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S.B. No. 689

A BILL TO BE ENTITLED

AN ACT

relating to restrictions on the use of the Internet by sex offenders and to the reporting, collection, and exchange of information regarding those offenders; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 42.12, Code of Criminal Procedure, is amended by adding Section 13E to read as follows:

Sec. 13E. PROHIBITIONS ON INTERNET ACCESS FOR CERTAIN SEX OFFENDERS. (a) This section applies only to a person who is required to register as a sex offender under Chapter 62, by court order or otherwise, and:

(1) is convicted of or receives a grant of deferred adjudication community supervision for a violation of Section 21.11, 22.011(a)(2), 22.021(a)(1)(B), 33.021, or 43.25, Penal Code;

(2) used the Internet or any other type of electronic device used for Internet access to commit the offense or engage in the conduct for which the person is required to register under Chapter 62; or

(3) is assigned a numeric risk level of three based on an assessment conducted under Article 62.007.

(b) If the court grants community supervision to a defendant described by Subsection (a), the court as a condition of community supervision shall prohibit the defendant from using the Internet

1 to:

2 (1) access material that is obscene as defined by
3 Section 43.21, Penal Code;

4 (2) access a commercial social networking site, as
5 defined by Article 62.0061(f);

6 (3) communicate with any individual concerning sexual
7 relations with an individual who is younger than 17 years of age; or

8 (4) communicate with another individual the defendant
9 knows is younger than 17 years of age.

10 (c) The court may modify at any time the condition described
11 by Subsection (b)(4) if:

12 (1) the condition interferes with the defendant's
13 ability to attend school or become or remain employed and
14 consequently constitutes an undue hardship for the defendant; or

15 (2) the defendant is the parent or guardian of an
16 individual who is younger than 17 years of age and the defendant is
17 not otherwise prohibited from communicating with that individual.

18 SECTION 2. Article 62.001, Code of Criminal Procedure, is
19 amended by adding Subdivision (11) to read as follows:

20 (11) "Online identifier" means electronic mail
21 address information or a name used by a person when sending or
22 receiving an instant message, social networking communication, or
23 similar Internet communication or when participating in an Internet
24 chat. The term includes an assumed name, nickname, pseudonym,
25 moniker, or user name established by a person for use in connection
26 with an electronic mail address, chat or instant chat room
27 platform, commercial social networking site, or online

1 picture-sharing service.

2 SECTION 3. Article 62.005, Code of Criminal Procedure, is
3 amended by amending Subsection (b) and adding Subsection (j) to
4 read as follows:

5 (b) The information contained in the database, including
6 the numeric risk level assigned to a person under this chapter, is
7 public information, with the exception of any information:

8 (1) regarding the person's social security number
9 or~~[r]~~ driver's license number, or any home, work, or cellular
10 telephone number of the person;

11 (2) that is described ~~[required]~~ by ~~[the department~~
12 ~~under]~~ Article 62.051(c)(7) or required by the department under
13 Article 62.051(c)(8); or

14 (3) that would identify the victim of the offense for
15 which the person is subject to registration.

16 (j) The department, for law enforcement purposes, shall
17 release all relevant information described by Subsection (a),
18 including information that is not public information under
19 Subsection (b), to a peace officer, an employee of a local law
20 enforcement authority, or the attorney general on the request of
21 the applicable person or entity.

22 SECTION 4. Subchapter A, Chapter 62, Code of Criminal
23 Procedure, is amended by adding Article 62.0061 to read as follows:

24 Art. 62.0061. REQUEST FOR ONLINE IDENTIFIERS BY SOCIAL
25 NETWORKING SITES. (a) On request by a commercial social
26 networking site, the department may provide to the commercial
27 social networking site:

1 (1) all public information that is contained in the
2 database maintained under Article 62.005; and

3 (2) notwithstanding Article 62.005(b)(2), any online
4 identifier established or used by a person who uses the site, is
5 seeking to use the site, or is precluded from using the site.

6 (b) The department by rule shall establish a procedure
7 through which a commercial social networking site may request
8 information under Subsection (a), including rules regarding the
9 eligibility of commercial social networking sites to request
10 information under Subsection (a). The department shall consult
11 with the attorney general, other appropriate state agencies, and
12 other appropriate entities in adopting rules under this subsection.

13 (c) A commercial social networking site or the site's agent:

14 (1) may use information received under Subsection (a)
15 only to:

16 (A) prescreen persons seeking to use the site; or

17 (B) preclude persons registered under this
18 chapter from using the site; and

19 (2) may not use any information received under
20 Subsection (a) that the networking site obtained solely under
21 Subsection (a) in any manner not described by Subdivision (1).

