider,

(3) the particular images, information, or data to be removed or to which access is to be disabled identified by uniform resource locator (URL) or Internet protocol (IP) address, a statement certifying that such content resides on a server or storage device controlled or owned by such interactive computer service provider, and

(4) the steps taken to obtain voluntary compliance by such interactive computer service provider with

the requirements of this act prior to filing the application,

d. such additional testimony and documentary evidence in support of the application as the judge may require, and

e. a showing that there is probable cause to believe that the child pornography items constitutes a violation of this section.

D. The Attorney General shall notify the interactive computer service provider which is identified in the court's order in accordance with the provisions of this section. The Attorney General shall notify an interactive computer service provider upon the issuance of an order authorizing the removal of the items of alleged child pornography.

1. The notice by the Attorney General shall include:

a. a copy of the application made pursuant to subsection C of this section,

b. a copy of the court order issued pursuant to subsection K of this section,

c. notification that the interactive computer service shall remove the item of alleged child pornography contained in the order which resides on a server or other storage device controlled or owned by such interactive service provider and which are accessible to persons located within this state expeditiously after receipt of the notification,

d. notification of the criminal penalties for failure to remove the item of child pornography,

e. notification of the right to appeal the court's order, and

f. contact information for the Attorney General's Office.

2. An interactive computer service may designate an agent within the state to receive notification pursuant to this section.

E. The interactive computer service provider has the right to request a hearing before the court imposes any penalty under this section.

F. Nothing in this section may be construed as imposing a duty on an interactive computer service provider to actively monitor its service or affirmatively seek evidence of illegal activity on its service.

G. Notwithstanding any other provision of law to the contrary, any interactive computer service provider that intentionally violates subsection L of this section commits:

1. A misdemeanor for a first offense punishable by a fine of One Thousand Dollars ($1,000.00);

2. A misdemeanor of a high and aggravated nature for a second offense punishable by a fine of Five Thousand Dollars ($5,000.00); and

3. A felony for a third or subsequent offense punishable by a fine of Thirty Thousand Dollars ($30,000.00) and imprisonment for a maximum of five (5) years.

H. The Attorney General shall have concurrent prosecutorial jurisdiction with a district attorney for violation of this section.

I. The removal of the alleged item of child pornography which resides on a server or other storage device, shall not, to the extent possible, interfere with any request of a law enforcement agency to preserve records or other evidence, which may be kept by the interactive computer service provider in the normal course of business.

J. Upon consideration of an application for authorization to remove the item of alleged child pornography that resides on a server or other storage device controlled or owned by an interactive computer service provider as set forth in subsection C of this

section, the judge may enter an ex parte order, as requested or as modified, authorizing the removal of the item of alleged child pornography, if the court determines on the basis of the facts submitted by the applicant that there is or was probable cause for belief that:

1. The item of alleged child pornography constitutes evidence of an act in violation of this section;

2. The investigative or law enforcement officer or agency acted within the official scope of that officer's duties or agency's authority, in discovering the images, information, or data and has complied with the requirements of subsection I and subsection K of this section;

3. An item of alleged child pornography resides on the server or other storage device controlled or owned by the interactive computer service provider and is accessible to persons located in the state; and

4. In the case of an application, other than a renewal or extension, for an order removing the item of alleged child pornography which was the subject of a previous order authorizing the removal or disabling of access, the application is based upon new evidence or information different from and in addition to the evidence or information offered to support the prior order.

K. Each order authorizing the removal or disabling of access to an alleged item of child pornography shall contain:

1. The name of the judge authorized to issue the order;

2. A particular description of the images, information, or data to be removed or access to such disabled, identified by a URL or IP address, and a statement of the particular violation of the section to which the images, information, or data relate;

3. The identity of the investigative or law enforcement officer or agency who discovered the images, information, or data and the identity of whoever authorized the application; and

4. Such additional information or instruction as the court deems necessary to execute the order.

L. The court shall review the application and testimony, if offered, and, upon a finding of probable cause, issue an order that:

1. An item of child pornography resides on a server or other storage device controlled by the interactive computer service provider and is accessible to persons located in the state;

2. The interactive computer service provider shall remove the item residing on a server or other storage device controlled or owned by the interactive computer service provider expeditiously after receiving the order, if practical;

3. The order shall specify that removal of any item covered by the order shall be accomplished in a fashion that prevents or minimizes the removal of, or restriction of access to, images, information, or data that are not subject to the order;

4. Failure of the interactive computer service provider to comply with the court's order is a violation of this section;

5. The removal of the item on the server or other storage device controlled or owned by the interactive computer service provider may not unreasonably interfere with a request by a law enforcement agency to preserve records for a reasonable period and in accordance with law; and

6. Provides the interactive computer service provider notice and opportunity for a hearing before the court imposes any penalty under this subsection.

M. An interactive computer service provider who is served with a court order under subsection L of this section shall remove the item of child pornography that is the subject of the order expeditiously after receiving the court order, if practicable.

N. 1. An interactive service provider may petition the court for relief for cause from an order issued under subsection L of this section.

2. The petition may be based on considerations of:

a. the cost or technical feasibility of compliance with the order, or

b. the inability of the interactive computer service provider to comply with the order without also removing data, images or information that are not subject to this section.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1174 of Title 21, unless there is created a duplication in numbering, reads as follows:

It shall be unlawful for any person or persons, with the intent of intimidating any person or group of persons, to burn, or cause to be burned, a cross on the property of another, a highway or other public place. Any person who shall violate any provision of this section shall be guilty of a felony.

SECTION 3. 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 22nd day of April, 2003.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2003.

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Presiding Officer of the Senate