

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 869*
Judiciary I (Civil) Committee Substitute Adopted 5/8/07

Short Title: Sex Offender/Register E-Mail Address.-AB

(Public)

Sponsors:

Referred to:

March 19, 2007

A BILL TO BE ENTITLED

1 AN ACT TO ADD FELONY CHILD ABUSE TO THE LIST OF SEX OFFENDER
2 REGISTRY OFFENSES WHEN THE OFFENSE INVOLVES PROSTITUTION
3 OF A JUVENILE OR THE COMMISSION OF A SEXUAL ACT UPON A
4 JUVENILE, TO REQUIRE THAT A SEX OFFENDER REGISTER HIS OR HER
5 ELECTRONIC MAIL ADDRESS OR OTHER ONLINE IDENTIFIER IN THE
6 STATEWIDE SEX OFFENDER REGISTRY, TO ALLOW LIMITED RELEASE
7 OF ONLINE IDENTIFIER INFORMATION IN THE SEX OFFENDER
8 REGISTRY TO CERTAIN ENTITIES THAT PROVIDE ELECTRONIC MAIL
9 SERVICES AND OTHER INTERNET SERVICES FOR THE PURPOSE OF
10 SCREENING ONLINE USERS, TO PROVIDE THAT THE COURT MAY
11 ORDER A CONVICTED SEX OFFENDER WHO FAILS TO REGISTER AS A
12 SEX OFFENDER TO FORFEIT CERTAIN LICENSING PRIVILEGES, TO
13 DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO DEVELOP
14 PROCEDURES TO ENSURE TIMELY NOTIFICATION OF THE DIVISION OF
15 CRIMINAL INFORMATION AND SHERIFFS OF PERSONS REQUIRED TO
16 REGISTER WHO ARE NOT SENTENCED TO ACTIVE TIME, AND TO
17 AUTHORIZE FUNDS FOR THE GOVERNOR'S CRIME COMMISSION TO USE
18 TO AWARD AS MATCHING GRANTS TO ELIGIBLE SHERIFFS' OFFICES TO
19 ENHANCE AND SUPPORT THEIR EFFORTS TO ENFORCE THE STATE'S
20 SEX OFFENDER LAWS.
21

22 The General Assembly of North Carolina enacts:

23 **SECTION 1.** G.S. 14-208.6 reads as rewritten:

24 "**§ 14-208.6. Definitions.**

25 The following definitions apply in this Article:

26 (1a) "Aggravated offense" means any criminal offense that includes either
27 of the following: (i) engaging in a sexual act involving vaginal, anal,
28 or oral penetration with a victim of any age through the use of force or
29 the threat of serious violence; or (ii) engaging in a sexual act involving

- 1 vaginal, anal, or oral penetration with a victim who is less than 12
2 years old.
- 3 (1b) "County registry" means the information compiled by the sheriff of a
4 county in compliance with this Article.
- 5 (1c) "Division" means the Division of Criminal Information of the
6 Department of Justice.
- 7 (1d) "Electronic mail" means the transmission of information or
8 communication by the use of the Internet, a computer, a facsimile
9 machine, a pager, a cellular telephone, a video recorder, or other
10 electronic means sent to a person identified by a unique address or
11 address number and received by that person.
- 12 ~~(1d)~~(1e) "Employed" includes employment that is full-time or part-time for a
13 period of time exceeding 14 days or for an aggregate period of time
14 exceeding 30 days during any calendar year, whether financially
15 compensated, volunteered, or for the purpose of government or
16 educational benefit.
- 17 (1f) "Entity" means a business or organization that provides Internet
18 service, electronic communications service, remote computing service,
19 online service, electronic mail service or electronic instant message or
20 chat services whether the business or organization is within or outside
21 the State.
- 22 (1g) "Instant Message or IM" means a form of real-time text
23 communication between two or more people. The communication is
24 conveyed via computers connected over a network such as the Internet.
- 25 ~~(1e)~~(1h) "Institution of higher education" means any postsecondary public or
26 private educational institution, including any trade or professional
27 institution, college, or university.
- 28 (1i) "Internet" means the global information system that is logically linked
29 together by a globally unique address space based on the Internet
30 Protocol or its subsequent extensions; that is able to support
31 communications using the Transmission Control Protocol/Internet
32 Protocol suite, its subsequent extensions, or other Internet Protocol
33 compatible protocols; and that provides, uses, or makes accessible,
34 either publicly or privately, high-level services layered on the
35 communications and related infrastructure described in this
36 subdivision.
- 37 ~~(1f)~~(1j) "Mental abnormality" means a congenital or acquired condition of a
38 person that affects the emotional or volitional capacity of the person in
39 a manner that predisposes that person to the commission of criminal
40 sexual acts to a degree that makes the person a menace to the health
41 and safety of others.
- 42 ~~(1g)~~(1k) "Nonresident student" means a person who is not a resident of North
43 Carolina but who is enrolled in any type of school in the State on a
44 part-time or full-time basis.

