

ENROLLED HOUSE
BILL NO. 3004

By: Morgan (Fred), Perry,
Blackwell, Nance, Dank,
Steele, Billy, Peterson
(Pam), Denney, Balkman,
Hickman and Sherrer of the
House

and

Coffee of the Senate

An Act relating to crimes and punishments; limiting outdoor advertising of certain businesses; defining terms; providing for enforcement; amending 21 O.S. 2001, Section 1040.75, which relates to materials harmful to minors; modifying and adding definitions; providing for codification; and providing an effective date.

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 1040.55 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Adult cabaret" means a nightclub, bar, restaurant, or similar establishment in which persons appear in a state of nudity in the performance of their duties;

2. "Sexually oriented business" means any business which offers its patrons goods of which a substantial portion are sexually oriented materials. Any business where more than ten percent (10%) of display space is used for sexually oriented materials shall be presumed to be a sexually oriented business;

3. "Sexually oriented materials" means any textual, pictorial, or three-dimensional material that depicts nudity, sexual conduct, sexual excitement, or sadomasochistic abuse in a way that is patently offensive to the average person applying contemporary adult community standards with respect to what is suitable for minors; and

4. "State of nudity" means the showing of either:

- a. the human male or female genitals or pubic area with less than a fully opaque covering, or
- b. the female breast with less than a fully opaque covering or any part of the nipple.

B. Except as otherwise provided in this subsection, no billboard or other exterior advertising sign for an adult cabaret or sexually oriented business shall be located within one (1) mile of any state highway. If such a business is located within one (1) mile of a state highway, the business may display a maximum of two exterior signs on the premises of the business, consisting of one identification sign and one sign solely giving notice that minors are not permitted on the premises. The identification sign shall be no more than forty (40) square feet in size and shall include no more than the following information: name, street address, telephone number, and operating hours of the business.

C. Signs existing at the time of the adoption of this section, which do not conform to the requirements of this section, may be allowed to continue as a nonconforming use, but shall be made to conform not later than November 1, 2009.

D. The Attorney General shall represent the state in all actions and proceedings arising from this section. In addition, all costs incurred by the Attorney General to defend or prosecute this section, including payment of all court costs, civil judgments, and, if necessary, any attorney fees, shall be paid from the General Revenue Fund.

E. Any owner of a business who violates the provisions of this section shall be guilty of a misdemeanor.

SECTION 2. AMENDATORY 21 O.S. 2001, Section 1040.75, is amended to read as follows:

Section 1040.75 As used in Sections 1040.75 through 1040.77 of this title:

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

2. "Harmful to minors" means:

a. 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.~~ (1) 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.~~ (2) 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

- ~~e.~~ (3) the material or performance lacks serious literary, scientific, medical, artistic, or political value for minors, or
- b. any description, exhibition, presentation or representation, in whatever form, of inappropriate violence;

3. "Inappropriate violence" means any description or representation, in an interactive video game or computer software, of violence which, 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 interactive video game or computer software is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors, and
- b. the interactive video game or computer software lacks serious literary, scientific, medical, artistic, or political value for minors based on, but not limited to, the following criteria:
 - (1) is glamorized or gratuitous,
 - (2) is graphic violence used to shock or stimulate,
 - (3) is graphic violence that is not contextually relevant to the material,
 - (4) is so pervasive that it serves as the thread holding the plot of the material together,
 - (5) trivializes the serious nature of realistic violence,
 - (6) does not demonstrate the consequences or effects of realistic violence,
 - (7) uses brutal weapons designed to inflict the maximum amount of pain and damage,
 - (8) endorses or glorifies torture or excessive weaponry, or
 - (9) depicts lead characters who resort to violence freely;

4. "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.~~ 5. "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.~~ 6. "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal;

~~6.~~ 7. "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.~~ 8. "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, video tape, computer software or video game;

~~8.~~ 9. "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.~~ 10. "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.~~ 11. "Magnetic Tape Memory" means a memory system that stores and retrieves binary data on magnetic recording tape;

~~11.~~ 12. "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;

~~12.~~ 13. "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;

~~13.~~ 14. "Person" means any individual, partnership, association, corporation, or other legal entity of any kind; and

~~14.~~ 15. "A reasonable bona fide attempt" means an attempt to ascertain the true age of the minor by requiring production of a driver 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 3. This act shall become effective November 1, 2006.

Passed the House of Representatives the 24th day of May, 2006.

Presiding Officer of the House of
Representatives

Passed the Senate the 24th day of April, 2006.

Presiding Officer of the Senate