

House Bill 838 (AS PASSED HOUSE AND SENATE)

By: Representatives Tanner of the 9th, Golick of the 40th, Ramsey of the 72nd, Powell of the 171st, Hamilton of the 24th, and others

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; or

55 (6) The transmission is made pursuant to or in anticipation of a civil action.

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

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

63 **SECTION 2.**

64 All laws and parts of laws in conflict with this Act are repealed.