

House Engrossed Senate Bill

State of Arizona
Senate
Forty-sixth Legislature
First Regular Session
2003

CHAPTER 222

SENATE BILL 1352

AN ACT

AMENDING SECTIONS 13-3506.01 AND 13-3620, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 38, ARTICLE 20, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-4066; RELATING TO CHILDREN AND FAMILY OFFENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-3506.01, Arizona Revised Statutes, is amended
3 to read:

4 13-3506.01. Furnishing harmful items to minors; internet
5 activity; classification

6 A. It is unlawful for any person, with knowledge of the character of
7 the item involved, to intentionally or knowingly transmit or send over the
8 internet an item to a minor that is harmful to minors when the person has
9 knowledge or reason to know TO A MINOR BY MEANS OF ELECTRONIC MAIL, PERSONAL
10 MESSAGING OR ANY OTHER DIRECT INTERNET COMMUNICATION AN ITEM THAT IS HARMFUL
11 TO MINORS WHEN THE PERSON KNOWS OR BELIEVES at the time of the transmission
12 that a minor in this state will receive the item.

13 B. ~~It is unlawful for any person in this state, with knowledge of the~~
14 ~~character of the item involved, to intentionally or knowingly transmit or~~
15 ~~send over the internet an item to a minor that is harmful to minors when the~~
16 ~~person has knowledge or reason to know at the time of the transmission that~~
17 ~~a minor will receive the item. THIS SECTION DOES NOT APPLY TO:~~

18 ~~1. Posting material on an internet web site does not constitute~~
19 ~~the act of transmitting or sending an item over the internet, BULLETIN BOARD~~
20 ~~OR NEWSGROUP.~~

21 ~~2. SENDING MATERIAL VIA A MAILING LIST OR LISTSERV THAT IS NOT~~
22 ~~ADMINISTERED BY THE SENDER. A MAILING LIST OR LISTSERV IS A METHOD OF~~
23 ~~INTERNET COMMUNICATION WHERE A MESSAGE IS SENT TO AN INTERNET ADDRESS AND~~
24 ~~THEN IS RETRANSMITTED TO ONE OR MORE SUBSCRIBERS TO THE MAILING LIST OR~~
25 ~~LISTSERV.~~

26 C. THE TERM "INTERNET" MEANS THE COMBINATION OF COMPUTER FACILITIES
27 AND ELECTROMAGNETIC TRANSMISSION MEDIA, AND RELATED EQUIPMENT AND SOFTWARE,
28 COMPRISING THE INTERCONNECTED WORLDWIDE NETWORK OF COMPUTER NETWORKS THAT
29 EMPLOY THE TRANSMISSION CONTROL PROTOCOL OR INTERNET PROTOCOL OR ANY
30 SUCCESSOR PROTOCOL TO TRANSMIT INFORMATION.

31 ~~D. In an action for a violation of this section, proof of any of the~~
32 ~~following may give rise to an inference that the person knew or should have~~
33 ~~known that the recipient of a transmission was a minor:~~

34 ~~1. The name, account, profile, web page or address of the recipient~~
35 ~~contained indicia that the recipient is a minor.~~

36 ~~2. The recipient or another person previously notified the person by~~
37 ~~any reasonable means that the recipient is a minor.~~

38 ~~3. The recipient's electronic mail or web page contains indicia that~~
39 ~~the address or domain name is the property of, or that the visual depiction~~
40 ~~ultimately will be stored at, a school as defined in section 13-609.~~

41 D. THE TERM "INTERNET WEB SITE" MEANS A LOCATION WHERE MATERIAL PLACED
42 IN A COMPUTER SERVER-BASED FILE ARCHIVE IS PUBLICLY ACCESSIBLE, OVER THE
43 INTERNET, USING HYPERTEXT TRANSFER PROTOCOL OR ANY SUCCESSOR PROTOCOL.

1 E. It is not a defense to a prosecution for a violation of this
2 section that the recipient of the transmission was a peace officer posing as
3 a minor.

