

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 HOUSE BILL 2736

By: Duel

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5
6 AS INTRODUCED

7 An Act relating to crimes and punishments; amending
8 21 O.S. 2021, Sections 1040.75 and 1040.76, which
9 relate to the display of materials harmful to minors;
10 adding definition; making certain acts unlawful; and
11 providing an effective date.

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

13 SECTION 1. AMENDATORY 21 O.S. 2021, Section 1040.75, is
14 amended to read as follows:

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

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

19 2. "Harmful to minors" means:

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

3 (1) the average person eighteen (18) years of age or
4 older applying contemporary community standards
5 would find that the material or performance has a
6 predominant tendency to appeal to a prurient
7 interest in sex to minors, and

8 (2) the average person eighteen (18) years of age or
9 older applying contemporary community standards
10 would find that the material or performance
11 depicts or describes nudity, sexual conduct,
12 sexual excitement or sadomasochistic abuse in a
13 manner that is patently offensive to prevailing
14 standards in the adult community with respect to
15 what is suitable for minors, and

16 (3) the material or performance lacks serious
17 literary, scientific, medical, artistic, or
18 political value for minors, or

19 b. any description, exhibition, presentation or
20 representation, in whatever form, of inappropriate
21 violence;

22 3. "Inappropriate violence" means any description or
23 representation, in an interactive video game or computer software,
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1 of violence which, taken as a whole, has the following
2 characteristics:

3 a. the average person eighteen (18) years of age or older
4 applying contemporary community standards would find
5 that the interactive video game or computer software
6 is patently offensive to prevailing standards in the
7 adult community with respect to what is suitable for
8 minors, and

9 b. the interactive video game or computer software lacks
10 serious literary, scientific, medical, artistic, or
11 political value for minors based on, but not limited
12 to, the following criteria:

13 (1) is glamorized or gratuitous,

14 (2) is graphic violence used to shock or stimulate,

15 (3) is graphic violence that is not contextually
16 relevant to the material,

17 (4) is so pervasive that it serves as the thread
18 holding the plot of the material together,

19 (5) trivializes the serious nature of realistic
20 violence,

21 (6) does not demonstrate the consequences or effects
22 of realistic violence,

23 (7) uses brutal weapons designed to inflict the
24 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 5. "Sexual conduct" means acts of masturbation, homosexuality,
15 sexual intercourse, or physical contact with a person's clothed or
16 unclothed genitals, pubic area, buttocks, or, if such person be a
17 female, breast;

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

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

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

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

18 13. "Drag performance" means a performance in which a performer
19 exhibits a gender identity that is different from the gender
20 assigned to the performer at birth using clothing, makeup, or other
21 physical markers and sings, lip syncs, dances, or otherwise performs
22 before an audience for entertainment;
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1 14. "Knowingly" means having general knowledge of, or reason to
2 know, or a belief or ground for belief which warrants further
3 inspection or inquiry of both:

4 a. the character and content of any material or
5 performance which is reasonably susceptible of
6 examination by the defendant, and

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

11 ~~14.~~ 15. "Person" means any individual, partnership,
12 association, corporation, or other legal entity of any kind; and

13 ~~15.~~ 16. "A reasonable bona fide attempt" means an attempt to
14 ascertain the true age of the minor by requiring production of a
15 driver license, marriage license, birth certificate or other
16 governmental or educational identification card or paper and not
17 relying solely on the oral allegations or apparent age of the minor.

18 SECTION 2. AMENDATORY 21 O.S. 2021, Section 1040.76, is
19 amended to read as follows:

20 Section 1040.76. A. No person, including but not limited to
21 any persons having custody, control or supervision of any commercial
22 establishment, shall knowingly:

23 1. Display material which is harmful to minors in such a way
24 that minors, as a part of the invited general public, will be

1 exposed to view such material. Provided, however, a person shall be
2 deemed not to have "displayed" material harmful to minors if the
3 material is kept behind devices commonly known as "blinder racks" so
4 that the lower two-thirds (2/3) of the material is not exposed to
5 view;

6 2. Sell, furnish, present, distribute, allow to view, or
7 otherwise disseminate to a minor, with or without consideration, any
8 material which is harmful to minors; or

9 3. Present to a minor or participate in presenting to a minor,
10 with or without consideration, any performance which is harmful to a
11 minor.

12 B. No person including, but not limited to, any person having
13 custody, control or supervision of a commercial establishment or
14 having custody, control or supervisions of any public property,
15 shall knowingly present to a minor or participate in presenting to a
16 minor, with or without consideration, any drag performance.

17 SECTION 3. This act shall become effective November 1, 2023.

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