

ONE HUNDRED FIRST LEGISLATURE - SECOND SESSION - 2010
COMMITTEE STATEMENT
LB728

Hearing Date: Friday January 22, 2010
Committee On: Judiciary
Introducer: Lautenbaugh
One Liner: Adopt the Exploited Children's Civil Remedy Act and redefine a term with respect to pleas

Roll Call Vote - Final Committee Action:
Advanced to General File

Vote Results:

| | | |
|----------------------------|---|--|
| Aye: | 7 | Senators Ashford, Christensen, Coash, Lathrop, Lautenbaugh, McGill, Rogert |
| Nay: | | |
| Absent: | | |
| Present Not Voting: | 1 | Senator Council |

Proponents:

Sen. Scott Lautenbaugh
David Cookson
John Lindsay

Representing:

Introducer
Nebraska Attorney General
NATA (Nebraska Association of Trial Attorneys)

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

Legislative Bill 728 would give the victims of child pornography offenses a civil cause of action against their exploiters. The bill is modeled after Federal and Florida law.

LB 728 gives any child (or parent or guardian of such child), who was a participant or portrayed observer in any visual depiction of child pornography, a civil cause of action against any person who, while in the State of Nebraska: created the visual depiction; distributed the visual depiction; actively acquired the visual depiction; or aided or assisted with the creation, distribution or active acquisition of the visual depiction. Actively acquire is defined as intentionally seeking out and obtaining said materials.

Additionally, LB 728 will give a cause of action to a victim when the visual depiction: was created here in Nebraska; was distributed by someone while they were present in Nebraska; or was actively acquired by someone while they were present in Nebraska. The act will not give a cause of action to a victim when they lived in Nebraska but the person who possesses or distributes the visual depiction lives in another state or country. Likewise, the victim cannot bring suit in Nebraska if they live here now but the visual depiction was created in another state or country.

LB 728 does not create a cause of action if the participant was 16 years or older at the time the visual depiction was created and the participant willfully and voluntarily participated in the creation of the visual depiction.

To prevail on this cause of action the victim must show: (1) that they are a child participant or portrayed observer in a visual depiction of child pornography; (2) that such visual depiction was created, distributed or actively acquired (or who aided another with the creation, distribution, or active acquisition) by the defendant while they were within the territorial

boundaries of the State of Nebraska; and (3) that they suffered or continue to suffer personal or psychological injury as a result of the defendant's creation, distribution or active acquisition of that visual depiction.

A child victim would have three years to bring suit against any person who created, distributed or actively acquired the child pornography containing them, from the latter of: the conclusion of any criminal prosecution against the person they wish to sue; the receipt of notice from law enforcement advising them that a person had been identified who created, distributed, actively acquired or aided in the creation, distribution or active acquisition of child pornography containing their likeness; or the date of their 18th birthday.

A victim who prevails under this cause of action can recover: actual damages, which cannot be less than \$150,000; plus reasonable attorney's fees; plus can be awarded temporary, preliminary and permanent injunctive relief as the court deems necessary and appropriate.

It shall be no defense to a cause of action brought pursuant to this act that the defendant: did not know the victim; did not personally appear in the child porn image or video; or was not present when the image or video was made or participate, observe or assist with any of the exploitative acts occurring within the image or video.

In addition, a person who knowingly and willfully aides or assisted in the creation, distribution or active acquisition is subject to civil action even if they were not in the State of Nebraska at the time. Also, LB 728 provides that a victim with a cognizable claim can bring their action using a pseudonym. Furthermore, in an effort to optimize the victim's ability to seek recovery and relief under this act, LB 728 empowers the Attorney General's Office to pursue claims on behalf of victims.

Finally, the act modifies Neb. Rev. Stat. Sec. 29-119 regarding the definition of "crime victim" so as to include identified child pornography victims in this definition. This is being done in order to provide a mechanism, through the Nebraska Crime Victim's Rights Act, for such victims to be notified about the apprehension of someone who created, distributed or possessed sexually explicit visual depictions of them. As a result, they will also be made aware of someone they can potentially sue under this Act.

Until now, these children have not had a cause of action in state courts for the continued distribution and possession of their images. This act provides a civil remedy to file suit against those who continue their exploitation and abuse. Previously victims could only file suit against their actual abuser, not those that distributed and possessed the images.

Brad Ashford, Chairperson