

Senate Bill 232

By: Senators Shafer of the 48th, Cagle of the 49th, Smith of the 52nd, Hudgens of the 47th, Seabaugh of the 28th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 2 of Article 3 of Chapter 12 of Title 16 of the Official Code of Georgia
2 Annotated, relating to obscenity offenses related to minors generally, so as to provide a short
3 title; to provide definitions; to provide that it shall be illegal for an Internet service provider
4 to fail to remove or disable access to child pornography items residing on or accessible
5 through its service after notice; to provide for notice to Internet service providers by the
6 Attorney General; to provide for penalties; to provide for applications to remove child
7 pornographic items residing on or accessible through an Internet service provider's service;
8 to provide for orders for removal of or disabling access to such items; to provide for reports
9 to the General Assembly; to provide for related matters; to provide an effective date; to
10 repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 This Act shall be known as and may be cited as the "Internet Child Pornography Prevention
14 Act."

15 style="text-align:center">**SECTION 2.**

16 Part 2 of Article 3 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated,
17 relating to obscenity offenses related to minors generally, is amended by adding a new Code
18 Section 16-12-100.4 to read as follows:

19 "16-12-100.4.

20 (a) As used in this Code section, the term:

21 (1) 'Child pornography' means any description, depiction, or representation of minors
22 engaged in sexually explicit conduct as that term is now or hereafter defined in Code
23 Section 16-12-100 and which is illegal under paragraph (5) of subsection (b) of Code
24 Section 16-12-100.

1 (2) 'Internet' means the computer and telecommunications facilities, including equipment
2 and operating software, which comprise the interconnected worldwide network of
3 networks that employ the transmission control protocol/Internet protocol or any
4 predecessor or successor protocols to such protocol to communicate information of all
5 kinds by wire or radio.

6 (3) 'Internet service provider' means a person who provides a service that enables users
7 to access content, information, electronic mail, or other services offered over the Internet.

8 (4) 'Minor' means individuals under 18 years of age.

9 (b) It shall be illegal for an Internet service provider located in this state or that provides
10 Internet service or access through computers located in this state to fail to remove or
11 disable access to child pornography items residing on or accessible through its service in
12 a manner accessible to persons located in this state within five business days after being
13 notified by the Attorney General pursuant to this Code section that such items reside on or
14 are accessible through its service.

15 (c)(1) The Attorney General shall have the exclusive jurisdiction to notify Internet
16 service providers that child pornography items reside on or are accessible through their
17 services in a manner accessible to persons located in this state.

18 (2) The Attorney General shall initiate notification pursuant to this Code section when
19 the Attorney General receives information from a state law enforcement agency or
20 through a district attorney of this state that child pornography items reside on or are
21 accessible through an Internet service provider's services in a manner accessible to
22 persons located in this state.

23 (3) Upon receiving information from a state law enforcement agency or through a district
24 attorney of this state that child pornography items reside on or are accessible through an
25 Internet service provider's services in a manner accessible to persons located in this state,
26 the Attorney General shall apply for an order to remove or disable access to such items
27 to the Superior Court of Fulton County. Such application shall state:

28 (A) The authority of the Attorney General to make the application;

29 (B) The identity of the investigative or law enforcement official that has, in the official
30 scope of that official's duties, discovered the items;

31 (C) A description of the items;

32 (D) The uniform resource locator or Internet address providing access to such items;

33 (E) The identity of the Internet service provider providing access to such items;

34 (F) The basis to believe that there is probable cause to believe that such items constitute
35 child pornography and a violation of Code Section 16-12-100; and

36 (G) Such other information, affidavits, and information as necessary for the court to
37 review the application.

1 (4) After reviewing the application, the court may enter an order, including an ex parte
2 order, finding that there is probable cause to believe that such items constitute a violation
3 of Code Section 16-12-100 and directing that such items be removed or disabled from the
4 Internet service provider's service.

5 (5) Within three business days after receipt of such order, the Attorney General shall
6 notify the Internet service provider in writing of existence of the order and shall provide
7 a copy of the application made pursuant to paragraph (3) of this subsection, a copy of the
8 order entered, and notice that the Internet service provider must remove or disable access
9 to the items residing on or accessible through its service within five business days after
10 receipt of such notification. Service may be made upon the Internet service provider
11 directly or through its registered agent for service within this state, if any.

12 (d) Any Internet service provider that violates subsection (b) of this Code section shall,
13 upon conviction, be punished as a misdemeanor on the first offense, as a misdemeanor of
14 a high and aggravated nature on a second offense, and as a felony punishable by a fine of
15 not less than \$1,000.00 nor more than \$30,000.00 on a third and subsequent offense.

16 (e) Nothing in this Code section shall be construed as imposing a duty on an Internet
17 service provider to actively monitor its service or affirmatively seek evidence of illegal
18 activity on its service.

19 (f) At the beginning of each legislative session, the Attorney General shall make an annual
20 report to the General Assembly on the number of notifications issued and the prosecutions
21 made under this Code section during the preceding year along with any recommendations
22 for amendatory language or further legislation to eliminate child pornography."

23 SECTION 3.

24 This Act shall become effective upon its approval by the Governor or upon its becoming law
25 without such approval.

26 SECTION 4.

27 All laws and parts of laws in conflict with this Act are repealed.