

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 837

Introduced by Brashear, 4

Read first time January 20, 1999

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections
2 28-1463.01, 28-1463.02, 28-1463.03, and 28-1463.05,
3 Reissue Revised Statutes of Nebraska; to change
4 provisions relating to the Child Pornography Prevention
5 Act; to harmonize provisions; and to repeal the original
6 sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-1463.01, Reissue Revised Statutes
2 of Nebraska, is amended to read:

3 28-1463.01. Sections 28-1463.01 to 28-1463.05 and
4 section 2 of this act shall be known and may be cited as the Child
5 Pornography Prevention Act.

6 Sec. 2. The Legislature hereby finds and declares that:

7 (1)(a) The state has a compelling interest in
8 safeguarding the physical and psychological well-being of children;

9 (b) Evidence suggests that there is a close link between
10 the use of child pornography and the sexual abuse of children; and

11 (c) The state, therefor, has a compelling interest in
12 preventing the distribution of visual depictions of children for
13 sexual purposes; and

14 (2)(a) A compilation of existing materials constitutes a
15 work of authorship distinct from the existing materials themselves;

16 (b) A compilation of visual depictions of full child
17 nudity can manifest a design to elicit a sexual response in a
18 viewer with a sexual interest in children through the selection,
19 repetition, and presentation of such images and the packaging and
20 marketing thereof, even if no individual visual depiction therein
21 demonstrates such sexual intent; and

22 (c) The value of such a compilation lacks any bona fide
23 scientific, medical, educational, or artistic purpose is
24 exceedingly modest, if not de minimis.

25 Sec. 3. Section 28-1463.02, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 28-1463.02. As used in For purposes of the Child
28 Pornography Prevention Act, unless the context otherwise requires:

1 (1) Child, in the case of a participant, ~~shall mean~~ means
2 any person under the age of eighteen years and, in the case of a
3 portrayed observer, ~~shall mean~~ means any person under the age of
4 sixteen years;

5 (2) Compilation means a book, magazine, newspaper,
6 pamphlet, motion picture, videotape, television production,
7 computer disk, or other compiled work containing multiple visual
8 depictions that is bound, stapled, folded, edited, spliced,
9 packaged, programmed, or otherwise compiled so as to remain intact
10 as a compiled work;

11 (3) Compile for purposes of reproduction and distribution
12 means to collect, assemble, gather, select, edit, splice, or
13 otherwise bring together into a compilation with the intent that
14 such compilation be reproduced as a compilation and rented, sold,
15 delivered, distributed, traded, or provided to another person as a
16 compilation;

17 (4) Containing multiple visual depictions of full child
18 nudity means containing more than five visual depictions of full
19 child nudity;

20 (5) Erotic fondling shall mean means touching a person's
21 clothed or unclothed genitals or pubic area, breasts if the person
22 is a female, or developing breast area if the person is a female
23 child, for the purpose of real or simulated overt sexual
24 gratification or sexual stimulation of one or more persons
25 involved. Erotic fondling shall not be construed to include
26 physical contact, even if affectionate, which is not for the
27 purpose of real or simulated overt sexual gratification or sexual
28 stimulation of one or more of the persons involved;

1 ~~(3)~~ (6) Erotic nudity ~~shall mean~~ means the display of the
2 human male or female genitals or pubic area, the human female
3 breasts, or the developing breast area of the human female child,
4 for the purpose of real or simulated overt sexual gratification or
5 sexual stimulation of one or more of the persons involved;

6 (7) Full child nudity means the display of the human male
7 or female genitals or pubic area of a child;

