

EHB 3004

1 THE STATE SENATE
2 Monday, April 10, 2006

3 ENGROSSED
4 House Bill No. 3004
5 As Amended

6 ENGROSSED HOUSE BILL NO. 3004 - By: MORGAN (Fred), PERRY, BLACKWELL,
7 NANCE, DANK and STEELE of the House and COFFEE of the Senate.

8 [crimes and punishments - amending 21 O.S., Section 1040.75
9 - materials harmful to minors - effective date]

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

11 SECTION 1. AMENDATORY 21 O.S. 2001, Section 1040.75, is
12 amended to read as follows:

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

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

17 2. "Harmful to minors" means:

18 a. that quality of any description, exhibition,
19 presentation or representation, in whatever form, of
20 nudity, sexual conduct, sexual excitement, or
21 sadomasochistic abuse when the material or
22 performance, taken as a whole, has the following
23 characteristics:

- 1 a. the average person eighteen (18) years of age or older
2 applying contemporary community standards would find
3 that the interactive video game or computer software
4 is patently offensive to prevailing standards in the
5 adult community with respect to what is suitable for
6 minors, and
- 7 b. the interactive video game or computer software lacks
8 serious literary, scientific, medical, artistic, or
9 political value for minors based on, but not limited
10 to, the following criteria:
- 11 (1) is glamorized or gratuitous,
12 (2) is graphic violence used to shock or stimulate,
13 (3) is graphic violence that is not contextually
14 relevant to the material,
15 (4) is so pervasive that it serves as the thread
16 holding the plot of the material together,
17 (5) trivializes the serious nature of realistic
18 violence,
19 (6) does not demonstrate the consequences or effects
20 of realistic violence,
21 (7) uses brutal weapons designed to inflict the
22 maximum amount of pain and damage,

1 (8) endorses or glorifies torture or excessive
2 weaponry, or

3 (9) depicts lead characters who resort to violence
4 freely;

5 4. "Nudity" means the:

6 a. showing of the human male or female genitals, pubic
7 area, or buttocks with less than a full opaque
8 covering,

9 b. showing of the female breast with less than a full
10 opaque covering of any portion of the female breast
11 below the top of the nipple, or

12 c. depiction of covered male genitals in a discernibly
13 turgid state;

14 ~~4.~~ 5. "Sexual conduct" means acts of masturbation,
15 homosexuality, sexual intercourse, or physical contact with a
16 person's clothed or unclothed genitals, pubic area, buttocks, or, if
17 such person be a female, breast;

18 ~~5.~~ 6. "Sexual excitement" means the condition of human male or
19 female genitals when in a state of sexual stimulation or arousal;

20 ~~6.~~ 7. "Sadomasochistic abuse" means flagellation or torture by
21 or upon a person clothed or naked or the condition of being
22 fettered, bound or otherwise physically restrained on the part of
23 one so clothed or naked;

1 ~~7.~~ 8. "Material" means any book, magazine, newspaper, pamphlet,
2 poster, print, picture, figure, image, description, motion picture
3 film, record, recording tape, CD-ROM disk, Magnetic Disk Memory,
4 Magnetic Tape Memory, video tape, computer software or video game;

5 ~~8.~~ 9. "CD-ROM" means a compact disk with read only memory which
6 has the capacity to store audio, video and written materials and may
7 be used by computer to play or display materials harmful to minors;

8 ~~9.~~ 10. "Magnetic Disk Memory" means a memory system that stores
9 and retrieves binary data on record-like metal or plastic disks
10 coated with a magnetic material, including but not limited to floppy
11 diskettes;

12 ~~10.~~ 11. "Magnetic Tape Memory" means a memory system that
13 stores and retrieves binary data on magnetic recording tape;

14 ~~11.~~ 12. "Performance" means any motion picture, film, video
15 tape, played record, phonograph or tape, preview, trailer, play,
16 show, skit, dance, or other exhibition performed or presented to or
17 before an audience of one or more, with or without consideration;

18 ~~12.~~ 13. "Knowingly" means having general knowledge of, or
19 reason to know, or a belief or ground for belief which warrants
20 further inspection or inquiry of both:

21 a. the character and content of any material or
22 performance which is reasonably susceptible of
23 examination by the defendant, and

1 b. the age of the minor. However, an honest mistake,
2 shall constitute an excuse from liability pursuant to
3 this act if the defendant made a reasonable bona fide
4 attempt to ascertain the true age of such minor;

5 ~~13.~~ 14. "Person" means any individual, partnership,
6 association, corporation, or other legal entity of any kind; and

7 ~~14.~~ 15. "A reasonable bona fide attempt" means an attempt to
8 ascertain the true age of the minor by requiring production of a
9 driver license, marriage license, birth certificate or other
10 governmental or educational identification card or paper and not
11 relying solely on the oral allegations or apparent age of the minor.

12 SECTION 2. This act shall become effective November 1, 2006.

13 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 4-4-06 - DO PASS,
14 As Amended.