1 ~~(4h)~~(11) "Nonresident worker" means a person who is not a resident of North
2 Carolina but who has employment or carries on a vocation in the State,
3 on a part-time or full-time basis, with or without compensation or
4 government or educational benefit, for more than 14 days, or for an
5 aggregate period exceeding 30 days in a calendar year.

6 ~~(4i)~~(1m) "Offense against a minor" means any of the following offenses if the
7 offense is committed against a minor, and the person committing the
8 offense is not the minor's parent: G.S. 14-39 (kidnapping), G.S. 14-41
9 (abduction of children), and G.S. 14-43.3 (felonious restraint). The
10 term also includes the following if the person convicted of the
11 following is not the minor's parent: a solicitation or conspiracy to
12 commit any of these offenses; aiding and abetting any of these
13 offenses.

14 (1n) "Online identifier" includes all of the following: electronic mail
15 address and instant message screen name, user ID, chat or other
16 Internet communication name or identity information.

17 (2) "Penal institution" means:

- 18 a. A detention facility operated under the jurisdiction of the
19 Division of Prisons of the Department of Correction;
20 b. A detention facility operated under the jurisdiction of another
21 state or the federal government; or
22 c. A detention facility operated by a local government in this State
23 or another state.

24 (2a) "Personality disorder" means an enduring pattern of inner experience
25 and behavior that deviates markedly from the expectations of the
26 individual's culture, is pervasive and inflexible, has an onset in
27 adolescence or early adulthood, is stable over time, and leads to
28 distress or impairment.

29 (2b) "Recidivist" means a person who has a prior conviction for an offense
30 that is described in G.S. 14-208.6(4).

31 (3) "Release" means discharged or paroled.

32 (4) "Reportable conviction" means:

- 33 a. A final conviction for an offense against a minor, a sexually
34 violent offense, or an attempt to commit any of those offenses
35 unless the conviction is for aiding and abetting. A final
36 conviction for aiding and abetting is a reportable conviction
37 only if the court sentencing the individual finds that the
38 registration of that individual under this Article furthers the
39 purposes of this Article as stated in G.S. 14-208.5.

- 40 b. A final conviction in another state of an offense, which if
41 committed in this State, is substantially similar to an offense
42 against a minor or a sexually violent offense as defined by this
43 section, or a final conviction in another state of an offense that