4 F. A violation of this section is a class 4 felony.

5 G. FAILURE TO REPORT A VIOLATION OF THIS SECTION IS A CLASS 6 FELONY
6 AS PRESCRIBED BY SECTION 13-3620.

7 Sec. 2. Section 13-3620, Arizona Revised Statutes, is amended to read:
8 13-3620. Duty to report abuse, physical injury, neglect and
9 denial or deprivation of medical or surgical care or
10 nourishment of minors; medical records; exception;
11 violation; classification; definitions

12 A. ~~Any physician, hospital intern or resident, surgeon, dentist,~~
13 ~~osteopath, chiropractor, podiatrist, county medical examiner, nurse,~~
14 ~~psychologist, school personnel, social worker, peace officer, parent,~~
15 ~~counselor, clergyman or priest or any other person having responsibility for~~
16 ~~the care or treatment of children whose observation or examination of any~~
17 ~~minor discloses reasonable grounds to believe ANY PERSON WHO REASONABLY~~
18 ~~BELIEVES that a minor is or has been the victim of PHYSICAL injury, sexual~~
19 ~~abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to~~
20 ~~section 13-1405, sexual assault pursuant to section 13-1406, molestation of~~
21 ~~a child pursuant to section 13-1410, commercial sexual exploitation of a~~
22 ~~minor pursuant to section 13-3552, sexual exploitation of a minor pursuant~~
23 ~~to section 13-3553, incest pursuant to section 13-3608 or child prostitution~~
24 ~~pursuant to section 13-3212, death, abuse pursuant to section 8-201, CHILD~~
25 ~~ABUSE, A REPORTABLE OFFENSE or physical neglect which THAT appears to have~~
26 ~~been inflicted on that THE minor by other than accidental means or which THAT~~
27 ~~is not explained by the available medical history as being accidental in~~
28 ~~nature or who has reasonable grounds to believe REASONABLY BELIEVES there has~~
29 ~~been a denial or deprivation of necessary medical treatment or surgical care~~
30 ~~or nourishment with the intent to cause or allow the death of an infant less~~
31 ~~than one year of age WHO IS protected under section 36-2281 shall immediately~~
32 ~~report or cause reports to be made of this information to a peace officer or~~
33 ~~to child protective services in the department of economic security, EXCEPT~~
34 ~~IF THE REPORT CONCERNS A PERSON WHO DOES NOT HAVE CARE, CUSTODY OR CONTROL~~
35 ~~OF THE MINOR, THE REPORT SHALL BE MADE TO A PEACE OFFICER ONLY. A clergyman~~
36 ~~MEMBER OF THE CLERGY, CHRISTIAN SCIENCE PRACTITIONER or priest who has~~
37 ~~received a confidential communication or a confession in that person's role~~
38 ~~as a clergyman MEMBER OF THE CLERGY, CHRISTIAN SCIENCE PRACTITIONER or a~~
39 ~~priest in the course of the discipline enjoined by the church to which the~~
40 ~~clergyman MEMBER OF THE CLERGY, CHRISTIAN SCIENCE PRACTITIONER or priest~~
41 ~~belongs may withhold reporting of the communication or confession if the~~
42 ~~clergyman MEMBER OF THE CLERGY, CHRISTIAN SCIENCE PRACTITIONER or priest~~
43 ~~determines that it is reasonable and necessary within the concepts of the~~
44 ~~religion. This exemption applies only to the communication or confession and~~
45 ~~not to personal observations the clergyman MEMBER OF THE CLERGY, CHRISTIAN~~

1 SCIENCE PRACTITIONER or priest may otherwise make of the minor. FOR THE
2 PURPOSES OF THIS SUBSECTION, "PERSON" MEANS:

3 1. ANY PHYSICIAN, PHYSICIAN'S ASSISTANT, OPTOMETRIST, DENTIST,
4 OSTEOPATH, CHIROPRACTOR, PODIATRIST, BEHAVIORAL HEALTH PROFESSIONAL, NURSE,
5 PSYCHOLOGIST, COUNSELOR OR SOCIAL WORKER WHO DEVELOPS THE REASONABLE BELIEF
6 IN THE COURSE OF TREATING A PATIENT.

7 2. ANY PEACE OFFICER, MEMBER OF THE CLERGY, PRIEST OR CHRISTIAN
8 SCIENCE PRACTITIONER.

9 3. THE PARENT, STEPPARENT OR GUARDIAN OF THE MINOR.

10 4. SCHOOL PERSONNEL OR DOMESTIC VIOLENCE VICTIM ADVOCATE WHO DEVELOP
11 THE REASONABLE BELIEF IN THE COURSE OF THEIR EMPLOYMENT.

12 5. ANY OTHER PERSON WHO HAS RESPONSIBILITY FOR THE CARE OR TREATMENT
13 OF THE MINOR.

