

BY: House Judiciary Committee

AMENDMENTS TO HOUSE BILL NO. 661
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 3, after “an” insert “investigative or law enforcement officer who receives information that an item of alleged child pornography resides on a server or other storage device controlled or owned by an interactive computer service provider to contact the provider and request the provider’s voluntary compliance in removing the item within a certain period of time; requiring the officer to apply for a court order if the provider does not voluntarily remove the item; specifying certain information to be included in the application for a court order; establishing the provider’s right to a hearing on the application; requiring a”; in lines 3, 8, and 11, in each instance, strike “Internet service”; in line 4, strike “or accessible on”; in line 5, strike “or access to it disabled”; in line 6, after “period;” insert “specifying the content of the court order; establishing a procedure for issuing and serving the court order; authorizing a provider to petition the court for relief for cause from the order on certain grounds; requiring a provider who has notice that an item of child pornography resides on a server or other storage device controlled or owned by the provider and located in the State or pertains to a user residing in the State to report the item’s location to the State Police; providing a certain exception to the reporting requirement; providing a criminal penalty for willful failure to provide certain information to the State Police;”; in line 7, strike “or disable access to”; in the same line, after “item” insert “of child pornography from a certain server or other storage device”; in line 9, strike “service” and substitute “server or other storage device”; in the same line, after “pornography;” insert “providing that this Act does not apply to the transmission, routing, or temporary storage of certain images or information by a provider;”; strike beginning with “establishing” in line 9 down through “order;” in line 10; in line 11, strike the second “an” and substitute “a”; and in line 12, strike “Internet service providers” and substitute “interactive computer service providers”.

AMENDMENT NO. 2

On page 4, in line 26, strike “MATTER,” and substitute “ELECTRONIC IMAGE OR”; in line 27, strike “REPRESENTATION, OR PERFORMANCE” and substitute “DEPICTION”; after line 28, insert:

(Over)

“(3) “CONTROLLED OR OWNED”, WITH RESPECT TO A SERVER OR OTHER STORAGE DEVICE, MEANS TO BE ENTIRELY OWNED BY AN INTERACTIVE COMPUTER SERVICE PROVIDER OR TO BE SUBJECT TO EXCLUSIVE MANAGEMENT BY AN INTERACTIVE COMPUTER SERVICE PROVIDER BY AGREEMENT OR OTHERWISE.”;

in line 29, strike “(3)” and substitute “(4)”; in the same line, strike “INTERNET” and substitute “INTERACTIVE COMPUTER”; strike beginning with the first “A” in line 29 down through “INTERNET” in line 31 and substitute “AN ENTITY THAT PROVIDES A SERVICE THAT PROVIDES OR ENABLES COMPUTER ACCESS VIA THE INTERNET BY MULTIPLE USERS TO A COMPUTER SERVER OR SIMILAR DEVICE USED FOR THE STORAGE OF GRAPHICS, VIDEO, OR IMAGES.”

(B) AN INVESTIGATIVE OR LAW ENFORCEMENT OFFICER WHO RECEIVES INFORMATION THAT AN ITEM OF ALLEGED CHILD PORNOGRAPHY RESIDES ON A SERVER OR OTHER STORAGE DEVICE CONTROLLED OR OWNED BY AN INTERACTIVE COMPUTER SERVICE PROVIDER SHALL:

(1) CONTACT THE INTERACTIVE COMPUTER SERVICE PROVIDER THAT CONTROLS OR OWNS THE SERVER OR OTHER STORAGE DEVICE WHERE THE ITEM OF ALLEGED CHILD PORNOGRAPHY IS LOCATED;

(2) INFORM THE INTERACTIVE COMPUTER SERVICE PROVIDER OF THE PROVISIONS OF THIS SECTION; AND

(3) REQUEST THAT THE INTERACTIVE COMPUTER SERVICE PROVIDER VOLUNTARILY COMPLY WITH THIS SECTION AND REMOVE THE ITEM OF ALLEGED CHILD PORNOGRAPHY FROM ITS SERVER OR OTHER STORAGE DEVICE WITHIN 5 DAYS”;

in line 32, strike “(B)” and substitute “(C)”; in the same line, strike “AN” and substitute “IF THE INTERACTIVE COMPUTER SERVICE PROVIDER DOES NOT VOLUNTARILY REMOVE THE ITEM OF ALLEGED CHILD PORNOGRAPHY WITHIN THE TIME PERIOD ESTABLISHED IN SUBSECTION (B) OF THIS SECTION, THE”; and in line 33, strike “OR DISABLE ACCESS TO AN” and substitute “THE”.

