

By Senator Fasano

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1 A bill to be entitled
2 An act relating to the protection of minors online;
3 defining the term "Internet access provider"; requiring
4 providers to make available to customers in this state a
5 product or service that enables the subscriber to regulate
6 a minor's use of the service to access the Internet if
7 certain conditions exist; providing requirements for such
8 a product or service; requiring that interactive computer
9 services take necessary steps to preserve records and
10 evidence upon request of law enforcement agencies
11 investigating specified crimes involving minor victims;
12 requiring retention of such records and information for
13 specified periods; providing search warrant compliance
14 requirements for interactive computer services for
15 investigations of specified offenses involving minor
16 victims; providing for compliance without compulsory legal
17 process in investigations of certain offenses involving
18 minor victims involving immediate danger of death or
19 serious bodily harm; providing for construction of
20 provisions in a manner consistent with specified federal
21 laws; creating s. 847.0141, F.S.; requiring interactive
22 computer services to make certain reports when a violation
23 of child pornography laws is evident to such service;
24 amending ss. 800.04 and 847.0135, F.S.; providing that it
25 is not a defense to charges of certain offenses involving
26 minor victims that the alleged victim was, in fact, a law
27 enforcement officer posing as such minor victim; amending
28 s. 943.043, F.S.; requiring the Department of Law
29 Enforcement to make electronic mail and instant message

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30 name information collected from sexual predators and
31 sexual offenders available to certain entities for
32 specified purposes; providing that interactive computers
33 services are not liable for specified actions based on a
34 good faith belief that a user is listed in a sex offender
35 registry; creating s. 948.33, F.S.; providing for lifetime
36 supervision of Internet activities of specified sexual
37 offenders whose offenses involved minor victims; providing
38 for conduct of such supervision; specifying the
39 requirements for such supervision; permitting certain
40 offenders to have their Internet access limited or
41 restricted; providing for petitions for release from such
42 supervision; providing penalties; amending s. 1003.42,
43 F.S.; providing a requirement for Internet safety
44 instruction for students; providing related duties for the
45 Department of Education; providing an effective date.

46
47 Be It Enacted by the Legislature of the State of Florida:

48
49 Section 1. Internet access provider; parental controls.--

50 (1) For purposes of this section, the term "Internet access
51 provider" means an entity that provides consumers with public
52 access to the Internet.

53 (2) If an Internet access provider knows or has reasonable
54 cause to believe that a subscriber resides within this state, the
55 provider shall make available to the subscriber a product or
56 service that enables the subscriber to regulate a minor's use of
57 the service to access the Internet if such a product or service
58 is reasonably and commercially available for the technology used

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59 by the subscriber to access the Internet. The product or service
60 must, subject to such availability, enable the subscriber to do
61 the following:

62 (a) Block access to specific websites or domains
63 disapproved by the subscriber.

64 (b) Restrict access exclusively to specific websites or
65 domains approved by the subscriber.

66 (c) Allow the subscriber to monitor a minor's use of the
67 Internet by providing a report to the subscriber of the specific
68 websites or domains that the minor has visited or has attempted
69 to visit but could not access because the websites or domains
70 were blocked or restricted by the subscriber.

71 (3) For the purposes of subsection (2), an Internet access
72 provider shall be deemed to know that a subscriber resides within
73 this state if the subscriber identifies this state as his or her
74 place of residence at the time of subscription.

75 (4) If a product or service described in subsection (2) is
76 reasonably and commercially available for the technology used by
77 the subscriber to access the Internet, the provider of Internet
78 access:

79 (a) Shall provide to the subscriber, at the time of
80 subscription, information concerning the availability of the
81 product or service described in subsection (2).

82 (b) May make the product or service described in subsection
83 (2) available to the subscriber either directly or through a
84 third-party vendor.

85 Section 2. (1) (a) An interactive computer service, as
86 defined in s. 668.602, Florida Statutes, shall, upon the request
87 of any law enforcement agency investigating an offense involving

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88 a minor victim that is listed in s. 775.21(4)1., Florida
89 Statutes, or s. 943.0435(1)(a)1., Florida Statutes, take all
90 necessary steps to preserve records and all other evidence in its
91 possession pending issuance of a court order or other legal
92 process. The interactive computer service shall comply with the
93 request as soon as possible following receipt.