14 B. A report is not required under this section for conduct prescribed
15 by sections 13-1404 and 13-1405 if the conduct involves only minors ~~age~~ WHO
16 ARE fourteen, fifteen, sixteen or seventeen YEARS OF AGE and there is nothing
17 to indicate that the conduct is other than consensual.

18 C. IF A PHYSICIAN, PSYCHOLOGIST OR BEHAVIORAL HEALTH PROFESSIONAL
19 RECEIVES A STATEMENT FROM A PERSON OTHER THAN A PARENT, STEPPARENT, GUARDIAN
20 OR CUSTODIAN OF THE MINOR DURING THE COURSE OF PROVIDING SEX OFFENDER
21 TREATMENT THAT IS NOT COURT ORDERED OR THAT DOES NOT OCCUR WHILE THE OFFENDER
22 IS INCARCERATED IN THE STATE DEPARTMENT OF CORRECTIONS OR THE DEPARTMENT OF
23 JUVENILE CORRECTIONS, THE PHYSICIAN, PSYCHOLOGIST OR BEHAVIORAL HEALTH
24 PROFESSIONAL MAY WITHHOLD THE REPORTING OF THAT STATEMENT IF THE PHYSICIAN,
25 PSYCHOLOGIST OR BEHAVIORAL HEALTH PROFESSIONAL DETERMINES IT IS REASONABLE
26 AND NECESSARY TO ACCOMPLISH THE PURPOSES OF THE TREATMENT.

27 D. Reports shall be made ~~forthwith~~ IMMEDIATELY by telephone or in
28 person ~~forthwith~~ and shall be followed by a written report within seventy-two
29 hours. The reports shall contain:

30 1. The names and addresses of the minor and the minor's parents or the
31 person or persons having custody of the minor, if known.

32 2. The minor's age and the nature and extent of the minor's ~~injuries~~
33 ABUSE, CHILD ABUSE, PHYSICAL INJURY or ~~physical~~ neglect, including any
34 evidence of previous ~~injuries~~ ABUSE, CHILD ABUSE, PHYSICAL INJURY or ~~physical~~
35 neglect.

36 3. Any other information that the person believes might be helpful in
37 establishing the cause of the ABUSE, CHILD ABUSE, PHYSICAL injury or ~~physical~~
38 neglect.

39 ~~B.~~ E. A health care professional who is regulated pursuant to title
40 32 and whose WHO, AFTER A routine newborn physical assessment of a newborn
41 infant's health status or whose FOLLOWING notification of positive toxicology
42 screens of a newborn infant ~~gives the professional reasonable grounds to~~
43 ~~believe~~, REASONABLY BELIEVES that the newborn infant may be affected by the
44 presence of alcohol or a substance ~~prohibited by chapter 34 of this title~~
45 DRUG LISTED IN SECTION 13-3401 shall immediately report this information, or

1 cause a report to be made, to child protective services in the department of
2 economic security. For the purposes of this subsection, "newborn infant"
3 means a newborn infant who is under thirty days of age.

4 ~~E.~~ F. Any person other than one required to report or cause reports
5 to be made in UNDER subsection A of this section who ~~has reasonable grounds~~
6 ~~to believe~~ REASONABLY BELIEVES that a minor is or has been a victim of abuse,
7 CHILD ABUSE, PHYSICAL INJURY, A REPORTABLE OFFENSE or neglect may report the
8 information to a peace officer or to child protective services in the
9 department of economic security, EXCEPT IF THE REPORT CONCERNS A PERSON WHO
10 DOES NOT HAVE CARE, CUSTODY OR CONTROL OF THE MINOR, THE REPORT SHALL BE MADE
11 TO A PEACE OFFICER ONLY.

12 ~~D.~~ G. A person ~~having~~ WHO HAS custody or control of medical records
13 of a minor for whom a report is required or authorized under this section
14 shall make the records, or a copy of the records, available to a peace
15 officer or child protective services worker investigating the minor's
16 neglect, CHILD ABUSE, PHYSICAL INJURY or abuse on written request for the
17 records signed by the peace officer or child protective services
18 worker. Records disclosed pursuant to this subsection are confidential and
19 may be used only in a judicial or administrative proceeding or investigation
20 resulting from a report required or authorized under this section.

21 ~~E.~~ H. When ~~such~~ telephone or in-person reports are received by the
22 A peace officer, ~~they~~ THE OFFICER shall immediately notify child protective
23 services in the department of economic security and make the information
24 available to them. Notwithstanding any other statute, when child protective
25 services receives these reports by telephone or in person, it shall
26 immediately notify a peace officer in the appropriate jurisdiction.

