

1 **SENATE FLOOR VERSION**

2 April 9, 2024

3 ENGROSSED HOUSE
4 BILL NO. 3456

By: Moore, Conley, Bashore,
West (Kevin), Baker, and
Kerbs of the House

5 and

6 Howard of the Senate
7

8
9 An Act relating to crimes and punishments; amending
10 21 O.S. 2021, Sections 1040.75 and 1040.76, which
11 relate to the display of materials harmful to minors;
12 modifying scope of certain definitions; deleting
13 definitions; providing findings and statement of
14 legislative intent; and providing an effective date.

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

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

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

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

22 2. "Harmful to minors" means:

- 23 a. that quality of any description, exhibition,
24 presentation or representation, in whatever form, of
nudity, sexual conduct, sexual excitement, or

1 sadomasochistic abuse when the material or
2 performance, taken as a whole, has the following
3 characteristics:

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

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

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

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

23 3. "Inappropriate violence" means any description or
24 representation, in an interactive video game or computer software,

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, or fellatio, cunnilingus, anal intercourse, or any
18 other intrusion, however slight, of any part of a person's body or
19 of any object into the genital or anal openings of another person's
20 body, or depictions or descriptions of sexual bestiality,
21 sadomasochism, masturbation, or excretory functions;

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

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1 7. "Sadomasochistic abuse" means flagellation or torture by or
2 upon a person clothed or naked or the condition of being fettered,
3 bound or otherwise physically restrained on the part of one so
4 clothed or naked;

5 8. "Material" means anything tangible that is capable of being
6 used or adapted to arouse prurient interest, whether through the
7 medium of reading, observation, sound, or in any other manner
8 including, but not limited to, anything printed or written, any
9 book, magazine, newspaper, pamphlet, ~~poster, print,~~ picture, ~~figure,~~
10 ~~image, description,~~ drawing, pictorial representation, motion
11 picture ~~film, record, recording tape, CD-ROM disk, Magnetic Disk~~
12 ~~Memory, Magnetic Tape Memory,~~ photograph, video tape, ~~computer~~
13 ~~software or~~ video disk, film, transparency, slide, audiotape, audio
14 disk, computer tape, video game, or any other medium used to
15 electronically produce or reproduce images on a screen, or any
16 mechanical, chemical, or electronic reproduction. Material includes
17 undeveloped photographs, molds, printing plates, and other latent
18 representational objects whether or not processing or other acts are
19 required to make the content of the material apparent;

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

23 10. ~~"Magnetic Disk Memory" means a memory system that stores~~
24 ~~and retrieves binary data on record-like metal or plastic disks~~

1 ~~coated with a magnetic material, including but not limited to floppy~~
2 ~~diskettes;~~

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

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

9 ~~13.~~ 10. "Knowingly" means having general knowledge of, or
10 reason to know, or a belief or ground for belief which warrants
11 further inspection or inquiry of both:

12 a. the character and content of any material or
13 performance which is reasonably susceptible of
14 examination by the defendant, and

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

19 ~~14.~~ 11. "Person" means any individual, partnership,
20 association, corporation, or other legal entity of any kind; and

21 ~~15.~~ 12. "A reasonable bona fide attempt" means an attempt to
22 ascertain the true age of the minor by requiring production of a
23 driver license, marriage license, birth certificate or other

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1 governmental or educational identification card or paper and not
2 relying solely on the oral allegations or apparent age of the minor.

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

5 Section 1040.76 The Legislature finds that protecting minor
6 children from overtly sexual and violent content is a legitimate
7 objective that should be actively enforced.

8 The Legislature further finds that the protection of the right
9 of the people to engage in the freedom of speech and expression is a
10 sacred right in the United States; however, such performances and
11 materials may not contain depictions of sexual conduct, nudity, or
12 inappropriate violence which are harmful to minor children.

13 Therefore, it is the intent of the Legislature that these
14 provisions be diligently enforced to protect minor children while
15 also protecting the free speech rights of the public.

16 No person, including but not limited to any persons having
17 custody, control or supervision of any commercial establishment,
18 shall knowingly:

19 1. Display material which is harmful to minors in such a way
20 that minors, as a part of the invited general public, will be
21 exposed to view such material. Provided, however, a person shall be
22 deemed not to have "displayed" material harmful to minors if the
23 material is kept behind devices commonly known as "blinder racks" so
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1 that the lower two-thirds (2/3) of the material is not exposed to
2 view;

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

6 3. Present to a minor or participate in presenting to a minor,
7 with or without consideration, any performance which is harmful to a
8 minor.

9 SECTION 3. This act shall become effective November 1, 2024.

10 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
11 April 9, 2024 - DO PASS

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