

E AND R AMENDMENTS TO LB 728

Introduced by Enrollment and Review Committee: Nordquist, 7,
Chairperson

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 Section 1. Sections 1 to 7 of this act shall be known and
4 may be cited as the Exploited Children's Civil Remedy Act.

5 Sec. 2. For purposes of the Exploited Children's Civil
6 Remedy Act:

7 (1) Access software provider means a provider of
8 software, including client or server software, or enabling tools
9 that do any one or more of the following: (a) Filter, screen,
10 allow, or disallow content; (b) pick, choose, analyze, or digest
11 content; or (c) transmit, receive, display, forward, cache, search,
12 subset, organize, reorganize, or translate content;

13 (2) Aid or assist another with the creation,
14 distribution, or active acquisition of child pornography means
15 help a principal in some appreciable manner with the creation,
16 distribution, or active acquisition of a visual depiction of
17 sexually explicit conduct which has a child as one of its
18 participants or portrayed observers. The term also includes
19 knowingly employing, forcing, authorizing, inducing, or otherwise
20 causing a child to engage in any visual depiction of sexually
21 explicit conduct which has a child as one of its participants
22 or portrayed observers. No parent, stepparent, legal guardian, or
23 person with custody and control of a child, knowing the content

1 thereof, may consent to such child engaging in any visual depiction
2 of sexually explicit conduct which has a child as one of its
3 participants or portrayed observers;

4 (3) Cable operator means any person or group of persons
5 (a) who provides cable service over a cable system and directly or
6 through one or more affiliates owns a significant interest in such
7 cable system or (b) who otherwise controls or is responsible for,
8 through any arrangement, the management and operation of such a
9 cable system;

10 (4) Child has the same meaning as in section 28-1463.02;

11 (5) Create means to knowingly create, make, manufacture,
12 direct, publish, finance, or in any manner generate;

13 (6) Distribute means the actual, constructive, or
14 attempted transfer from one person, source, or location to another
15 person, source, or location. The term includes, but is not limited
16 to, renting, selling, delivering, displaying, advertising, trading,
17 mailing, procuring, circulating, lending, exhibiting, transmitting,
18 transmuting, transferring, disseminating, presenting, or providing
19 any visual depiction of sexually explicit conduct which has a child
20 as one of its participants or portrayed observers;

21 (7) Interactive computer service means any information
22 service system or access software provider that provides or enables
23 computer access by multiple users to a computer server, including
24 specifically a service or system that provides access to the
25 Internet and such systems operated or services offered by libraries
26 or educational institutions;

27 (8) Participant means a child who appears in any visual

1 depiction and is portrayed or actively engaged in acts of sexually
2 explicit conduct appearing therein;

3 (9) Portrayed observer means a child who appears in
4 any visual depiction where sexually explicit conduct is likewise
5 portrayed or occurring within the child's presence or in the
6 child's proximity;

7 (10) Sexually explicit conduct has the same meaning as in
8 section 28-1463.02;

9 (11) Telecommunications service means the offering of
10 telecommunications for a fee directly to the public, or to such
11 classes of users as to be effectively available directly to the
12 public, regardless of the facilities used; and

13 (12) Visual depiction has the same meaning as in section
14 28-1463.02.

15 Sec. 3. (1) Any participant or portrayed observer in a
16 visual depiction of sexually explicit conduct or his or her parent
17 or legal guardian who suffered or continues to suffer personal
18 or psychological injury as a result of such participation or
19 portrayed observation may bring a civil action against any person
20 who knowingly and willfully (a) created, distributed, or actively
21 acquired such visual depiction while in this state or (b) aided
22 or assisted with the creation, distribution, or active acquisition
23 of such visual depiction while such person or the person aided or
24 assisted was in this state.

25 (2) A plaintiff who prevails in a civil action brought
26 pursuant to the Exploited Children's Civil Remedy Act may recover
27 his or her actual damages, which are deemed to be a minimum of one

1 hundred fifty thousand dollars, plus any and all attorney's fees
2 and costs reasonably associated with the civil action. In addition
3 to all other remedies available under the act, the court may also
4 award temporary, preliminary, and permanent injunctive relief as
5 the court deems necessary and appropriate.

6 (3) This section does not create a cause of action if
7 the participant was sixteen years of age or older at the time
8 the visual depiction was created and the participant willfully and
9 voluntarily participated in the creation of the visual depiction.

10 (4) No provider of interactive computer service, provider
11 of telecommunications service, or cable operator is subject to a
12 civil action under the Exploited Children's Civil Remedy Act.