27 ~~F.~~ I. Any person WHO IS required to receive reports pursuant to
28 subsection A of this section may take or cause to be taken photographs of the
29 ~~child~~ MINOR and the vicinity involved. Medical examinations ~~including, but~~
30 ~~not limited to, radiological examinations~~ of the involved ~~child~~ MINOR may be
31 performed.

32 ~~G.~~ J. A person furnishing WHO FURNISHES a report, information or
33 records required or authorized under this section, or a person participating
34 WHO PARTICIPATES in a judicial or administrative proceeding or investigation
35 resulting from a report, information or records required or authorized under
36 this section, ~~shall be~~ IS immune from any civil or criminal liability by
37 reason of ~~such~~ THAT action unless the person acted with malice or unless the
38 person has been charged with or is suspected of abusing or neglecting the
39 child or children in question.

40 ~~K.~~ Except ~~as provided in subsection H of this section, the~~
41 ~~physician-patient privilege, the husband-wife privilege or any privilege~~
42 ~~except the attorney-client privilege, provided for by professions such as the~~
43 ~~practice of social work or nursing covered by law or a code of ethics~~
44 ~~regarding practitioner-client confidences, both as they relate to the~~
45 ~~competency of the witness and to the exclusion of confidential~~

1 ~~communications, shall not pertain in any~~ FOR THE ATTORNEY CLIENT PRIVILEGE
2 OR THE PRIVILEGE UNDER SUBSECTION L OF THIS SECTION, NO PRIVILEGE APPLIES TO
3 ANY:

4 1. Civil or criminal litigation or administrative proceeding in which
5 a ~~child's~~ MINOR'S neglect, dependency, abuse, CHILD ABUSE, PHYSICAL INJURY
6 or abandonment is an issue. ~~nor in any~~

7 2. Judicial or administrative proceeding resulting from a report,
8 information or records submitted pursuant to this section. ~~nor in any~~

9 3. Investigation of a ~~child's~~ MINOR'S CHILD ABUSE, PHYSICAL INJURY,
10 neglect or abuse conducted by a peace officer or child protective services
11 in the department of economic security.

12 ~~H.~~ L. In any civil or criminal litigation in which a child's neglect,
13 dependency, PHYSICAL INJURY, abuse, CHILD ABUSE or abandonment is an issue,
14 a ~~clergyman~~ MEMBER OF THE CLERGY, A CHRISTIAN SCIENCE PRACTITIONER or A
15 priest shall not, without his consent, be examined as a witness concerning
16 any confession made to him in his role as a ~~clergyman~~ MEMBER OF THE CLERGY,
17 A CHRISTIAN SCIENCE PRACTITIONER or a priest in the course of the discipline
18 enjoined by the church to which he belongs. Nothing in this subsection
19 discharges a ~~clergyman~~ MEMBER OF THE CLERGY, A CHRISTIAN SCIENCE PRACTITIONER
20 or A priest from the duty to report pursuant to subsection A of this section.

21 ~~I.~~ M. If psychiatric records are requested pursuant to subsection ~~D~~
22 G of this section, the custodian of the records shall notify the attending
23 psychiatrist, who may excise from the records, before they are made
24 available:

25 1. Personal information about individuals other than the patient.

26 2. Information regarding specific diagnosis or treatment of a
27 psychiatric condition, if the attending psychiatrist certifies in writing
28 that release of the information would be detrimental to the patient's health
29 or treatment.

30 ~~J.~~ N. If any portion of a psychiatric record is excised pursuant to
31 subsection ~~I~~ M of this section, a court, upon application of a peace officer
32 or child protective services worker, may order that the entire record or any
33 portion of the record ~~containing~~ THAT CONTAINS information relevant to the
34 reported abuse, CHILD ABUSE, PHYSICAL INJURY or neglect be made available to
35 the peace officer or child protective services worker investigating the
36 abuse, CHILD ABUSE, PHYSICAL INJURY or neglect.

37 ~~K.~~ O. A person who violates this section is guilty of a class 1
38 misdemeanor, EXCEPT IF THE FAILURE TO REPORT INVOLVES A REPORTABLE OFFENSE,
39 THE PERSON IS GUILTY OF A CLASS 6 FELONY.

40 P. FOR THE PURPOSES OF THIS SECTION:

41 1. "ABUSE" HAS THE SAME MEANING PRESCRIBED IN SECTION 8-201.

