

No. 2002-5

AN ACT

HB 1333

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, requiring Internet service providers to remove or disable access to child pornography sites on the Internet.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 18 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:

§ 7330. Internet child pornography.

(a) *General rule.*—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 located within this Commonwealth within five business days of when the Internet service provider is notified by the Attorney General pursuant to subsection (g) that child pornography items reside on or are accessible through its service.

(b) *Protection of privacy.*—Nothing in this section may be construed as imposing a duty on an Internet service provider to actively monitor its service or affirmatively seek evidence of illegal activity on its service.

(c) *Penalty.*—Notwithstanding any other provision of law to the contrary, any Internet service provider who violates subsection (a) commits:

(1) A misdemeanor of the third degree for a first offense punishable by a fine of \$5,000.

(2) A misdemeanor of the second degree for a second offense punishable by a fine of \$20,000.

(3) A felony of the third degree for a third or subsequent offense punishable by a fine of \$30,000 and imprisonment for a maximum of seven years.

(d) *Jurisdiction for prosecution.*—The Attorney General shall have concurrent prosecutorial jurisdiction with the county district attorney for violations of this section. No person charged with a violation of this section by the Attorney General shall have standing to challenge the authority of the Attorney General to prosecute the case, and, if any such challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of this Commonwealth to the person making the challenge.

(e) *Application for order to remove or disable items.*—An application for an order of authorization to remove or disable items residing on or accessible through an Internet service provider's service shall be made to

the court of common pleas having jurisdiction in writing upon the personal oath or affirmation of the Attorney General or a district attorney of the county wherein the items have been discovered and, if available, shall contain all of the following information:

(1) A statement of the authority of the applicant to make such an application.

(2) A statement of the identity of the investigative or law enforcement officer that has, in the official scope of that officer's duties, discovered the child pornography items.

(3) A statement by the investigative or law enforcement officer who has knowledge of relevant information justifying the application.

(4) The Uniform Resource Locator providing access to such items.

(5) The identity of the Internet service provider used by the law enforcement officer.

(6) A showing that there is probable cause to believe that such items constitute a violation of section 6312 (relating to sexual abuse of children).

(7) A proposed order of authorization for consideration by the judge.

(8) Contact information for the Office of Attorney General, including the name, address and telephone number of any deputy or agent authorized by the Attorney General to submit notification pursuant to subsection (g).

(9) Such additional testimony or documentary evidence in support of the application as the judge may require.

(f) Order to remove or disable certain items from Internet service provider's service.—Upon consideration of an application, the court may enter an order, including an ex parte order, as requested, advising the Attorney General or a district attorney that such items constitute probable cause evidence of a violation of section 6312 and that such items shall be removed or disabled from the Internet service provider's service, and the court may include such other information as the court deems relevant and necessary.

(g) Notification procedure.—

(1) The Attorney General shall have exclusive jurisdiction to notify Internet service providers under this section. The Attorney General shall initiate notification pursuant to this section if requested in writing by a district attorney who has provided the Attorney General with a copy of the application made pursuant to subsection (e) and a copy of the order issued pursuant to subsection (f) or upon the issuance of an order based upon an application filed by the Attorney General.

(2) For purposes of this subsection, an Internet service provider or the person designated by the Internet service provider as provided for in subsection (h) shall be notified in writing by the Attorney General

within three business days of the Attorney General's receipt of an order.

(3) The notice shall include the following information:

(i) A copy of the application made pursuant to subsection (e).

(ii) A copy of the court order issued pursuant to subsection (f).

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

(iv) Contact information for the Office of Attorney General, including the name, address and telephone number of any deputy or agent authorized by the Attorney General to submit notification pursuant to this subsection.

(h) Designated agent.—An Internet service provider may designate an agent to receive notification pursuant to subsection (g).

(i) Report to General Assembly.—The Attorney General shall make an annual report to the chairman and minority chairman of the Judiciary Committee of the Senate and to the chairman and minority chairman of the Judiciary Committee of the House of Representatives providing information on the number of notifications issued and the prosecutions made under this section and making any recommendations for amendatory language.

(j) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Child pornography.” As described in section 6312 (relating to sexual abuse of children).

“Internet.” 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.

“Internet service provider.” A person who provides a service that enables users to access content, information, electronic mail or other services offered over the Internet.

Section 2. This act shall take effect in 60 days.

APPROVED—The 21st day of February, A.D. 2002.

MARK S. SCHWEIKER