

SB 755

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THE STATE SENATE  
Monday, February 24, 2003

Senate Bill No. 755  
As Amended

SENATE BILL NO. 755 - By: PRUITT 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; construing duty to remove certain items; stating misdemeanor penalties; granting concurrent prosecutorial jurisdiction to district attorney and Attorney General for certain violations; construing authority to challenge certain jurisdiction; 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 or any other state within five (5) business days of when the Internet service provider is notified by the Attorney General pursuant to this

1 section that child pornography items reside on or are accessible  
2 through its service or when discovered by the Internet service  
3 provider.

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

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

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

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

- 1           2. A statement of the identity of the investigative or law  
2 enforcement officer that has, in the official scope of that  
3 officer's duties, discovered the child pornography items;
- 4           3. A statement by the investigative or law enforcement officer  
5 who has knowledge of relevant information justifying the  
6 application;
- 7           4. The uniform resource locator providing access to the  
8 prohibited items;
- 9           5. The identity of the Internet service provider used by the  
10 law enforcement officer;
- 11          6. A showing that there is probable cause to believe that the  
12 prohibited items constitute a violation of this section;
- 13          7. A proposed order of authorization for consideration by the  
14 judge;
- 15          8. Contact information for the Office of the Attorney General  
16 including the name, address, and telephone number of any deputy,  
17 assistant attorney general, or agent authorized by the Attorney  
18 General to submit notification; and
- 19          9. Such additional testimony or documentary evidence in support  
20 of the application as the judge may require.

21          **E.** Upon consideration of an application, the court may enter an  
22 order, including an ex parte order, as required, advising the  
23 Attorney General or a district attorney that such items constitute

1 probable cause evidence of a violation of this section, and that  
2 such items shall be removed or disabled from the Internet service  
3 provider's service. The court may include such other information as  
4 the court deems relevant and necessary.

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

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

19 3. The notice shall include the following information:  
20 a. a copy of the application made pursuant to subsection  
21 E of this section,  
22 b. a copy of the court order issued pursuant to  
23 subsection F of this section,

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

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

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

19          **I.** As used in this section:

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

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

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

11        SECTION 2. It being immediately necessary for the preservation  
12 of the public peace, health and safety, an emergency is hereby  
13 declared to exist, by reason whereof this act shall take effect and  
14 be in full force from and after its passage and approval.

15 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-11-03 - DO  
16 PASS, As Amended and Coauthored.