

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE BILL 132
Judiciary II (Criminal) Committee Substitute Adopted 5/17/07
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Short Title: Protect Children From Sexual Predators Act.

(Public)

Sponsors:

Referred to:

February 14, 2007

A BILL TO BE ENTITLED

1 AN ACT TO EXPAND THE SCOPE OF CERTAIN PORNOGRAPHY LAWS BY
2 AMENDING THE DEFINITION OF SEXUAL ACTIVITY; TO INCREASE THE
3 PENALTY FOR FIRST, SECOND, AND THIRD DEGREE SEXUAL
4 EXPLOITATION OF A MINOR; TO PROVIDE THAT A PROCESSOR OF
5 PHOTOGRAPHIC IMAGES OR A COMPUTER TECHNICIAN WHO, IN THE
6 COURSE OF WORK, ENCOUNTERS AN IMAGE OF A MINOR ENGAGING IN
7 SEXUAL ACTIVITY MUST REPORT THE NAME OF THE CUSTOMER
8 REQUESTING THE WORK TO THE APPROPRIATE AUTHORITIES; TO
9 PROVIDE THAT IT SHALL BE UNLAWFUL FOR THE OWNER OR
10 OPERATOR OF A COMMERCIAL SOCIAL NETWORKING WEB SITE TO
11 ALLOW A MINOR USING A PROTECTED COMPUTER TO CREATE OR
12 MAINTAIN A PERSONAL WEB PAGE ON A COMMERCIAL SOCIAL
13 NETWORKING WEB SITE WITHOUT THE PERMISSION OF THE MINOR'S
14 PARENT OR GUARDIAN AND WITHOUT PROVIDING SUCH PARENT OR
15 GUARDIAN ACCESS TO SUCH PERSONAL WEB PAGE, TO REQUIRE THE
16 OWNER OR OPERATOR TO ADOPT AND IMPLEMENT PROCEDURES TO
17 CONFIRM THE IDENTITY AND AGE OF A PARENT OR GUARDIAN
18 GRANTING PERMISSION, AND TO PROVIDE FOR PENALTIES; TO MAKE
19 IT A FELONY FOR A REGISTERED SEX OFFENDER TO ACCESS A
20 COMMERCIAL SOCIAL NETWORKING WEB SITE; TO INCREASE THE
21 PENALTY FOR CERTAIN OFFENSES OF SOLICITATION OF A CHILD BY
22 COMPUTER TO COMMIT AN UNLAWFUL SEX ACT; AND TO MAKE IT A
23 FELONY TO LIE TO A SWORN SBI AGENT CONDUCTING AN OFFICIAL
24 INVESTIGATION.
25

26 The General Assembly of North Carolina enacts:

27 **SECTION 1.** G.S. 14-190.13 reads as rewritten:

28 **"§ 14-190.13. Definitions for certain offenses concerning minors.**

1 The following definitions apply to G.S. 14-190.14, displaying material harmful to
2 minors; G.S. 14-190.15, disseminating or exhibiting to minors harmful material or
3 performances; G.S. 14-190.16, first degree sexual exploitation of a minor;
4 G.S. 14-190.17, second degree sexual exploitation of a minor; G.S. 14-190.17A, third
5 degree sexual exploitation of a minor; G.S. 14-190.18, promoting prostitution of a
6 minor; ~~and~~ G.S. 14-190.19, participating in prostitution of a minor.

7 (1) Harmful to Minors. – That quality of any material or performance that
8 depicts sexually explicit nudity or sexual activity and that, taken as a
9 whole, has the following characteristics:

- 10 a. The average adult person applying contemporary community
11 standards would find that the material or performance has a
12 predominant tendency to appeal to a prurient interest of minors
13 in sex; and
14 b. The average adult person applying contemporary community
15 standards would find that the depiction of sexually explicit
16 nudity or sexual activity in the material or performance is
17 patently offensive to prevailing standards in the adult
18 community concerning what is suitable for minors; and
19 c. The material or performance lacks serious literary, artistic,
20 political, or scientific value for minors.

21 (2) Material. – Pictures, drawings, video recordings, films or other visual
22 depictions or representations but not material consisting entirely of
23 written words.

24 (3) Minor. – An individual who is less than 18 years old and is not
25 married or judicially emancipated.

26 (4) Prostitution. – Engaging or offering to engage in sexual activity with
27 or for another in exchange for anything of value.

