

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 755

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

and

Smith (Hopper) of the
House

COMMITTEE SUBSTITUTE

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; construing duty to remove certain items; stating misdemeanor penalties; providing for application for certain order to remove certain items; stating contents of application; authorizing ex parte orders; authorizing removal of certain items upon probable cause evidence; providing for notification; stating time period for certain notification; specifying information to be in certain notification; allowing designation of service agent for certain purpose; requiring an annual report; allowing certain recommendations by Attorney General; defining terms; 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. An Internet provider shall remove or disable access to child pornography items residing on or accessible through its service in a manner accessible to persons located within this state within five (5) business days of when the Internet service provider is notified by the Attorney General pursuant to this section that child pornography items reside on or are accessible through its service or when discovered by the Internet service provider.

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

C. Notwithstanding any other provision of law to the contrary, any Internet service provider who violates subsection A of this section shall, upon conviction, be guilty of a misdemeanor punishable by a fine of up to Five Thousand Dollars (\$5,000.00) for a first offense, and up to Ten Thousand Dollars (\$10,000.00) for a second or subsequent offense.

D. An application for an order of authorization to remove or disable items residing on or accessible through an Internet service provider's service shall be made to the court having jurisdiction in writing upon the personal oath of affirmation of the Attorney General or the district attorney of the county wherein the items have been discovered, and if available, shall contain the following information:

1. A statement of the authority of the applicant to make the application;

2. A statement of the identity of the investigative or law enforcement officer that has, in the official scope of that officer's duties, discovered the child pornography items;

3. A statement by the investigative or law enforcement officer who has knowledge of relevant information justifying the application;

4. The uniform resource locator providing access to the prohibited items;

5. The identity of the Internet service provider used by the law enforcement officer;

6. A showing that there is probable cause to believe that the prohibited items constitute a violation of this section;

7. A proposed order of authorization for consideration by the judge;

8. Contact information for the Office of the Attorney General including the name, address, and telephone number of any deputy, assistant attorney general, or agent authorized by the Attorney General to submit notification; and

9. Such additional testimony or documentary evidence in support of the application as the judge may require.

E. Upon consideration of an application, the court may enter an order, including an ex parte order, as required, advising the Attorney General or a district attorney that such items constitute probable cause evidence of a violation of this section, and that such items shall be removed or disabled from the Internet service provider's service. The court may include such other information as the court deems relevant and necessary.

F. 1. The Attorney General shall have exclusive jurisdiction to notify Internet service providers under this section. The Attorney General shall initiate notification pursuant to this section if requested in writing by a district attorney who has provided the Attorney General with a copy of the application made pursuant to subsection D of this section and a copy of the order issued pursuant to subsection E of this section, or upon the issuance of an order based upon an application filed by the Attorney General.

2. For purposes of this subsection, an Internet service provider or the person designated by the Internet service provider as provided for in subsection G of this section, shall be notified in writing by the Attorney General within three (3) business days of the Attorney General's receipt of an order.

3. The notice shall include the following information:

- a. a copy of the application made pursuant to subsection D of this section,
- b. a copy of the court order issued pursuant to subsection E of this section,

- c. notification that the Internet service provider must remove or disable the items residing on or accessible through its service within five (5) business days of the date of receipt of this notification, and
- d. contact information for the Office of the Attorney General including the name, address and telephone number of any deputy, assistant attorney general, or agent authorized by the Attorney General to submit notification pursuant to this subsection.

G. An Internet service provider may designate an agent to receive notification pursuant to subsection F of this section.

H. The Attorney General shall make an annual report to the President Pro Tempore of the Senate and the Speaker of the Oklahoma House of Representatives providing information on the number of notifications issued and the prosecutions made under this section. The Attorney General may make recommendations for amendatory language as deemed proper to implement the provisions of this section.

I. As used in this section:

1. "Child pornography" means any obscene material, depicting performance, sexual conduct, child sexual abuse, or explicit child pornography as defined in Section 1024.1 of Title 21 of the Oklahoma Statutes;

2. "Internet" means the myriad of computer and telecommunications facilities, including equipment and operating software, which comprises the interconnected worldwide network of networks that employ the transmission control protocol, Internet protocol, or any predecessor or successor protocols to such protocols, to communicate information of all kinds by wires or radio; and

3. "Internet service provider" means an entity which provides a service that enables users to access content, information, electronic mail or other services offered over the Internet.

SECTION 2. 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.

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