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76-10-1206 Dealing in material harmful to a minor -- Penalties -- Exemptions for Internet service providers and hosting companies.

- (1) A person is guilty of dealing in material harmful to minors when, knowing or believing that an individual is a minor, or having negligently failed to determine the proper age of a minor, the person intentionally:
 - (a) distributes or offers to distribute, or exhibits or offers to exhibit, to a minor or an individual whom the person believes to be a minor, any material harmful to minors;
 - (b) produces, performs, or directs any performance, before a minor or an individual whom the person believes to be a minor, that is harmful to minors; or
 - (c) participates in any performance, before a minor or an individual whom the person believes to be a minor, that is harmful to minors.
- (2)
 - (a) Except as provided in Subsection (2)(b), each separate offense under this section committed by a person 18 years of age or older is a third degree felony punishable by:
 - (i) a minimum mandatory fine of not less than \$1,000, plus \$10 for each article exhibited up to the maximum allowed by law; and
 - (ii) incarceration, without suspension of sentence, for a term of not less than 14 days.
 - (b) Each separate offense under this section committed by a person 18 years of age or older against a minor 16 years of age or older, but younger than 18 years of age, is a class A misdemeanor if the person is less than seven years older than the minor at the time of the offense.
 - (c) Each separate offense under this section committed by a person 16 or 17 years of age is a class A misdemeanor.
 - (d) Each separate offense under this section committed by a person younger than 16 years of age is a class B misdemeanor.
 - (e) Subsection (2)(a) supersedes Section 77-18-1.
- (3)
 - (a) Except for a defendant described in Subsection (2)(b), if a defendant 18 years of age or older has been previously convicted or adjudicated to be under the jurisdiction of the juvenile court under this section, each separate subsequent offense is a second degree felony punishable by:
 - (i) a minimum mandatory fine of not less than \$5,000, plus \$10 for each article exhibited up to the maximum allowed by law; and
 - (ii) incarceration, without suspension of sentence, for a term of not less than one year.
 - (b) If a defendant described in Subsection (2)(b) or a defendant younger than 18 years of age has been previously convicted or adjudicated to be under the jurisdiction of the juvenile court under this section, each separate subsequent offense is a third degree felony.
 - (c) Subsection (3)(a) supersedes Section 77-18-1.
 - (d)
 - (i) This section does not apply to an Internet service provider, as defined in Section 76-10-1230, a provider of an electronic communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service, information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined in 47 U.S.C. Sec. 522, if:
 - (A) the distribution of pornographic material by the Internet service provider occurs only incidentally through the provider's function of:

- (I) transmitting or routing data from one person to another person; or
 - (II) providing a connection between one person and another person;
 - (B) the provider does not intentionally aid or abet in the distribution of the pornographic material; and
 - (C) the provider does not knowingly receive from or through a person who distributes the pornographic material a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute the pornographic material.
- (ii) This section does not apply to a hosting company, as defined in Section 76-10-1230, if:
- (A) the distribution of pornographic material by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;
 - (B) the hosting company does not intentionally engage, aid, or abet in the distribution of the pornographic material; and
 - (C) the hosting company does not knowingly receive from or through a person who distributes the pornographic material a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute, store, or cache the pornographic material.
- (4) A service provider, as defined in Section 76-10-1230, is not negligent under this section if the service provider complies with Section 76-10-1231.
- (5) A person 18 years of age or older who knowingly solicits, requests, commands, encourages, or intentionally aids another person younger than 18 years of age to engage in conduct in violation of Subsection (1) is guilty of a third degree felony and is subject to the penalties under Subsection (2)(a).