28 (5) Sexual Activity. – Any of the following acts:

- 29 a. Masturbation, whether done alone or with another human or an
30 animal.
31 b. Vaginal, anal, or oral intercourse, whether done with another
32 human or with an animal.
33 c. Touching, in an act of apparent sexual stimulation or sexual
34 abuse, of the clothed or unclothed genitals, pubic area, or
35 buttocks of another person or the clothed or unclothed breasts
36 of a human female.
37 d. An act or condition that depicts torture, physical restraint by
38 being fettered or bound, or flagellation of or by a person clad in
39 undergarments or in revealing or bizarre costume.
40 e. Excretory functions; provided, however, that this
41 sub-subdivision shall not apply to G.S. 14-190.17A.
42 f. The insertion of any part of a person's body, other than the male
43 sexual organ, or of any object into another person's anus or

1 vagina, except when done as part of a recognized medical
2 procedure.

3 g. The lascivious exhibition of the genitals or pubic area of any
4 person.

5 (6) Sexually Explicit Nudity. – The showing of:

6 a. Uncovered, or less than opaquely covered, human genitals,
7 pubic area, or buttocks, or the nipple or any portion of the
8 areola of the human female breast, except as provided in
9 G.S. 14-190.9(b); or

10 b. Covered human male genitals in a discernibly turgid state."

11 **SECTION 2.** G.S. 14-190.16(d) reads as rewritten:

12 "(d) Punishment and Sentencing. – Violation of this section is a ~~Class D~~
13 ~~felony.~~Class C felony."

14 **SECTION 3.** G.S. 14-190.17(d) reads as rewritten:

15 "(d) Punishment and Sentencing. – Violation of this section is a ~~Class F~~
16 ~~felony.~~Class D felony."

17 **SECTION 4.** G.S. 14-190.17A(d) reads as rewritten:

18 "(d) Punishment and Sentencing. – Violation of this section is a ~~Class I~~
19 ~~felony.~~Class E felony."

20 **SECTION 5.** Article 13 of Chapter 66 of the General Statutes is amended by
21 adding a new section to read:

22 "**§ 66-67.4. Processors of photographic images or computer technicians to report**
23 **photo, film, video, or computer images that contain pictures of a minor**
24 **engaging in sexual activity.**

25 (a) As used in this section:

26 (1) "Computer technician" means any person who repairs, installs, or
27 otherwise services any computer or computer network or system for
28 compensation.

29 (2) "Processor of photographic images" means any person who, for
30 compensation: (i) develops exposed photographic film into negatives,
31 slides, or prints; (ii) makes prints from negatives, slides, digital
32 images, or video; or (iii) develops, processes, transfers, edits, or
33 enhances video or digital images.

34 (4) "Minor" has the same meaning as in G.S. 14-190.13.

35 (5) "Sexual activity" has the same meaning as in G.S. 14-190.13.

36 (b) Any processor of photographic images or any computer technician who,
37 within the person's scope of employment, observes an image of a minor or a person who
38 reasonably appears to be a minor engaging in sexual activity shall report the name and
39 address of the person requesting the processing of the photographic images or the owner
40 or person in possession of the computer or computer network or system to the Cyber
41 Tip Line at the National Center for Missing and Exploited Children or to the appropriate
42 law enforcement official in the county or municipality in which the photographic image
43 was submitted.

1 (c) An employee of a processor of photographic images or computer technician
2 may satisfy the requirements of this section by reporting the required information to a
3 person designated by the employer. The person designated by the employer shall then
4 report as required by subsection (b) of this section.

5 (d) Any person, his or her employer, or a third-party complying with this section
6 in good faith shall be immune from any civil or criminal liability that might otherwise
7 be incurred as a result of the report. In any proceeding involving liability, good faith is
8 presumed."

9 **SECTION 6.** G.S. 14-202.3(c) reads as rewritten:

10 "(c) Punishment. – A violation of this section is ~~a Class H felony~~ punishable as
11 follows:

12 (1) A violation is a Class H felony except as provided by subdivision (2)
13 of this subsection.

14 (2) If either the defendant or the person for whom the defendant was
15 arranging the meeting in violation of this section actually appears at
16 the meeting location, then the violation is a Class E felony."