22 (d) A commercial social networking site that uses
23 information received under Subsection (a) in any manner not
24 described by Subsection (c)(1) or that violates a rule adopted by
25 the department under Subsection (b) is subject to a civil penalty of
26 \$1,000 for each misuse of information or rule violation. A
27 commercial social networking site that is assessed a civil penalty

1 under this article shall pay, in addition to the civil penalty, all
2 court costs, investigative costs, and attorney's fees associated
3 with the assessment of the penalty. A civil penalty assessed under
4 this subsection shall be deposited to the compensation to victims
5 of crime fund established under Subchapter B, Chapter 56.

6 (e) This article does not create a private cause of action
7 against a commercial social networking site, including a cause of
8 action that is based on the site:

9 (1) identifying, removing, disabling, blocking, or
10 otherwise affecting the user of a commercial social networking
11 site, based on a good faith belief that the person is required to
12 register as a sex offender under this chapter or federal law; or

13 (2) failing to identify, remove, disable, block, or
14 otherwise affect the user of a commercial social networking site
15 who is required to register as a sex offender under this chapter or
16 federal law.

17 (f) In this article, "commercial social networking site":

18 (1) means an Internet website that:

19 (A) allows users, through the creation of
20 Internet web pages or profiles or other similar means, to provide
21 personal information to the public or other users of the Internet
22 website;

23 (B) offers a mechanism for communication with
24 other users of the Internet website; and

25 (C) has the primary purpose of facilitating
26 online social interactions; and

27 (2) does not include an Internet service provider,

1 unless the Internet service provider separately operates and
2 directly derives revenue from an Internet website described by
3 Subdivision (1).

4 SECTION 5. Subsection (c), Article 62.051, Code of Criminal
5 Procedure, is amended to read as follows:

6 (c) The registration form shall require:

7 (1) the person's full name, [~~each alias,~~] date of
8 birth, sex, race, height, weight, eye color, hair color, social
9 security number, driver's license number, shoe size, and home
10 address and each alias used by the person and any home, work, or
11 cellular telephone number of the person;

12 (2) a recent color photograph or, if possible, an
13 electronic digital image of the person and a complete set of the
14 person's fingerprints;

15 (3) the type of offense the person was convicted of,
16 the age of the victim, the date of conviction, and the punishment
17 received;

18 (4) an indication as to whether the person is
19 discharged, paroled, or released on juvenile probation, community
20 supervision, or mandatory supervision;

21 (5) an indication of each license, as defined by
22 Article 62.005(g), that is held or sought by the person;

23 (6) an indication as to whether the person is or will
24 be employed, carrying on a vocation, or a student at a particular
25 public or private institution of higher education in this state or
26 another state, and the name and address of that institution; [~~and~~]

27 (7) the identification of any online identifier

1 established or used by the person; and

2 (8) any other information required by the department.

3 SECTION 6. Subsection (f), Article 62.053, Code of Criminal
4 Procedure, is amended to read as follows:

5 (f) The local law enforcement authority shall include in the
6 notice to the superintendent of the public school district and to
7 the administrator of any private primary or secondary school
8 located in the public school district any information the authority
9 determines is necessary to protect the public, except:

10 (1) the person's social security number or~~[]~~ driver's
11 license number, or any home, work, or cellular telephone number of
12 the person; and

13 (2) any information that would identify the victim of
14 the offense for which the person is subject to registration.

15 SECTION 7. Subsection (g), Article 62.055, Code of Criminal
16 Procedure, is amended to read as follows:

17 (g) The local law enforcement authority shall include in the
18 notice to the superintendent of the public school district and the
19 administrator of any private primary or secondary school located in
20 the public school district any information the authority determines
21 is necessary to protect the public, except:

22 (1) the person's social security number or~~[]~~ driver's
23 license number, or any home, work, or cellular telephone number of
24 the person; and

25 (2) any information that would identify the victim of
26 the offense for which the person is subject to registration.

27 SECTION 8. Subchapter B, Chapter 62, Code of Criminal

1 Procedure, is amended by adding Article 62.0551 to read as follows:

2 Art. 62.0551. CHANGE IN ONLINE IDENTIFIERS. (a) If a
3 person required to register under this chapter changes any online
4 identifier included on the person's registration form or
5 establishes any new online identifier not already included on the
6 person's registration form, the person, not later than the later of
7 the seventh day after the change or establishment or the first date
8 the applicable authority by policy allows the person to report,
9 shall report the change or establishment to the person's primary
10 registration authority in the manner prescribed by the authority.

