

1                                   **MINOR'S ACCESS TO HARMFUL MATERIAL**

2   **ON THE INTERNET**

3   2000 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: Scott N. Howell**

6 AN ACT RELATING TO THE CRIMINAL CODE; AMENDING PROVISIONS REGARDING  
7 MATERIAL HARMFUL TO MINORS TO INCLUDE MATERIAL AVAILABLE THROUGH  
8 THE INTERNET.

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

11                   **76-10-1206**, as last amended by Chapter 164, Laws of Utah 1997

12 *Be it enacted by the Legislature of the state of Utah:*

13                   Section 1. Section **76-10-1206** is amended to read:

14                   **76-10-1206. Dealing in material harmful to a minor -- Use of the Internet.**

15                   (1) A person is guilty of dealing in [harmful] material harmful to minors when, knowing  
16 that a person is a minor, or having failed to exercise reasonable care in ascertaining the proper age  
17 of a minor, he:

18                   (a) intentionally distributes or offers to distribute, exhibits or offers to exhibit to a minor  
19 any [harmful] material harmful to [a minor] minors;

20                   (b) intentionally produces, presents, or directs any performance before a minor, that is  
21 harmful to minors; [or]

22                   (c) intentionally participates in any performance before a minor, that is harmful to  
23 minors[.]; or

24                   (d) intentionally by means of the Internet places, posts, or makes available to minors any  
25 material harmful to minors.

26                   (2) (a) (i) In committing an offense under Subsection (1)(d), the person is presumed to  
27 know that the material harmful to minors is available to minors if access is not restricted by:

28           (A) requiring the use of a credit card, debit account, adult access code, or adult personal  
29 identification number; or

30           (B) any other reasonable measures.

31           (ii) A statement indicating that the site where the material is located is for adults only, or  
32 that it is illegal for a minor to enter the site, is not a reasonable measure to restrict access by  
33 minors.

34           (b) Subsection (1)(d) does not apply to electronic mail, automatic mailing list services,  
35 news groups, chat rooms, or discussion groups.

36           (c) Material under Subsection (1)(d) includes only pictures, images, or graphic image files  
37 that:

38           (i) meet the definition of material harmful to minors under Section 76-10-1201; and

39           (ii) explicitly depict sexual conduct or simulated sexual conduct, as defined in Section  
40 76-5a-2.

41           (d) Subsection (1)(d) does not include an Internet service provider who:

42           (i) provides a client's Internet access solely as a passive conduit; and

43           (ii) does not exercise any influence or control over the content of the client's web site or  
44 page other than as may be authorized by the contract between the client and the Internet service  
45 provider.

46           [~~(2)~~] (3) Each separate offense under this section is a third degree felony punishable by a  
47 minimum mandatory fine of not less than \$300 plus \$10 for each article exhibited up to the  
48 maximum allowed by law and by incarceration, without suspension of sentence in any way, for a  
49 term of not less than 14 days. This section supersedes Section 77-18-1.

50           [~~(3)~~] (4) If a defendant has already been convicted once under this section, each separate  
51 further offense is a second degree felony punishable by a minimum mandatory fine of not less than  
52 \$5,000 plus \$10 for each article exhibited up to the maximum allowed by law and by incarceration,  
53 without suspension of sentence in any way, for a term of not less than one year. This section  
54 supersedes Section 77-18-1.

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**Legislative Review Note**

**as of 2-10-00 4:47 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**