AMENDMENT NO. 3

On page 5, in line 1, after “OF” insert “ALLEGED”; in the same line, strike “UNDER THIS

SECTION”; in line 3, after “APPLICATION” insert “FOR A COURT ORDER”; in line 5, strike “INTERNET” and substitute “SERVER OR OTHER STORAGE DEVICE CONTROLLED OR OWNED BY AN INTERACTIVE COMPUTER”; in the same line, strike “PROVIDER’S SERVER” and substitute “PROVIDER”; in line 6, after “SERVER” insert “OR OTHER STORAGE DEVICE IN THE FORM OF AN INTERNET PROTOCOL (IP) ADDRESS OR UNIFORM RESOURCE LOCATOR (URL)”; in line 7, strike “AND”; in line 8, after “(IV)” insert “VERIFY THAT THE ITEM OF ALLEGED CHILD PORNOGRAPHY RESIDES ON THE SERVER OR OTHER STORAGE DEVICE CONTROLLED OR OWNED BY THE INTERACTIVE COMPUTER SERVICE PROVIDER;”

(V) DESCRIBE THE STEPS TAKEN TO OBTAIN VOLUNTARY COMPLIANCE OF THE INTERACTIVE COMPUTER SERVICE PROVIDER WITH THIS SECTION;

(VI) INFORM THE INTERACTIVE COMPUTER SERVICE PROVIDER OF ITS RIGHT TO REQUEST A HEARING ON THE APPLICATION; AND

(VII)”;

after line 8, insert:

“(3) THE INVESTIGATIVE OR LAW ENFORCEMENT OFFICER SHALL SERVE THE APPLICATION ON THE INTERACTIVE COMPUTER SERVICE PROVIDER.

(4) THE INTERACTIVE COMPUTER SERVICE PROVIDER HAS THE RIGHT TO REQUEST A HEARING BEFORE THE COURT IMPOSES ANY PENALTY UNDER THIS SECTION.”;

in line 9, strike “(C)” and substitute “(D)”; in the same line, strike “AFFIDAVIT” and substitute “APPLICATION AND TESTIMONY, IF OFFERED,”; in line 11, after “ON” insert “A SERVER OR OTHER STORAGE DEVICE CONTROLLED OR OWNED BY”; in the same line, strike “INTERNET” and substitute “INTERACTIVE COMPUTER”; in line 12, strike “PROVIDER’S SERVICE” and substitute “PROVIDER”; strike beginning with “THROUGH” in line 12 down

(Over)

through “SERVICE” in line 13; in lines 16, 19, 22, 26, and 33, in each instance, strike “INTERNET” and substitute “INTERACTIVE COMPUTER”; strike beginning with “OR” in line 16 down through “SERVICE” in line 17 and substitute “THE ITEM RESIDING ON A SERVER OR OTHER STORAGE DEVICE CONTROLLED OR OWNED BY THE INTERACTIVE COMPUTER SERVICE PROVIDER”; in line 17, strike “FROM” and substitute “AFTER”; in line 18, after “ORDER” insert “, IF PRACTICABLE”; in the same line, strike “AND”; in line 20, strike the period and substitute a semicolon; after line 20, insert:

“(5) THE REMOVAL OF THE ITEM ON THE SERVER OR OTHER STORAGE DEVICE CONTROLLED OR OWNED BY THE INTERACTIVE COMPUTER SERVICE PROVIDER MAY NOT UNREASONABLY INTERFERE WITH A REQUEST BY A LAW ENFORCEMENT AGENCY TO PRESERVE RECORDS OR OTHER EVIDENCE;

(6) THE PROCESS OF REMOVAL SHALL BE CONDUCTED IN A MANNER THAT PREVENTS THE REMOVAL OF IMAGES, INFORMATION, OR DATA NOT OTHERWISE SUBJECT TO REMOVAL UNDER THIS SECTION; AND

(7) PROVIDES THE INTERACTIVE COMPUTER SERVICE PROVIDER NOTICE AND OPPORTUNITY FOR A HEARING BEFORE THE COURT IMPOSES ANY PENALTY UNDER THIS SECTION.”;

in line 21, strike “(D)” and substitute “(E)”; in line 24, strike “(B)” and substitute “(C)”; in lines 27, 30, and 34, in each instance, strike “OR DISABLE ACCESS TO”; in line 27, after “ITEM” insert “RESIDING ON A SERVER OR OTHER STORAGE DEVICE CONTROLLED OR OWNED BY THE INTERACTIVE COMPUTER SERVICE PROVIDER”; in line 30, after “PORNOGRAPHY;” insert:

“(IV) NOTIFICATION OF THE RIGHT TO APPEAL THE COURT’S ORDER;”;

in line 31, strike “(IV)” and substitute “(V)”; in line 33, strike “(E)” and substitute “(F)”; and in line 34, strike “(D)” and substitute “(E)”.

