

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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SENATE DRS75328-LH-226 (5/18)

Short Title: Child Porn/Internet.

(Public)

Sponsors: Senator Hagan.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A DUTY ON THE PART OF INTERNET SERVICE PROVIDERS TO REMOVE OR DISABLE ACCESS TO CHILD PORNOGRAPHY ITEMS ACCESSIBLE THROUGH THE SERVICE AND TO MAKE IT A CRIMINAL OFFENSE TO FAIL TO COMPLY WITH THIS DUTY UPON APPROPRIATE NOTIFICATION BY THE ATTORNEY GENERAL.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 14 of the General Statutes is amended by adding a new article to read:

"Article 62.

"Internet Child Pornography or Obscenity.

**"§ 14-465. Definitions.**

The following definitions apply in this Article:

- (1) Child pornography means any act that is in violation of G.S. 14-190.16.
- (2) Internet means the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected worldwide network of networks that employ the transmission control protocol/Internet protocol or any predecessor or successor protocols to such protocol to communicate information of all kinds by wire or radio.
- (3) Internet service provider means a person who provides a service that enables users to access content, information, electronic mail, or other services offered over the Internet.

**"§ 14-466. Duty of Internet service provider.**

An Internet service provider shall remove or disable access to child pornography items residing on or accessible through its service in a manner accessible to persons

1 located within this State within five business days of when the Internet service provider  
2 is notified by the Attorney General pursuant to G.S. 14-476 that child pornography  
3 items reside on or are accessible through its service.

4 **"§ 14-467. Protection of privacy.**

5 Nothing in this Article may be construed as imposing a duty on an Internet service  
6 provider to actively monitor its service or affirmatively seek evidence of illegal activity  
7 on its service.

8 **"§ 14-468. Penalty.**

9 Notwithstanding any other provision of law to the contrary, any Internet service  
10 provider who violates G.S. 14-466 is guilty of a criminal offense as follows:

- 11 (1) A Class 2 misdemeanor for a first offense, punishable only by a fine.
- 12 (2) A Class 1 misdemeanor for a second offense, punishable only by a  
13 fine.
- 14 (3) A Class I felony for a third or subsequent offense.

15 **"§ 14-469. Jurisdiction for prosecution.**

16 The Attorney General shall have concurrent prosecutorial jurisdiction with the  
17 district attorney for violations of this Article. No person charged with a violation of this  
18 Article by the Attorney General shall have standing to challenge the authority of the  
19 Attorney General to prosecute the case. If a challenge is made, the challenge shall be  
20 dismissed and no relief shall be available in the courts of this State to the person making  
21 the challenge.

22 **"§ 14-470. Petition for order to remove or disable items.**

23 The Attorney General or district attorney may petition the district court for an order  
24 to remove or disable items residing on or accessible through an Internet service  
25 provider's service. The petition shall be in writing and shall be filed in the district court  
26 having jurisdiction where the items were discovered. The petition shall contain all of the  
27 following information:

- 28 (1) A statement of the authority of the petitioner to file the petition.
- 29 (2) A statement of the identity of the investigative or law enforcement  
30 officer who has, in the official scope of that officer's duties, discovered  
31 the child pornography items.
- 32 (3) A statement by the investigative or law enforcement officer who has  
33 knowledge of relevant information justifying the petition.
- 34 (4) The Uniform Resource Locator providing access to the items.
- 35 (5) The identity of the Internet service provider used by the law  
36 enforcement officer.
- 37 (6) A showing that there is probable cause to believe that the items  
38 constitute a violation of G.S. 14-190.16.
- 39 (7) A proposed order for the removal of the items from the Internet service  
40 for consideration by the judge.
- 41 (8) Contact information for the Office of Attorney General, including the  
42 name, address, and telephone number of any deputy or agent  
43 authorized by the Attorney General to submit notification.

1           (9) Additional testimony or documentary evidence in support of the  
2           petition as the judge may require.

3 **"§ 14-471. Order to remove or disable certain items from Internet service**  
4 **provider's service.**

5           Upon consideration of the petition, the court may enter an order, including an ex  
6 parte order as requested, advising the Attorney General or a district attorney that the  
7 items constitute probable cause evidence of a violation of G.S. 14-190.16 and that the  
8 items shall be removed or disabled from the Internet service provider's service. The  
9 court may include any other information in the order as the court deems relevant and  
10 necessary.

11 **"§ 14-472. Notification procedure.**

12           (a) The Attorney General shall have exclusive jurisdiction to notify Internet  
13 service providers under this Article. The Attorney General shall initiate notification  
14 under this Article if requested in writing by a district attorney who has provided the  
15 Attorney General with a copy of a petition made under G.S. 14-470 and a copy of the  
16 order issued under G.S. 14-471 or upon the issuance of an order based upon a petition  
17 filed by the Attorney General.

18           (b) For purposes of this section, an Internet service provider or the person  
19 designated by the Internet service provider as provided for in G.S. 14-473 shall be  
20 notified in writing by the Attorney General within three business days of the Attorney  
21 General's receipt of an order.

22           (c) The notice shall include the following information:

23           (1) A copy of the application filed in accordance with G.S. 14-471.

24           (2) A copy of the court order issued under G.S. 14-472.

25           (3) Notification that the Internet service provider must remove or disable  
26 the items residing on or accessible through its service within five  
27 business days of the date of receipt of the notification.

28           (4) Contact information for the Office of Attorney General, including the  
29 name, address, and telephone number of any deputy or agent  
30 authorized by the Attorney General to submit notification pursuant to  
31 this article.

32 **"§ 14-473. Designated agent.**

33           An Internet service provider may designate an agent to receive notification provided  
34 under G.S. 14-472.

35 **"§ 14-474. Report to General Assembly.**

36           The Attorney General shall make an annual report to the Chairs of the Joint  
37 Legislative Commission on Governmental Operations providing information on the  
38 number of notifications issued and the prosecutions made under this Article."

39           **SECTION 2.** This act becomes effective December 1, 2004, and applies to  
40 offenses committed on or after that date.