

SENATE NO. 937

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 downloads
12 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 the
16 female, whether alone or between members of the same or opposite sex or between humans and

17 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 gives
19 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 the
22 scope of such person's employment, any film, photograph, videotape, negative, slide or computer-
23 generated image or any other visual image depicting another, that such technician, processor or
24 provider knows is under the age of 18 or that such technician, processor or provider has reason to
25 know that such person is a child under 18 years of age, and such image depicts such person engaged in
26 sexual conduct shall report the knowledge or observation of such image to the state police or the
27 municipal law enforcement agency having jurisdiction over the matter as well as the name, address
28 and any other identifying data of the individual requesting the development of the image or of the
29 owner or person requesting the computer technician service, including the internet protocol address, if
30 applicable. Such report shall be made as soon as practically possible. Whoever violates this section
31 shall be punished by a fine of not less than \$500 nor more than \$2,500 for a first offense and not less
32 than \$2,500 nor more than \$5,000 for any subsequent offense.

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

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

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