

Senate Bill 316

By: Senators Chance of the 16th, Carter of the 13th, Stephens of the 27th, Schaefer of the 50th, Douglas of the 17th and others

AS PASSED SENATE

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 crimes involving obscenity and related matters and minors, so as to
3 change provisions relating to the crime of electronically furnishing obscene material to
4 minors; to provide that a person commits this crime if such person furnishes to an individual
5 whom the person knows or should have known is a minor any product which contains or
6 reveals or gives access to any user name, log-in code, password, number, or other information
7 which enables a person to access one or more Internet sites containing certain material which
8 is harmful to minors in that it appeals to and incites prurient interest; to provide for related
9 matters; to provide for an effective date and applicability; to repeal conflicting laws; and for
10 other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Part 2 of Article 3 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated,
14 relating to crimes involving obscenity and related matters and minors, is amended by striking
15 Code Section 16-12-100.1, relating to the crime of electronically furnishing obscene material
16 to minors, and inserting in its place a new Code section to read as follows:

17 "16-12-100.1.

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

19 (1) 'Bulletin board system' means a computer data and file service that is accessed by
20 telephone line to store and transmit information.

21 (2) 'CD-ROM' means a compact disc with read only memory which has the capacity to
22 store audio, video, and written materials and is used by computers to reveal the above-said
23 material.

24 (3) 'Electronically furnishes' means:

25 (A) To make available by electronic storage device, including floppy disks and other
26 magnetic storage devices, or by CD-ROM; or

(B) To make available by allowing access to information stored in a computer, including making material available by operating a computer bulletin board.

(4) 'Harmful to minors' means that quality of description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:

(A) Taken as a whole, predominantly appeals to the prurient, shameful, or morbid interest of minors;

(B) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

(C) Is, when taken as a whole, lacking in serious literary, artistic, political, or scientific value for minors.

(5) 'Minor' means an unmarried person younger than 18 years of age.

(5.1) 'Prepaid Internet access product' means any product which contains or reveals or gives access to any user name, log-in code, password, number, or other information which enables a person to access one or more Internet sites not otherwise accessible without payment or proof of age or both; and without limiting the generality of the foregoing this term specifically includes any product commonly referred to as a PPP card or any substantially equivalent product.

(6) 'Sadomasochistic abuse' means flagellation or torture by or upon a person who is nude or clad in undergarments or in revealing or bizarre costume or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

(7) 'Sexual conduct' means human masturbation, sexual intercourse, or any touching of the genitals, pubic areas, or buttocks of the human male or female or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(8) 'Sexual excitement' means the condition of human male or female genitals or the breasts of the female when in a state of sexual stimulation.

(b) A person commits the crime of electronically furnishing obscene materials to minors if:

(1) Knowing or having good reason to know the character of the material ~~furnished~~, the person either furnishes to an individual whom the person knows or should have known is a minor any prepaid Internet access product which would enable the minor to access any of the following material over the Internet or electronically furnishes to an individual whom the person knows or should have known is a minor any of the following material:

(A) Any picture, photograph, drawing, or similar visual representation or image of a person or portion of a human body which depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors; or

(B) Any written or aural matter that contains material of the nature described in subparagraph (A) of this paragraph or contains explicit verbal descriptions or narrative accounts of sexual conduct, sexual excitement, or sadomasochistic abuse;

(2) The offensive portions of the material electronically furnished to the minor are not merely an incidental part of an otherwise nonoffending whole;

(3) The material furnished to the minor, taken as a whole, lacks serious literary, artistic, political, or scientific value; and

(4) The material furnished to the minor, taken as a whole, is harmful to minors in that it appeals to and incites prurient interest.

(c) Any person who violates this Code section shall be guilty of a misdemeanor of a high and aggravated nature."

SECTION 2.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall apply with respect to offenses committed on or after that effective date. Prior offenses shall continue to be governed by prior law.

SECTION 3.

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