

SENATE, No. 1115
STATE OF NEW JERSEY
218th LEGISLATURE

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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.