8 (8) Manifesting a design to elicit a sexual response in a
9 viewer with a sexual interest in children means, with respect to a
10 compilation containing multiple visual depictions of full child
11 nudity, that the compilation, taken as a whole, (a) manifests the
12 deliberate selection of visual depictions of full child nudity to
13 the exclusion of other visual depictions, (b) manifests the
14 deliberate repetition of visual depictions of full child nudity in
15 a manner not demonstrated therein with respect to visual depictions
16 of other subject matter, and (c) is designed, marketed, or packaged
17 in a manner that calls attention to the fact that its contents
18 include multiple visual depictions of full child nudity. A
19 compilation containing multiple visual depictions of full child
20 nudity shall not manifest a design to elicit a sexual response in a
21 viewer with a sexual interest in children if such compilation is
22 for a bona fide scientific, medical, educational, or artistic
23 purpose;

24 ~~(4)~~ (9) Sadomasochistic abuse ~~shall mean~~ means
25 flagellation or torture by or upon a nude person or a person clad
26 in undergarments, a mask, or bizarre costume, or the condition of
27 being fettered, bound, or otherwise physically restrained when
28 performed to predominantly appeal to the morbid interest;

1 ~~(5)~~ (10) Sexually explicit conduct ~~shall mean~~ means: (a)
 2 Real or simulated intercourse, whether genital-genital,
 3 oral-genital, anal-genital, or oral-anal between persons of the
 4 same or opposite sex or between a human and an animal or with an
 5 artificial genital; (b) real or simulated masturbation; (c) real or
 6 simulated sadomasochistic abuse; (d) erotic fondling; (e) erotic
 7 nudity; or (f) real or simulated defecation or urination for the
 8 purpose of sexual gratification or sexual stimulation of one or
 9 more of the persons involved; and

10 ~~(6)~~ (11) Visual depiction ~~shall mean~~ means live
 11 performance or photographic representation.

12 Sec. 4. Section 28-1463.03, Reissue Revised Statutes of
 13 Nebraska, is amended to read:

14 28-1463.03. (1) It ~~shall be~~ is unlawful for a person to
 15 knowingly (a) make, publish, direct, create, provide, or in any
 16 manner generate any visual depiction of sexually explicit conduct
 17 which has a child as one of its participants or portrayed observers
 18 or (b) compile for purposes of reproduction and distribution a
 19 compilation containing multiple visual depictions of full child
 20 nudity manifesting a design to elicit a sexual response in a viewer
 21 with a sexual interest in children.

22 (2) It ~~shall be~~ is unlawful for a person to knowingly ~~to~~
 23 purchase, rent, sell, deliver, distribute, display for sale,
 24 advertise, trade, or provide to any person (a) any visual depiction
 25 of sexually explicit conduct which has a child as one of its
 26 participants or portrayed observers or (b) any compilation
 27 containing multiple visual depictions of full child nudity,
 28 compiled for purposes of reproduction and distribution, manifesting

1 a design to elicit a sexual response in a viewer with a sexual
2 interest in children.

3 (3) It ~~shall be~~ is unlawful for a person to knowingly
4 employ, force, authorize, induce, or otherwise cause a child to
5 engage in any visual depiction of sexually explicit conduct which
6 has a child as one of its participants or portrayed observers.

7 (4) It ~~shall be~~ is unlawful for a parent, stepparent,
8 legal guardian, or any person with custody and control of a child,
9 knowing the content thereof, to consent to such child engaging in
10 any visual depiction of sexually explicit conduct which has a child
11 as one of its participants or portrayed observers.

12 Sec. 5. Section 28-1463.05, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 28-1463.05. (1) It ~~shall be~~ is unlawful for a person to
15 knowingly possess with intent to rent, sell, deliver, distribute,
16 trade, or provide to any person (a) any visual depiction of
17 sexually explicit conduct which has a child as one of its
18 participants or portrayed observers or (b) any compilation
19 containing multiple visual depictions of full child nudity,
20 compiled for purposes of reproduction and distribution, manifesting
21 a design to elicit a sexual response in a viewer with a sexual
22 interest in children.

23 (2) Any person who violates this section ~~shall be~~ is
24 guilty of a Class IV felony for each offense.

25 Sec. 6. Original sections 28-1463.01, 28-1463.02,
26 28-1463.03, and 28-1463.05, Reissue Revised Statutes of Nebraska,
27 are repealed.