13 Sec. 4. Notwithstanding any other provisions of law, any
14 action to recover damages under the Exploited Children's Civil
15 Remedy Act shall be filed within three years after the later of:

16 (1) The conclusion of any related criminal prosecution
17 against the person or persons from whom recovery is sought;

18 (2) The receipt of actual or constructive notice sent or
19 given to the participant or portrayed observer or his or her parent
20 or legal guardian by a member of a law enforcement entity informing
21 the participant or portrayed observer or his or her parent or legal
22 guardian that the entity has identified the person:

23 (a) Who created, distributed, or actively acquired the
24 visual depiction of the participant or portrayed observer; or

25 (b) Who aided or assisted another person with the
26 creation, distribution, or active acquisition of the visual
27 depiction of the participant or portrayed observer; or

1 (3) The participant or portrayed observer reaching the
2 age of eighteen years.

3 Sec. 5. In any action brought pursuant to the Exploited
4 Children's Civil Remedy Act, a plaintiff may request to use a
5 pseudonym instead of his or her legal name in all court proceedings
6 and records. Upon finding that the use of a pseudonym is proper,
7 the court shall ensure that the pseudonym is used in all court
8 proceedings and records.

9 Sec. 6. It is not a defense to a cause of action brought
10 pursuant to the Exploited Children's Civil Remedy Act that the
11 defendant:

12 (1) Did not know the participant or portrayed observer
13 appearing in the visual depiction of sexually explicit conduct;

14 (2) Did not appear in the visual depiction of sexually
15 explicit conduct containing the participant or portrayed observer;
16 or

17 (3) Did not commit, assist with the commission of,
18 or personally observe the commission of acts of sexually
19 explicit conduct portrayed in the visual depiction containing the
20 participant or portrayed observer.

21 Sec. 7. To prevent ongoing and further exploitation of
22 any person who was a participant or portrayed observer or his or
23 her parent or legal guardian, the Attorney General, upon request,
24 may pursue cases on behalf of any participant or portrayed observer
25 or his or her parent or legal guardian who has a bona fide cause of
26 action under the Exploited Children's Civil Remedy Act. All damages
27 obtained shall go to the plaintiff or plaintiffs. For his or her

1 role in pursuing a civil action under the act, the Attorney General
2 may seek all of his or her reasonable attorney's fees and costs
3 associated with the civil action.

4 Sec. 8. Section 29-119, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 29-119 For purposes of this section and sections 23-1201,
7 29-120, and 29-2261, unless the context otherwise requires:

8 (1) A plea agreement means that as a result of a
9 discussion between the defense counsel and the prosecuting
10 attorney:

11 (a) A charge is to be dismissed or reduced; or

12 (b) A defendant, if he or she pleads guilty to a charge,
13 may receive less than the maximum penalty permitted by law; and

14 (2) Victim means a person who, as a result of a homicide
15 ~~as defined in~~ under sections 28-302 to 28-306, a first degree
16 sexual assault ~~as defined in~~ under section 28-319, a first degree
17 assault ~~as defined in~~ under section 28-308, a sexual assault
18 of a child in the second or third degree ~~as defined in~~ under
19 section 28-320.01, a sexual assault of a child in the first
20 degree ~~as defined in~~ under section 28-319.01, a possession of
21 a visual depiction of sexually explicit conduct under section
22 28-813.01 who has been identified and can be reasonably notified,
23 a distribution offense of a visual depiction of sexually explicit
24 conduct under section 28-1463.03, 28-1463.04, or 28-1463.05 who has
25 been identified and can be reasonably notified, a second degree
26 assault ~~as defined in~~ under section 28-309, a first degree false
27 imprisonment ~~as defined in~~ under section 28-314, a second degree

1 sexual assault ~~as defined in~~ under section 28-320, or a robbery ~~as~~
2 ~~defined in~~ under section 28-324, has had a personal confrontation
3 with the offender and also includes a person who has suffered
4 serious bodily injury as defined in section 28-109 as a result of a
5 motor vehicle accident when the driver was charged with a violation
6 of section 60-6,196 or 60-6,197 or with a violation of a city or
7 village ordinance enacted in conformance with either section. In
8 the case of a homicide, victim means the nearest surviving relative
9 under the law as provided by section 30-2303 but does not include
10 the alleged perpetrator of the homicide. In the case of a sexual
11 assault of a child, a possession of a visual depiction of sexually
12 explicit conduct, or a distribution offense of a visual depiction
13 of sexually explicit conduct, victim means the child victim and the
14 parents, guardians, or duly appointed legal representative of the
15 child victim but does not include the alleged perpetrator of the
16 ~~sexual assault.~~ crime.

17 Sec. 9. Original section 29-119, Reissue Revised Statutes
18 of Nebraska, is repealed.