94 (b) Records referred to in paragraph (a) shall be retained
95 for a period of 90 days, which shall be extended for an
96 additional 90-day period upon a renewed request by the law
97 enforcement agency.

98 (2)(a) An interactive computer service shall, after
99 receiving a search warrant as set forth in chapter 933 relating
100 to an investigation of an offense involving a minor victim that
101 is listed in s. 775.21(4)1., Florida Statutes, or s.
102 943.0435(1)(a)1., Florida Statutes, provide information
103 identified in 18 U.S.C. s. 2703(c)(2) that is in its possession;
104 except that if the service demonstrates to the requesting law
105 enforcement agency that, for bona fide technical reasons, it
106 cannot comply with the order within 15 days of the request, it
107 shall make every reasonable effort to comply with the request as
108 soon as reasonably possible.

109 (b) In connection with any criminal investigation regarding
110 a possible sex offense involving a minor that is listed in s.
111 775.21(4)1., Florida Statutes, or s. 943.0435(1)(a)1., Florida
112 Statutes, that involves immediate danger of death or serious
113 bodily harm, a law enforcement agency in this state may issue a
114 request, without compulsory legal process or court order, to a
115 designated recipient of the interactive computer service to
116 disclose, consistent with 18 U.S.C. s. 2702(c)(4), the

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117 information identified in paragraph (a). The service shall
118 communicate with the requesting agency to discuss the nature of
119 the request and to coordinate an appropriate response immediately
120 and without delay.

121 (3) Subsections (1) and (2) shall be interpreted in a
122 manner consistent with the requirements of federal law that apply
123 to providers of an electronic communications service, including,
124 but not limited to, 18 U.S.C. ss. 2701 et seq. and 42 U.S.C. s.
125 13032.

126 Section 3. Section 847.0141, Florida Statutes, is created
127 to read:

128 847.0141 Reporting child pornography violations.--An
129 interactive computer service, as defined in s. 668.602, that is
130 doing business in this state and that obtains knowledge of facts
131 or circumstances from which a violation of any law in this state
132 prohibiting child pornography is apparent shall make a report, as
133 soon as reasonably possible, of such facts or circumstances to
134 the National Center for Missing and Exploited Children consistent
135 with the requirements of 42 U.S.C. s. 13032.

136 Section 4. Paragraph (e) is added to subsection (7) of
137 section 800.04, Florida Statutes, to read:

138 800.04 Lewd or lascivious offenses committed upon or in the
139 presence of persons less than 16 years of age.--

140 (7) LEWD OR LASCIVIOUS EXHIBITION.--

141 (e) It shall not be a defense to a charge under this
142 subsection that the victim was actually a law enforcement officer
143 posing as a person less than 16 years of age.

144 Section 5. Subsection (8) is added to section 847.0135,
145 Florida Statutes, to read:

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146 847.0135 Computer pornography; traveling to meet minor;
147 penalties.--

148 (8) NOT A DEFENSE.--It shall not be a defense to a charge
149 under this section that the victim was actually a law enforcement
150 officer posing as a minor.

151 Section 6. Subsections (6) and (7) are added to section
152 943.043, Florida Statutes, to read:

153 943.043 Toll-free telephone number; Internet notification;
154 sexual predator and sexual offender information; interactive
155 computer service liability.--

156 (6) The department shall make the electronic mail and
157 instant message name information collected from sexual predators
158 and sexual offenders available through a formal mechanism to any
159 commercial or nonprofit entity, including child safety
160 organizations, educational institutions, and interactive computer
161 services as defined in s. 668.602, for the purpose of protecting
162 minors from sexual predators and sexual offenders.