17 **SECTION 7.** G.S. 14-225 reads as rewritten:

18 "**§ 14-225. False reports to law enforcement agencies or officers.**

19 (a) For purposes of this section, the term "official inquiry" means the pursuit of
20 an investigative matter by a sworn agent of the State Bureau of Investigation pursuant to
21 a statutorily authorized request from the Governor or the Attorney General, assistance
22 rendered in accordance with G.S. 114-14, or an investigation being conducted as a
23 matter of original jurisdiction conferred upon the State Bureau of Investigation by North
24 Carolina law.

25 (b) Any person who shall willfully make or cause to be made to a law
26 enforcement agency or officer any false, misleading or unfounded report, for the
27 purpose of interfering with the operation of a law enforcement agency, or to hinder or
28 obstruct any law enforcement officer in the performance of his duty, shall be guilty of a
29 Class 2 misdemeanor.

30 (c) In response to an official inquiry by a sworn agent of the State Bureau of
31 Investigation, any person who shall willfully do any of the following is guilty of a Class
32 H felony:

33 (1) Falsify by any trick, scheme, or device a material fact.

34 (2) Make any materially false, fictitious, or fraudulent statement or
35 representation.

36 (3) Use any false writing or document knowing the writing or document to
37 contain any materially false, fictitious, or fraudulent statement or
38 entry."

39 **SECTION 8.(a)** Article 1 of Chapter 75 of the General Statutes is amended
40 by adding a new section to read:

41 "**§ 75-40. Requiring parental permission for minors to access commercial social**
42 **networking Web sites.**

43 (a) Findings. – The General Assembly finds all of the following:

- 1 (1) Commercial social networking Web sites are growing dramatically and
2 have become widely used online communications tools. A significant
3 percentage of minor children use these social networking Web sites.
4 (2) Because children post personal information on these sites that may be
5 accessed by other users, these social networking Web sites have
6 become a matter of State and national concern. In particular, adult
7 sexual predators use these sites to identify, contact, and exploit
8 children.
9 (3) While parents and legal guardians are primarily responsible for
10 protecting the physical and psychological well-being of their children,
11 protection of children from exploitation by sexual predators is a
12 compelling governmental interest.
13 (4) Filtering software that prevents children from accessing social
14 networking and other Web sites is commercially available but does not
15 provide complete or even adequate protection to children from online
16 sexual predators. Only a portion of households with minor children
17 and Internet connections use filtering software that limits or prohibits
18 access to such sites. Even if filters are used, a child may circumvent a
19 filter by simply going to another location where the filter does not
20 operate.
21 (5) Most commercial social networking Web sites attempt to separate
22 children from adults by asking users for either their age or date of
23 birth. A user can easily circumvent this barrier by misrepresenting his
24 or her age.
25 (6) Requiring commercial social networking Web sites to obtain the
26 permission of a parent or legal guardian before his or her child can
27 enter and use a social networking Web site provides parents important
28 assistance in protecting their children from harm on the Internet.
29 (7) Verifying the identity of a parent or guardian who then grants a minor
30 permission to enter and use a social networking Web site makes it
31 more difficult for the minor to bypass a barrier between children and
32 adults. Identity verification therefore furthers and facilitates
33 supervision of children by their parents and guardians and furthers the
34 State's interest in protecting children from online sexual predators.
35 Moreover, identity verification of adults is commercially available.
36 (8) While commercial social networking Web sites offer a forum for
37 political discourse, friendships, and cultural developments, preserving
38 this arena of expression must be balanced against the compelling State
39 interest in protecting children from sexual predators. Providing parents
40 the power to permit or deny their children's participation enhances the
41 protection of children without unduly restricting expression.
42 (b) Definitions. – The following definitions apply in this section:
43 (1) Internet. – The global information system that is logically linked
44 together by a globally unique address space based on the Internet

1 Protocol or its subsequent extensions; that is able to support
2 communications using the Transmission Control Protocol/Internet
3 Protocol suite, its subsequent extensions, or other Internet Protocol
4 compatible protocols; and that provides, uses, or makes accessible,
5 either publicly or privately, high-level services layered on the
6 communications and related infrastructure described in this
7 subdivision.

8 (2) Person. – An individual, sole proprietor, partnership, corporation,
9 limited liability company, trust, joint venture, or other legally
10 cognizable entity.

11 (3) Protected computer. – Any computer that, at the time of an alleged
12 violation of any provision of this section involving that computer, was
13 located within the geographic boundaries of the State of North
14 Carolina.

