Sponsored by:
Senator RICHARD J. CODEY
District 27 (Essex and Morris)

SYNOPSIS
Provides penalties for sexually offensive or abusive communication through social networking websites.

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning social networking websites and supplementing
Title 56 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State
of New Jersey:

1. This act shall be known and may be cited as the “Social
Networking Safety Act.”

2. No person shall transmit a sexually offensive
communication through a social networking website to or about a
person located in New Jersey who is, or who the actor reasonably
believes to be less than 13 years of age, or at least 13 but less than
16 years old and at least four years younger than the actor.
A person who transmits a sexually offensive communication in
violation of this subsection shall be liable to the social networking
website operator in a civil action for damages of $1,000, plus
reasonable attorney’s fees, for each violation.
A person who transmits a sexually offensive communication in
violation of this subsection shall also be liable to the recipient of the
communication in a civil action for damages in the amount of
$5,000, plus reasonable attorney’s fees, or actual damages,
whichever is greater.
Actual damages shall consist of compensatory and punitive
damages and costs of suit, including reasonable attorney’s fees.
Compensatory damages may include, but are not limited to,
damages for pain and suffering, medical expenses, emotional
trauma, diminished childhood, diminished enjoyment of life, costs
of counseling, and lost wages.

3. No person shall transmit an abusive communication through
a social networking website to or about a person located in New
Jersey who is, or who the actor reasonably believes to be less than
18 years of age.

4. a. Except as provided in subsection b. of this section, it shall
be an unlawful practice and a violation of P.L. 1960, c.39 (C.56:8-1
et seq.) for a social networking website operator to fail to revoke, in
the most expedient time possible without unreasonable delay, the
website access of any user or third party upon receipt of
information that provides a reasonable basis to conclude that the
user or third party has violated section 2 or section 3 of
P.L. , c. (C. ) (pending before the Legislature as this bill).
b. A social networking website operator shall not be deemed to
be in violation of subsection a. of this section if the operator
maintains a reporting mechanism available to the user that meets
the following requirements:
(1) the social networking website displays, in a conspicuous location, a readily identifiable icon or link that enables a user or third party to report to the social networking website operator a sexually offensive or abusive communication transmitted through the social networking website;

(2) the operator conducts a review, in the most expedient time possible without unreasonable delay, of any report by a user or third party, including investigation and referral to law enforcement if appropriate, and provides users and third parties with the opportunity to determine the status of the operator’s review or investigation of any such report; and

(3) the mechanism provides the means to enable a user to block communications from third parties whom users allege have transmitted a sexually offensive or abusive communication.

c. A social networking website operator that does not maintain a reporting mechanism that meets the requirements set forth in subsection b. of this section shall include on its website, in a clear and conspicuous manner, a statement notifying users that the website does not maintain a reporting mechanism that comports with New Jersey state law provisions to protect users against sexually offensive and abusive communications.

5. A social networking website operator or any employee or agent thereof who reports information to law enforcement concerning an allegation that a user or third party has violated section 2 or section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill) is immune from civil and criminal liability arising from such report, unless the person acts in bad faith or with malicious purpose.

6. For the purposes of this act:

a. “Operator” means any person, business or organization qualified to do business in this State that operates a social networking website.

b. “Social networking website” means a website which is accessible to third parties and on which users under the age of 18 located in New Jersey may post personal information and through which third parties may communicate with such users.

c. “Abusive communication” means any communication which a reasonable person would believe is intended to threaten, intimidate or harass another person.

d. “Sexually offensive communication” means any communication which a reasonable person would believe is intended to solicit or request a person to engage in sexual activity, and any communication which transmits obscene material as defined in N.J.S.2C:34-3.

e. “Third party” means a person other than the user or the operator, or an employee of the operator.
f. “User” means a person located in this State who establishes
on a social networking website an online profile, page or similar
account on which the user may post personal information, and
which may be viewed by third parties.

7. This act shall take effect immediately.

STATEMENT

This bill would enact the “Social Networking Safety Act.”

The bill provides for civil penalties against individuals who
transmit a sexually offensive communication through a social
networking website to or about a person located in New Jersey who
is, or who the actor reasonably believes to be: (1) less than 13 years
of age; or (2) at least 13 but less than 16 years old and at least four
years younger than the actor. Under the bill, this person would be
liable to the social networking website operator in a civil action for
damages of $1,000, plus reasonable attorney’s fees, for each
violation and to the recipient of the communication in a civil action
for damages in the amount of $5,000, plus reasonable attorney’s
fees, or actual damages, whichever is greater. Actual damages
would consist of compensatory and punitive damages and costs of
suit, including reasonable attorney’s fees. Compensatory damages
may include, but are not limited to, damages for pain and suffering,
medical expenses, emotional trauma, diminished childhood,
diminished enjoyment of life, costs of counseling, and lost wages.

The bill defines “sexually offensive communication” as any
communication which a reasonable person would believe is
intended to solicit or request a person to engage in sexual activity,
and any communication which transmits obscene material as
defined in N.J.S.2C:34-3.

This bill also prohibits the transmission of abusive
communication through a social networking website to or about a
person located in New Jersey who is, or who the actor reasonably
believes to be, less than 18 years of age. This bill defines “abusive
communication” as any communication which a reasonable person
would believe is intended to threaten, intimidate or harass another
person.

The bill makes it an unlawful practice and a violation of the
Consumer Fraud Act, N.J.S.A.56:8-1, for a social networking
website operator to fail to revoke, in the most expedient time
possible without unreasonable delay, the website access of any user
or third party upon receipt of information that provides a reasonable
basis to conclude that the user or third party has transmitted
sexually offensive or abusive communications. The bill defines
“user” as a person located in this State who establishes on a social
networking website an online profile, page or similar account on
which the user may post personal information, and which may be
viewed by third parties.

A social networking website operator would not be deemed to be
in violation if the operator maintains a reporting mechanism
available to the user that meets the following requirements:

(1) the social networking website displays, in a conspicuous
location, a readily identifiable icon or link that enables a user to
report to the social networking website operator a sexually
offensive or abusive communication transmitted by a third party
through the social networking website;

(2) the operator conducts a review, in the most expedient time
possible without unreasonable delay, of any report by a user or third
party, including investigation and referral to law enforcement if
appropriate, and provides users and third parties with the
opportunity to determine the status of the operator’s review or
investigation of any such report; and

(3) the mechanism provides the means to enable a user to block
communications from third parties whom users allege have
transmitted a sexually offensive or abusive communication.

Under the bill, a social networking website operator that does not
maintain a reporting mechanism meeting the requirements set forth
in the bill must include on its website, in a clear and conspicuous
manner, a statement notifying users that the website does not
maintain a reporting mechanism that comports with New Jersey
state law provisions to protect users against sexually offensive and
abusive communications.

In addition, the bill provides that a social networking website
operator or any employee or agent thereof who reports information
to law enforcement concerning an allegation that a user or third
party has transmitted sexually offensive or abusive communication
is immune from civil and criminal liability arising from such report,
unless the person acts in bad faith or with malicious purpose.