

The Senate Judiciary Non-Civil Committee offered the following substitute to HB 838:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 3 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated,  
2 relating to invasions of privacy, so as to prohibit the transmission of photography or video  
3 depicting nudity or sexually explicit conduct of an adult under certain circumstances; to  
4 provide for definitions; to provide for penalties; to provide for venue; to provide for  
5 exceptions; to provide for rebuttable presumption; to provide for related matters; to repeal  
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 SECTION 1.

9 Article 3 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to  
10 invasions of privacy, is amended by adding a new part to read as follows:

11 Part 3

12 16-11-90.

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

14 (1) 'Harassment' means engaging in conduct directed at a depicted person that is intended  
15 to cause substantial emotional harm to the depicted person.

16 (2) 'Nudity' means:

17 (A) The showing of the human male or female genitals, pubic area, or buttocks without  
18 any covering or with less than a full opaque covering;

19 (B) The showing of the female breasts without any covering or with less than a full  
20 opaque covering; or

21 (C) The depiction of covered male genitals in a discernibly turgid state.

22 (3) 'Sexually explicit conduct' shall have the same meaning as set forth in Code Section  
23 16-12-100.

24 (b) A person violates this Code section if he or she, knowing the content of a transmission  
25 or post, knowingly and without the consent of the depicted person:

26 (1) Electronically transmits or posts, in one or more transmissions or posts, a photograph  
27 or video which depicts nudity or sexually explicit conduct of an adult when the  
28 transmission or post is harassment or causes financial loss to the depicted person and  
29 serves no legitimate purpose to the depicted person; or

30 (2) Causes the electronic transmission or posting, in one or more transmissions or posts,  
31 of a photograph or video which depicts nudity or sexually explicit conduct of an adult  
32 when the transmission or post is harassment or causes financial loss to the depicted  
33 person and serves no legitimate purpose to the depicted person.

34 (c) Any person who violates this Code section shall be guilty of a misdemeanor of a high  
35 and aggravated nature; provided, however, that upon a second or subsequent violation of  
36 this Code section, he or she shall be guilty of a felony and, upon conviction thereof, shall  
37 be punished by imprisonment of not less than one nor more than five years, a fine of not  
38 more than \$100,000.00, or both.

39 (d) A person shall be subject to prosecution in this state pursuant to Code Section 17-2-1  
40 for any conduct made unlawful by this Code section which the person engages in while:

41 (1) Either within or outside of this state if, by such conduct, the person commits a  
42 violation of this Code section which involves an individual who resides in this state; or

43 (2) Within this state if, by such conduct, the person commits a violation of this Code  
44 section which involves an individual who resides within or outside this state.

45 (e) The provisions of subsection (b) of this Code section shall not apply to:

46 (1) The activities of law enforcement and prosecution agencies in the investigation and  
47 prosecution of criminal offenses;

48 (2) Legitimate medical, scientific, or educational activities;

49 (3) Any person who transmits or posts a photograph or video depicting only himself or  
50 herself engaged in nudity or sexually explicit conduct;

51 (4) The transmission or posting of a photograph or video that was originally made for  
52 commercial purposes; or

53 (5) Any person who transmits or posts a photograph or video depicting a person  
54 voluntarily engaged in nudity or sexually explicit conduct in a public setting.

55 (f) There shall be a rebuttable presumption that an information service, system, or access  
56 software provider that provides or enables computer access by multiple users to a computer  
57 server, including specifically a service or system that provides access to the Internet, for  
58 content provided by another person, does not know the content of an electronic  
59 transmission or post.

60 (g) Any violation of this Code section shall constitute a separate offense and shall not  
61 merge with any other crimes set forth in this title."

62 **SECTION 2.**

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