15 (4) Commercial social networking Web site. –

16 a. A commercial social networking Web site is an Internet Web
17 site that (i) is operated by a person who derives revenue
18 membership fees, advertising, or other sources related to the
19 operation of the Web site; (ii) facilitates the social introduction
20 between two or more persons for the purposes of friendship,
21 meeting other persons, or information exchanges; (iii) allows
22 users to create Web pages or personal profiles that contain
23 information such as the name or nickname of the user,
24 photographs placed on the personal Web page by the user, other
25 personal information about the user, and links to other personal
26 Web pages on the commercial social networking Web site of
27 friends or associates of the user that may be accessed by other
28 users or visitors to the Web site; and (iv) provides users or
29 visitors to the commercial social networking Web site
30 mechanisms to communicate with other users, such as a
31 message board, chat room, electronic mail, or instant
32 messenger.

33 b. A commercial social networking Web site does not include an
34 Internet Web site (i) that provides only one of the following
35 discrete services: photo-sharing, electronic mail, instant
36 messenger, or chat room or message board platform; or (ii) the
37 primary purpose of which is the facilitation of commercial
38 transactions involving goods or services between its members
39 or visitors.

40 (5) Hosting provider. – A commercial provider of Web hosting services
41 where the provider does not determine the content to be hosted on the
42 Web site, but such content is determined in the discretion of the
43 customer of the hosting provider. Creation, implementation, or
44 enforcement of acceptable use policies by a hosting provider shall not

1 mean that a hosting provider determines the content to be hosted on
2 the Web site for purposes of this definition.

3 (c) No owner or operator of a commercial social networking Web site shall allow
4 a minor using a protected computer to create or maintain a personal Web page on a
5 social networking Web site without first obtaining the permission of the minor's parent
6 or guardian and without providing the parent or guardian access to the personal Web
7 page at all times the commercial social networking Web site is operational.

8 (d) Any owner or operator of a social networking Web site shall adopt and
9 implement procedures to confirm the identities and ages of parents or guardians who are
10 providing permission for their minor children and members at the time of registration by
11 independently validating the accuracy of personal identification information submitted
12 at the time of registration.

13 (e) Violation of any provision of this section shall constitute an unfair and
14 deceptive trade practice under G.S. 75-1.1. For the purposes of this section, each day
15 that an owner or operator of a commercial social networking Web site fails to adopt and
16 implement the procedures required of this section shall constitute a separate and distinct
17 violation.

18 (f) This section shall not apply to an Internet service or hosting provider by
19 reason of such provider's transmitting, routing, or providing connections for information
20 sent or received from a commercial social networking Web site, or by reason of hosting
21 the commercial social networking Web site, at the direction of a user or customer;
22 provided that the Internet service or hosting provider does not profit directly from the
23 activities of the commercial social networking Web site or intentionally aid and abet a
24 violation of this section."

25 **SECTION 8.(b)** Article 26 of Chapter 14 of the General Statutes is amended
26 by adding a new section to read:

27 **"§ 14-202.5. Ban use of commercial social networking Web sites by sex offenders.**

28 (a) Offense. – It is unlawful for a sex offender who is registered in accordance
29 with Article 27A of Chapter 14 of the General Statutes to access a commercial social
30 networking Web site, as defined in G.S. 75-40, that permits minor children to become a
31 member or to create or maintain a personal Web page on a commercial social
32 networking Web site.

33 (b) Jurisdiction. – The offense is committed in the State for purposes of
34 determining jurisdiction, if the transmission that constitutes the offense either originates
35 in the State or is received in the State.

36 (c) Punishment. – A violation of this section is a Class G felony."

37 **SECTION 8.(c)** Article 26 of Chapter 14 of the General Statutes is amended
38 by adding a new section to read:

39 **"§ 14-202.6. Ban on name changes by sex offenders.**

40 It is unlawful for a sex offender who is registered in accordance with Article 27A of
41 Chapter 14 of the General Statutes to obtain a change of name under Chapter 101 of the
42 General Statutes."

43 **SECTION 8.(d)** G.S. 101-6 is amended by adding a new subsection to read:

1 "(c) A sex offender who is registered in accordance with Article 27A of Chapter
2 14 of the General Statutes is prohibited from a obtaining a change of name under this
3 Chapter."

4 **SECTION 9.** If any section or provision of this act is declared
5 unconstitutional or invalid by the courts, the unconstitutional or invalid section or
6 provision does not affect the validity of this act as a whole or any part of this act other
7 than the part declared to be unconstitutional or invalid.

8 **SECTION 10.** This act becomes effective December 1, 2007, and applies to
9 offenses committed on or after that date.