

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Mr. Knapik

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to reporting child pornography.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Mr. Brown	Norfolk, Bristol and Middlesex
Mr. Buoniconti	Hampden
Mr. Hedlund	Plymouth and Norfolk
Mr. Knapik	Second Hampden and Hampshire
Mr. Tarr	First Essex and Middlesex
Mr. Tisei	Middlesex and Essex
Todd M. Smola	1st Hampden

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S00937 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO REPORTING CHILD PORNOGRAPHY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1.

2 Chapter 272 of the General Laws is hereby amended by inserting after section 29C the following
3 section:-

4 Section 29D. (a) For the purposes of this section the following words shall have the following
5 meanings:-

6 “Commercial computer technician”, any person who repairs, installs or otherwise services any
7 computer including, but not limited to, a component part, device, memory storage or recording
8 mechanism, auxiliary storage, recording or memory capacity, or any other materials relating to
9 operation and maintenance of a computer or computer network or system, for compensation.

10 “Commercial film and photographic print processor”, any person who develops exposed
11 photographic film into negatives, slides or prints, makes prints from negatives or slides or
12 downloads photographic images onto discs for compensation.

13 “Sexual conduct”, human masturbation, sexual intercourse, actual or simulated, any lewd
14 exhibitions of the genitals, flagellation or torture in the context of a sexual relationship, any lewd
15 touching of the genitals, pubic areas, or buttocks of the human male or female, or the breasts of
16 the female, whether alone or between members of the same or opposite sex or between humans
17 and animals, and any depiction or representation of excretory functions in the context of a sexual
18 relationship. Sexual intercourse is simulated when it depicts explicit sexual intercourse which
19 gives the appearance of the consummation of sexual intercourse.

20 (b) Any commercial film and photographic print processor, commercial computer technician,
21 internet service provider or electronic service provider that has knowledge of or observes, within
22 the scope of such person’s employment, any film, photograph, videotape, negative, slide or
23 computer-generated image or any other visual image depicting another, that such technician,
24 processor or provider knows is under the age of 18 or that such technician, processor or provider
25 has reason to know that such person is a child under 18 years of age, and such image depicts
26 such person engaged in sexual conduct shall report the knowledge or observation of such image
27 to the state police or the municipal law enforcement agency having jurisdiction over the matter
28 as well as the name, address and any other identifying data of the individual requesting the
29 development of the image or of the owner or person requesting the computer technician service,
30 including the internet protocol address, if applicable. Such report shall be made as soon as
31 practically possible. Whoever violates this section shall be punished by a fine of not less than

32 \$500 nor more than \$2,500 for a first offense and not less than \$2,500 nor more than \$5,000 for
33 any subsequent offense.

34 (c) This section shall not require that a commercial film and photographic print processor,
35 commercial computer technician, internet service provider or electronic service provider review
36 or monitor all film, disks, data or tapes under such commercial film or photographic print
37 processor, commercial computer technician, or internet service provider or electronic service
38 provider's control within the scope of such business for the purpose of complying with this
39 section.

40 (d) No action taken in good faith to comply with this section by a commercial film or
41 photographic print processor, commercial computer technician, internet service provider or
42 electronic service provider shall give rise to any civil liability.

43 (e) No commercial film and photographic print processor, commercial computer technician,
44 internet service provider or electronic service provider who, in good faith, transfers to a law
45 enforcement agency at the request of such agency, an image which depicts a child that is or
46 appears to be under the age of 18 engaged in sexual conduct and discovered in the course of his
47 business, or preserves a copy of such image for the purpose of providing the image to a law
48 enforcement agency and which image is subsequently provided to a law enforcement agency,
49 shall be criminally liable for such temporary possession or preservation or transfer.

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