Senate Bill 78
By: Senators Jones II of the 22nd, Anderson of the 43rd, Harrell of the 40th, Parent of the 42nd, Butler of the 55th and others

AS PASSED

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 3 of Article 3 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to invasion of privacy, so as to revise the prohibition on electronically transmitting or posting nude or sexually explicit photographs or videos for purposes of harassing the depicted person; to provide for an increased penalty for the electronic transmission or posting to a web page that is accessible to the general public; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Part 3 of Article 3 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to invasion of privacy, is amended by revising subsections (b) and (c) of Code Section 16-11-90, relating to prohibition on nude or sexually explicit electronic transmissions, as follows:

"(b) A person violates this Code section if he or she, knowing the content of a transmission or post, knowingly and without the consent of the depicted person:

(1) Electronically transmits or posts, in one or more transmissions or posts, a photograph or video which depicts nudity or sexually explicit conduct of an adult, including a falsely
created videographic or still image, when the transmission or post is harassment or causes financial loss to the depicted person, and serves no legitimate purpose to the depicted person, and is transmitted or posted:

(A) To a website, peer-to-peer file-sharing site, thumbnail gallery, movie gallery post, linked list, live webcam, web page, or message board, that advertises or promotes its service as showing, previewing, or distributing sexually explicit conduct; or

(B) Via any other electronic means that does not fall within subparagraph (A) of this paragraph; or

(2) Causes the electronic transmission or posting, in one or more transmissions or posts, of a photograph or video which depicts nudity or sexually explicit conduct of an adult, including a falsely created videographic or still image, when the transmission or post is harassment or causes financial loss to the depicted person, and serves no legitimate purpose to the depicted person, and is transmitted or posted:

(A) To a website, peer-to-peer file-sharing site, thumbnail gallery, movie gallery post, linked list, live webcam, web page, or message board, that advertises or promotes its service as showing, previewing, or distributing sexually explicit conduct; or

(B) Via any other electronic means that does not fall within subparagraph (A) of this paragraph.

Nothing in this Code section shall be construed to impose liability on an interactive computer service, as such term is defined in 47 U.S.C. 230(f)(2), or an information service or telecommunications service, as such terms are defined in 47 U.S.C. 153, for content provided by another person.

(c)(1) Any person who violates subparagraph (b)(1)(B) or (b)(2)(B) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature; provided, however, that upon a second or subsequent violation of this Code section, he or she shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment of not less than one nor more than five years, a fine of not more than $100,000.00, or both.
(2) Any person who violates subparagraph (b)(1)(A) or (b)(2)(A) of this Code section
shall be guilty of a felony and, upon conviction thereof, shall be punished by
imprisonment of not less than one nor more than five years, a fine of not more than
$100,000.00, or both. Upon the second and all subsequent convictions for violations of
subparagraph (b)(1)(A) or (b)(2)(A) of this Code section, such person shall be guilty of
a felony and shall be punished by imprisonment of not less than two nor more than five
years, a fine of not more than $100,000.00, or both."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.