163 (7) No provider of an interactive computer service shall be
164 liable under this section or any other provision of law:

165 (a) For identifying, removing, disabling, blocking, or
166 otherwise affecting a user based on a good faith belief that such
167 user's electronic mail address, instant message name, or other
168 similar Internet identifier appeared in the National Sex Offender
169 Registry or any analogous state registry; or

170 (b) For failing to identify, block, or otherwise prevent a
171 person from registering for its service, or for failing to
172 remove, disable, or otherwise affect a registered user, whose
173 electronic mail address, instant message name, or other similar

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174 Internet identifier appears in the National Sex Offender Registry
175 or any analogous state registry.

176 Section 7. Section 948.33, Florida Statutes, is created to
177 read:

178 948.33 Online monitoring of certain sexual offenders.--

179 (1) A person subject to additional restrictions under any
180 provision of s. 948.30 for an offense committed on or after
181 October 1, 2008, against a victim who was under 18 years of age
182 at the time of the offense shall, in addition to any other
183 provision of law, be subject to additional supervision for life
184 as provided in this section. The supervision shall be conducted
185 by a probation officer, law enforcement officer, or an assigned
186 computer information technology specialist in a form and manner
187 prescribed by the Attorney General. Conditions imposed pursuant
188 to this section do not require oral pronouncement at the time of
189 sentencing and shall be considered standard conditions of
190 probation or community control for offenders specified in this
191 section.

192 (2) Persons subject to lifetime supervision under this
193 section shall be subject to:

194 (a) Continued supervision, whether in person or remotely,
195 of his or her incoming and outgoing e-mail or other Internet-
196 based communication.

197 (b) Continued supervision, either in person or remotely, of
198 his or her history of websites visited.

199 (c) Periodic, unannounced inspections of the contents of
200 his or her computer and any other device with Internet access
201 owned or used by the offender. Such inspections may include, but
202 are not limited to, retrieval and copying of all data from the

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203 device and any internal or external storage or portable media and
204 the removal of such information, computer, device, or media to
205 conduct an examination for evidence relevant to any offense that
206 is listed in s. 948.30 committed against a victim who was under
207 18 years of age at the time of the offense.

208 (d) Allowing for the use of technologies to create a unique
209 identifier of his or her computer that will allow law enforcement
210 to track and monitor online activity.

211 (3) If the Internet was used by the offender in the
212 commission of the offense described in subsection (1), the judge,
213 as a part of the offender's sentence, may limit or restrict the
214 offender's Internet access.

215 (4) An offender subject to lifetime supervision under this
216 section may petition for release from supervision to the circuit
217 court having jurisdiction over the original offense. The offender
218 may not be released from supervision unless he or she shows by
219 clear and convincing evidence that he or she has not committed a
220 felony or misdemeanor of any type for 15 years since his or her
221 last conviction or release from incarceration, whichever is
222 later, and that the offender is not likely to pose a threat to
223 the safety of others if released from supervision.

224 (5) An offender who violates a provision of supervision
225 under this section commits a felony of the third degree,
226 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
227 and, upon conviction, shall be sentenced to a mandatory minimum
228 term of imprisonment of 5 years unless the court finds that in
229 that particular case the interests of justice outweigh the need
230 to deter the crimes referenced in subsection (1) and that such a
231 sentence of imprisonment would be a manifest injustice.

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232 Section 8. Paragraph (u) is added to subsection (2) of
233 section 1003.42, Florida Statutes, to read:

234 1003.42 Required instruction.--

235 (2) Members of the instructional staff of the public
236 schools, subject to the rules of the State Board of Education and
237 the district school board, shall teach efficiently and
238 faithfully, using the books and materials required that meet the
239 highest standards for professionalism and historic accuracy,
240 following the prescribed courses of study, and employing approved
241 methods of instruction, the following:

242 (u) Internet safety for students, taught at least once to
243 students in grade 3 or above in a way that is integrated in the
244 instructional program. The department shall develop a model
245 curriculum, taking into consideration similar curricula developed
246 by the other states as well as any other curricular materials
247 suggested by education experts, child psychologists, or
248 technology companies working on child online safety issues. The
249 department shall also provide each district with materials for
250 parents regarding child online safety.

251
252 The State Board of Education is encouraged to adopt standards and
253 pursue assessment of the requirements of this subsection.

254 Section 9. This act shall take effect October 1, 2008.