AMENDMENT NO. 4

On page 6, in line 2, after “ORDER” insert “, IF PRACTICABLE”; after line 2, insert:

“(G) (1) AN INTERACTIVE COMPUTER SERVICE PROVIDER MAY PETITION THE COURT FOR RELIEF FOR CAUSE FROM AN ORDER ISSUED UNDER SUBSECTION (D) OF THIS SECTION.

(2) THE PETITION MAY BE BASED ON CONSIDERATIONS OF:

(I) THE COST OR TECHNICAL FEASIBILITY OF COMPLIANCE WITH THE ORDER; OR

(II) THE INABILITY OF THE INTERACTIVE COMPUTER SERVICE PROVIDER TO COMPLY WITH THE ORDER WITHOUT ALSO REMOVING DATA, IMAGES, OR INFORMATION THAT ARE NOT SUBJECT TO THIS SECTION.

(H) (1) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, AN INTERACTIVE COMPUTER SERVICE PROVIDER SHALL REPORT THE LOCATION OF AN ITEM OF CHILD PORNOGRAPHY TO THE STATE POLICE IF THE ITEM OF CHILD PORNOGRAPHY:

1. RESIDES ON A SERVER OR OTHER STORAGE DEVICE THAT IS:

A. CONTROLLED OR OWNED BY THE INTERACTIVE COMPUTER SERVICE PROVIDER; AND

B. LOCATED IN THE STATE; OR

2. IN THE REASONABLE JUDGMENT OF THE PROVIDER, PERTAINS TO A SUBSCRIBER OR USER OF THE INTERACTIVE COMPUTER SERVICE WHO RESIDES IN THE STATE.

(II) SUBPARAGRAPH (I) OF THIS PARAGRAPH DOES NOT APPLY TO AN INTERACTIVE COMPUTER SERVICE PROVIDER IF:

(Over)

1. FEDERAL LAW EXPRESSLY PROVIDES FOR OR PERMITS THE REFERRAL OF A REPORT OF AN ITEM OF CHILD PORNOGRAPHY TO A STATE OR LOCAL LAW ENFORCEMENT AGENCY; AND

2. THE INTERACTIVE COMPUTER SERVICE PROVIDER COMPLIES WITH THE FEDERAL LAW.

(2) AN INTERACTIVE COMPUTER SERVICE PROVIDER WHO KNOWINGLY AND WILLFULLY FAILS TO REPORT THE INFORMATION REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

(I) FOR A FIRST VIOLATION, A FINE NOT EXCEEDING \$5,000;

(II) FOR A SECOND VIOLATION, A FINE NOT EXCEEDING \$20,000;

AND

(III) FOR EACH SUBSEQUENT VIOLATION, A FINE NOT EXCEEDING \$30,000.”;

in line 3, strike “(F)” and substitute “(I)”; in the same line, after “WHO” insert “WILLFULLY”; in lines 3, 9, 12, 14, 16, and 18, in each instance, strike “INTERNET” and substitute “INTERACTIVE COMPUTER”; in line 3, strike “(E)” and substitute “(F)”; strike beginning with “IMPRISONMENT” in line 7 down through the first “OR” in line 8; in line 8, strike “OR BOTH”; in line 9, strike “(G)” and substitute “(J)”; in the same line, after “WHO” insert “WILLFULLY”; in the same line, strike “(E)” and substitute “(F) OR (H)”; in line 18, strike “(H)” and substitute “(K) (1)”; and after line 20, insert:

“(2) THIS SECTION DOES NOT APPLY TO THE INTERACTIVE COMPUTER SERVICE PROVIDER’S TRANSMISSION OR ROUTING OF, OR INTERMEDIATE TEMPORARY STORAGE OR CACHING OF, AN IMAGE, INFORMATION, OR DATA THAT OTHERWISE IS SUBJECT TO THIS SECTION.”.