

The House Committee on Judiciary Non-Civil offers the following substitute to SB 78:

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 3 of Article 3 of Chapter 11 of Title 16 of the Official Code of Georgia
2 Annotated, relating to invasion of privacy, so as to revise the prohibition on electronically
3 transmitting or posting nude or sexually explicit photographs or videos for purposes of
4 harassing the depicted person; to provide for an increased penalty for the electronic
5 transmission or posting to a web page that is accessible to the general public; to provide for
6 related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Part 3 of Article 3 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated,
10 relating to invasion of privacy, is amended by revising subsections (b) and (c) of Code
11 Section 16-11-90, relating to prohibition on nude or sexually explicit electronic
12 transmissions, as follows:

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

15 (1) Electronically transmits or posts, in one or more transmissions or posts, a photograph
16 or video which depicts nudity or sexually explicit conduct of an adult, including a falsely

17 created videographic or still image, when the transmission or post is harassment or causes
18 financial loss to the depicted person, ~~and~~ serves no legitimate purpose to the depicted
19 person, and is transmitted or posted:

20 (A) To a website, peer-to-peer file-sharing site, thumbnail gallery, movie gallery post,
21 linked list, live webcam, web page, or message board that advertises or promotes its
22 service as showing, previewing, or distributing sexually explicit conduct; or

23 (B) Via any other electronic means that does not fall within subparagraph (A) of this
24 paragraph; or

25 (2) Causes the electronic transmission or posting, in one or more transmissions or posts,
26 of a photograph or video which depicts nudity or sexually explicit conduct of an adult,
27 including a falsely created videographic or still image, when the transmission or post is
28 harassment or causes financial loss to the depicted person, ~~and~~ serves no legitimate
29 purpose to the depicted person, and is transmitted or posted:

30 (A) To a website, peer-to-peer file-sharing site, thumbnail gallery, movie gallery post,
31 linked list, live webcam, web page, or message board that advertises or promotes its
32 service as showing, previewing, or distributing sexually explicit conduct; or

33 (B) Via any other electronic means that does not fall within subparagraph (A) of this
34 paragraph.

35 Nothing in this Code section shall be construed to impose liability on an interactive
36 computer service, as such term is defined in 47 U.S.C. 230(f)(2), or an information service
37 or telecommunications service, as such terms are defined in 47 U.S.C. 153, for content
38 provided by another person.

39 (c)(1) Any person who violates subparagraph (b)(1)(B) or (b)(2)(B) of this Code section
40 shall be guilty of a misdemeanor of a high and aggravated nature; provided, however, that
41 upon a second or subsequent violation of this Code section, he or she shall be guilty of
42 a felony and, upon conviction thereof, shall be punished by imprisonment of not less than
43 one nor more than five years, a fine of not more than \$100,000.00, or both.

44 (2) Any person who violates subparagraph (b)(1)(A) or (b)(2)(A) of this Code section
45 shall be guilty of a felony and, upon conviction thereof, shall be punished by
46 imprisonment of not less than one nor more than five years, a fine of not more than
47 \$100,000.00, or both. Upon the second and all subsequent convictions for violations of
48 subparagraph (b)(1)(A) or (b)(2)(A) of this Code section, such person shall be guilty of
49 a felony and shall be punished by imprisonment of not less than two nor more than five
50 years, a fine of not more than \$100,000.00, or both."

51 **SECTION 2.**

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