- 1 requires registration under the sex offender registration statutes
2 of that state.
- 3 c. A final conviction in a federal jurisdiction (including a court
4 martial) of an offense, which is substantially similar to an
5 offense against a minor or a sexually violent offense as defined
6 by this section.
- 7 d. A final conviction for a violation of G.S. 14-202(d), (e), (f), (g),
8 or (h), or a second or subsequent conviction for a violation of
9 G.S. 14-202(a), (a1), or (c), only if the court sentencing the
10 individual issues an order pursuant to G.S. 14-202(l) requiring
11 the individual to register.
- 12 (5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first
13 degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first
14 degree sexual offense), G.S. 14-27.5 (second degree sexual offense),
15 G.S. 14-27.5A (sexual battery), G.S. 14-27.6 (attempted rape or sexual
16 offense), G.S. 14-27.7 (intercourse and sexual offense with certain
17 victims), G.S. 14-27.7A(a) (statutory rape or sexual offense of person
18 who is 13-, 14-, or 15-years-old where the defendant is at least six
19 years older), G.S. 14-43.13 (subjecting or maintaining a person for
20 sexual servitude), G.S. 14-178 (incest between near relatives),
21 G.S. 14-190.6 (employing or permitting minor to assist in offenses
22 against public morality and decency), G.S. 14-190.9(a1)(felonious
23 indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of
24 a minor), G.S. 14-190.17 (second degree sexual exploitation of a
25 minor), G.S. 14-190.17A (third degree sexual exploitation of a minor),
26 G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19
27 (participating in the prostitution of a minor), G.S. 14-202.1 (taking
28 indecent liberties with children), or G.S. 14-202.3 (Solicitation of child
29 by computer to commit an unlawful sex ~~act~~act),
30 G.S. 14-318.4(a1)(parent or caretaker commit or permit act of
31 prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission
32 or allowing of sexual act upon a juvenile by parent or guardian). The
33 term also includes the following: a solicitation or conspiracy to
34 commit any of these offenses; aiding and abetting any of these
35 offenses.
- 36 (6) "Sexually violent predator" means a person who has been convicted of
37 a sexually violent offense and who suffers from a mental abnormality
38 or personality disorder that makes the person likely to engage in
39 sexually violent offenses directed at strangers or at a person with
40 whom a relationship has been established or promoted for the primary
41 purpose of victimization.
- 42 (7) "Sheriff" means the sheriff of a county in this State.
- 43 (8) "Statewide registry" means the central registry compiled by the
44 Division in accordance with G.S. 14-208.14.

1 (9) "Student" means a person who is enrolled on a full-time or part-time
2 basis, in any postsecondary public or private educational institution,
3 including any trade or professional institution, or other institution of
4 higher education."

5 **SECTION 2.** G.S. 14-208.7(b) reads as rewritten:

6 "(b) The Division shall provide each sheriff with forms for registering persons as
7 required by this Article. The registration form shall require:

8 (1) The person's full name, each alias, date of birth, sex, race, height,
9 weight, eye color, hair color, drivers license number, and home
10 address;

11 (2) The type of offense for which the person was convicted, the date of
12 conviction, and the sentence imposed;

13 (3) A current photograph;

14 (4) The person's fingerprints;

15 (5) A statement indicating whether the person is a student or expects to
16 enroll as a student within a year of registering. If the person is a
17 student or expects to enroll as a student within a year of registration,
18 then the registration form shall also require the name and address of
19 the educational institution at which the person is a student or expects
20 to enroll as a ~~student; and~~ student;

21 (6) A statement indicating whether the person is employed or expects to
22 be employed at an institution of higher education within a year of
23 registering. If the person is employed or expects to be employed at an
24 institution of higher education within a year of registration, then the
25 registration form shall also require the name and address of the
26 educational institution at which the person is or expects to be
27 ~~employed; and~~ employed; and

28 (7) Any online identifier that the person uses or intends to use. The
29 registration form shall also require that the person execute a consent
30 form consistent with applicable law that authorizes an entity to provide
31 to the sheriff and Division any information pertaining to that person
32 necessary to determine the veracity of the person's online identifier in
33 the registry. The executed consent form shall be submitted with the
34 registration form.

35 The sheriff shall photograph the individual at the time of registration and take
36 fingerprints from the individual at the time of registration both of which will be kept as
37 part of the registration form. The registrant will not be required to pay any fees for the
38 photograph or fingerprints taken at the time of registration."