42 2. "CHILD ABUSE" MEANS CHILD ABUSE PURSUANT TO SECTION 13-3623.

43 3. "NEGLECT" HAS THE SAME MEANING PRESCRIBED IN SECTION 8-201.

44 4. "REPORTABLE OFFENSE" MEANS ANY OF THE FOLLOWING:

1 (a) ANY OFFENSE LISTED IN CHAPTERS 14 AND 35.1 OF THIS TITLE OR
2 SECTION 13-3506.01.

3 (b) SURREPTITIOUS PHOTOGRAPHING, VIDEOTAPING, FILMING OR DIGITALLY
4 RECORDING OF A MINOR PURSUANT TO SECTION 13-3019.

5 (c) CHILD PROSTITUTION PURSUANT TO SECTION 13-3212.

6 (d) INCEST PURSUANT TO SECTION 13-3608.

7 Sec. 3. Title 13, chapter 38, article 20, Arizona Revised Statutes,
8 is amended by adding section 13-4066, to read:

9 13-4066. Privileged communication; sex offender treatment

10 ANY STATEMENT THAT IS MADE BY A PERSON WHO UNDERGOES SEX OFFENDER
11 TREATMENT THAT IS ORDERED BY THE COURT OR THAT IS PROVIDED BY THE STATE
12 DEPARTMENT OF CORRECTIONS OR THE DEPARTMENT OF JUVENILE CORRECTIONS TO A
13 PERSON WHO IS CONVICTED OF AN OFFENSE LISTED IN CHAPTER 14 OR 35.1 OF THIS
14 TITLE AND ANY EVIDENCE THAT RESULTS FROM THAT TREATMENT IS NOT ADMISSIBLE
15 AGAINST THE PERSON IN ANY CRIMINAL OR JUVENILE DELINQUENCY PROCEEDING UNLESS
16 THE PERSON CONSENTS, EXCEPT THAT THE STATEMENT OR EVIDENCE MAY BE USED
17 PURSUANT TO RULE 404 (b) AND (c), ARIZONA RULES OF EVIDENCE.

~~APPROVED BY THE GOVERNOR MAY 14, 2003.~~

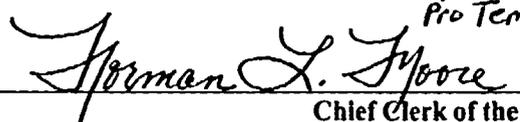
~~FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 15, 2003.~~

Passed the House May 1, 20 03,

by the following vote: 57 Ayes,

0 Nays, 3 Not Voting



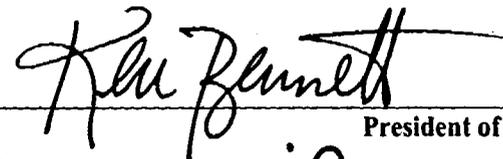
Speaker of the House
Pro Tempore


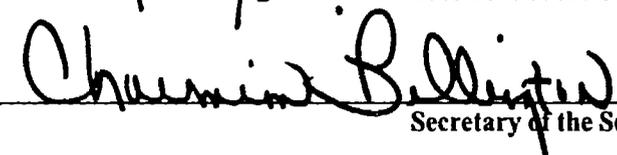
Chief Clerk of the House

Passed the Senate March 17, 20 03,

by the following vote: 22 Ayes,

8 Nays, 0 Not Voting



President of the Senate


Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

~~_____ day of _____, 20____,~~

~~at _____ o'clock _____ M.~~

~~_____
Secretary to the Governor~~

Approved this _____ day of

~~_____, 20____,~~

~~at _____ o'clock _____ M.~~

~~_____
Governor of Arizona~~

S.B. 1352

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

~~this _____ day of _____, 20____,~~

~~at _____ o'clock _____ M.~~

~~_____
Secretary of State~~

SENATE CONCURS IN HOUSE AMENDMENTS
AND FINAL PASSAGE

Passed the Senate May 8, 2003,

by the following vote: 27 Ayes,

2 Nays, 1 Not Voting

Ken Blumenthal
President of the Senate
Charmian Bellis
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

8 day of May, 2003

at 11:45 o'clock A M.

Sandra Ramirez
Secretary to the Governor

Approved this 14 day of

May, 2003,

at 4:00 o'clock P. M.

Jan Noyes
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 15 day of May, 2003,

at 1:55 o'clock P. M.

Janice L. Brewer
Secretary of State

S.B. 1352