

ASSEMBLY BILL NO. 88—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 15, 2008

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to child pornography. (BDR 15-267)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in **bolded italics** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to sexual offenses; prohibiting a person from using the Internet to control child pornography; establishing a civil remedy under certain circumstances for a person who appeared in child pornography; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 **Section 1** of this bill prohibits a person from using the Internet to control child
2 pornography.
3 **Section 4** of this bill establishes a civil cause of action for a person who, while
4 under the age of 16 years, appeared in child pornography and suffered personal or
5 psychological injury as the result. A person who prevails in such an action may
6 recover his actual damages, which are deemed to be at least \$150,000, plus
7 attorney's fees and costs. **Section 3** of this bill establishes the statute of limitations
8 for such an action.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 200 of NRS is hereby amended by adding
2 thereto a new section to read as follows:
3 ***1. Any person who, knowingly, willfully and with the specific***
4 ***intent to view any film, photograph or other visual presentation***
5 ***depicting a person under the age of 16 years engaging in or***



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1 *simulating sexual conduct, uses the Internet to control such a*
2 *film, photograph or other visual presentation is guilty of:*

3 *(a) For the first offense, a category C felony and shall be*
4 *punished as provided in NRS 193.130.*

5 *(b) For any subsequent offense, a category B felony and shall*
6 *be punished by imprisonment in the state prison for a minimum*
7 *term of not less than 1 year and a maximum term of not more than*
8 *6 years, and may be further punished by a fine of not more than*
9 *\$5,000.*

10 2. *As used in this section, "sexual conduct" means sexual*
11 *intercourse, fellatio, cunnilingus, bestiality, anal intercourse,*
12 *excretion, sado-masochistic abuse, masturbation, or the*
13 *penetration of any object manipulated or inserted by a person into*
14 *the genital or anal opening of the body of another.*

15 **Sec. 2.** NRS 200.700 is hereby amended to read as follows:

16 200.700 As used in NRS 200.700 to 200.760, inclusive, *and*
17 *section 1 of this act*, unless the context otherwise ~~provides:~~
18 *requires:*

19 1. "Performance" means any play, film, photograph, computer-
20 generated image, electronic representation, dance or other visual
21 presentation.

22 2. "Promote" means to produce, direct, procure, manufacture,
23 sell, give, lend, publish, distribute, exhibit, advertise or possess for
24 the purpose of distribution.

25 3. "Sexual conduct" means sexual intercourse, lewd exhibition
26 of the genitals, fellatio, cunnilingus, bestiality, anal intercourse,
27 excretion, sado-masochistic abuse, masturbation, or the penetration
28 of any part of a person's body or of any object manipulated or
29 inserted by a person into the genital or anal opening of the body of
30 another.

31 4. "Sexual portrayal" means the depiction of a person in a
32 manner which appeals to the prurient interest in sex and which does
33 not have serious literary, artistic, political or scientific value.

34 **Sec. 3.** NRS 11.215 is hereby amended to read as follows:

35 11.215 1. Except as otherwise provided in *subsection 2 and*
36 *NRS 217.007*, an action to recover damages for an injury to a person
37 arising from the sexual abuse of the plaintiff which occurred when
38 the plaintiff was less than 18 years of age must be commenced
39 within 10 years after the plaintiff:

40 (a) Reaches 18 years of age; or

41 (b) Discovers or reasonably should have discovered that his
42 injury was caused by the sexual abuse,

43 ➤ whichever occurs later.



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2. *An action to recover damages pursuant to section 4 of this act must be commenced within 3 years after the occurrence of the following, whichever is later:*

- (a) The court enters a verdict in a related criminal case; or*
- (b) The victim reaches the age of 18 years.*

3. As used in this section, "sexual abuse" has the meaning ascribed to it in NRS 432B.100.

Sec. 4. Chapter 41 of NRS is hereby amended by adding thereto a new section to read as follows:

1. *Any person who, while under the age of 16 years, appeared in any film, photograph or other visual presentation engaging in sexual conduct and who suffered personal or psychological injury as a result may bring an action against any person who, while over the age of 18 years, knowingly and willfully:*

- (a) Promoted the film, photograph or other visual presentation;*

- (b) Possessed the film, photograph or other visual presentation; or*

- (c) Used the Internet to control the film, photograph or other visual presentation, with the specific intent to view the film, photograph or other visual presentation.*

2. *A plaintiff who prevails in an action brought pursuant to this section may recover his actual damages, which shall be deemed to be at least \$150,000, plus attorney's fees and costs.*

3. *A plaintiff may request to use a pseudonym instead of his name in all court proceedings and records related to an action brought pursuant to this section. Upon notification that a plaintiff has requested to use a pseudonym, the court shall ensure that the pseudonym is used in all court proceedings and records.*

4. *It is not a defense to a cause of action under this section that a defendant did not know the plaintiff or did not engage in the sexual conduct with the plaintiff.*

5. *As used in this section:*

- (a) "Promote" has the meaning ascribed to it in NRS 200.700.*

- (b) "Sexual conduct" means sexual intercourse, fellatio, cunnilingus, bestiality, anal intercourse, excretion, sado-masochistic abuse, masturbation, or the penetration of any object manipulated or inserted by a person into the genital or anal opening of the body of another.*