11 (b) A primary registration authority that receives
12 information under this article shall forward information in the
13 same manner as information received by the authority under Article
14 62.055.

15 SECTION 9. Subsections (a) and (b), Article 62.057, Code of
16 Criminal Procedure, are amended to read as follows:

17 (a) If the juvenile probation officer, community
18 supervision and corrections department officer, or parole officer
19 supervising a person subject to registration under this chapter
20 receives information to the effect that the person's status has
21 changed in any manner that affects proper supervision of the
22 person, including a change in the person's name, online
23 identifiers, physical health, job or educational status, including
24 higher educational status, incarceration, or terms of release, the
25 supervising officer shall promptly notify the appropriate local law
26 enforcement authority or authorities of that change. If the person
27 required to register intends to change address, the supervising

1 officer shall notify the local law enforcement authorities
2 designated by Article 62.055(b). Not later than the seventh day
3 after the date the supervising officer receives the relevant
4 information, the supervising officer shall notify the local law
5 enforcement authority of any change in the person's job or
6 educational status in which the person:

7 (1) becomes employed, begins to carry on a vocation,
8 or becomes a student at a particular public or private institution
9 of higher education; or

10 (2) terminates the person's status in that capacity.

11 (b) Not later than the later of the seventh day after the
12 date of the change or the first date the applicable authority by
13 policy allows the person to report, a person subject to
14 registration under this chapter shall report to the local law
15 enforcement authority designated as the person's primary
16 registration authority by the department any change in the person's
17 name, online identifiers, physical health, or job or educational
18 status, including higher educational status.

19 SECTION 10. Subchapter F, Chapter 508, Government Code, is
20 amended by adding Section 508.1861 to read as follows:

21 Sec. 508.1861. PROHIBITIONS ON INTERNET ACCESS FOR CERTAIN
22 SEX OFFENDERS. (a) This section applies only to a person who, on
23 release, will be required to register as a sex offender under
24 Chapter 62, Code of Criminal Procedure, by court order or
25 otherwise, and:

26 (1) is serving a sentence for an offense under Section
27 21.11, 22.011(a)(2), 22.021(a)(1)(B), 33.021, or 43.25, Penal

1 Code;

2 (2) used the Internet or any other type of electronic
3 device used for Internet access to commit the offense or engage in
4 the conduct for which the person is required to register under
5 Chapter 62, Code of Criminal Procedure; or

6 (3) is assigned a numeric risk level of three based on
7 an assessment conducted under Article 62.007, Code of Criminal
8 Procedure.

9 (b) If the parole panel releases on parole or to mandatory
10 supervision a person described by Subsection (a), the parole panel
11 as a condition of parole or mandatory supervision shall prohibit
12 the releasee from using the Internet to:

13 (1) access material that is obscene as defined by
14 Section 43.21, Penal Code;

15 (2) access a commercial social networking site, as
16 defined by Article 62.0061(f), Code of Criminal Procedure;

17 (3) communicate with any individual concerning sexual
18 relations with an individual who is younger than 17 years of age; or

19 (4) communicate with another individual the releasee
20 knows is younger than 17 years of age.

21 (c) The parole panel may modify at any time the condition
22 described by Subsection (b)(4) if:

23 (1) the condition interferes with the releasee's
24 ability to attend school or become or remain employed and
25 consequently constitutes an undue hardship for the releasee; or

26 (2) the releasee is the parent or guardian of an
27 individual who is younger than 17 years of age and the releasee is

1 not otherwise prohibited from communicating with that individual.

2 SECTION 11. The changes in law made by this Act in adding
3 Section 13E, Article 42.12, Code of Criminal Procedure, and Section
4 508.1861, Government Code, apply only to a person who is placed on
5 community supervision or released on parole or to mandatory
6 supervision on or after the effective date of this Act.

7 SECTION 12. The Department of Public Safety of the State of
8 Texas shall implement Subsection (c), Article 62.051, Code of
9 Criminal Procedure, as amended by this Act, and Subsection (j),
10 Article 62.005, and Article 62.0061, Code of Criminal Procedure, as
11 added by this Act, as soon as practicable after September 1, 2009,
12 but not later than January 1, 2010.

13 SECTION 13. The change in law made by this Act in amending
14 Chapter 62, Code of Criminal Procedure, applies to any person who,
15 on or after January 1, 2010, is subject to registration under that
16 chapter regardless of whether the offense or conduct for which the
17 person is subject to registration occurred before, on, or after
18 that date.

19 SECTION 14. This Act takes effect September 1, 2009.