39 **SECTION 3.** G.S. 14-208.8(a) reads as rewritten:

40 "(a) At least 10 days, but not earlier than 30 days, before a person who will be
41 subject to registration under this Article is due to be released from a penal institution, an
42 official of the penal institution shall:

43 (1) Inform the person of the person's duty to register under this Article and
44 require the person to sign a written statement that the person was so

1 informed or, if the person refuses to sign the statement, certify that the
2 person was so informed;

3 (2) Obtain the registration information required under G.S. 14-208.7(b)(1),
4 (2), (5), ~~and (6), (6), and (7)~~, as well as the address where the person
5 expects to reside upon the person's release; and

6 (3) Send the Division and the sheriff of the county in which the person
7 expects to reside the information collected in accordance with
8 subdivision (2) of this subsection."

9 **SECTION 4.** The catch line for G.S. 14-208.9 reads as rewritten:

10 "**§ 14-208.9. Change of address; change of online identifier; change of academic**
11 **status or educational employment status.**"

12 **SECTION 5.** G.S. 14-208.9 is amended by adding a new subsection to read:

13 "(e) A person required to register shall not use any online identifier to
14 communicate over the Internet that is not included in the registration information
15 provided pursuant to G.S. 14-208.7. If a person required to register changes or obtains a
16 new online identifier, the person shall report in person to the sheriff in the county where
17 the person is registered to provide the online identifier information to the sheriff before
18 using the online identifier. The person shall also execute a consent form consistent with
19 applicable law that authorizes an entity to provide to the sheriff and Division any
20 information pertaining to that person necessary to determine the veracity of the person's
21 changed or new online identifier in the registry."

22 **SECTION 6.** G.S. 14-208.9A is amended by adding a new subdivision to
23 read:

24 "(5) If the person has an online identifier, the person shall update the
25 person's consent form or execute a new consent form that authorizes
26 an entity to provide to the sheriff and Division any information
27 pertaining to that person necessary to determine the veracity of the
28 person's changed or new online identifier in the registry as necessary."

29 **SECTION 7.** G.S. 14-208.11(a) is amended by adding a new subdivision to
30 read:

31 "(10) Fails to provide an online identifier that the person uses or intends to
32 use as required by this Article."

33 **SECTION 8.** G.S. 14-208.14(a) is amended by adding a new subdivision to
34 read:

35 "(5) To maintain a system allowing an entity to compare the database of
36 registered users of that entity to the list of online identifiers of persons
37 in the central sex offender registry in accordance with this Article."

38 **SECTION 9.** Part 2 of Article 27A is amended by adding a new section to
39 read:

40 "**§ 14-208.15A. Release of online identifiers to entity; fee.**

41 (a) The Division may release registry information regarding a registered
42 offender's online identifier to an entity for the purpose of allowing the entity
43 prescreening users or for comparison with information held by the entity as provided by
44 this section.

1 (b) An entity desiring to prescreen its users or compare its database of registered
2 users to the list of online identifiers of persons in the statewide registry may apply to the
3 Division to access the information. An entity that complies with the criteria developed
4 by the Division regarding the release and use of the online identifier information and
5 pays the fee established by the Division in accordance with this section may screen new
6 users or compare its database of registered users to the list of online identifiers of
7 persons in the statewide registry as frequently as the Division may allow for the purpose
8 of identifying a registered user associated with an online identifier contained in the
9 statewide registry.

10 (c) The Division may charge an entity that submits a request to access and
11 review the database of online identifiers of persons in the statewide registry a fee of one
12 hundred dollars (\$100.00). The fee shall be included with the request to access the
13 database. The fee may be charged for each request to access the database. Fees collected
14 under this section shall be credited to the Department of Justice and applied to the cost
15 of providing this service.

16 (d) The Division shall develop criteria and adopt rules regarding the release and
17 use of online identifier information. The criteria shall include a requirement that the
18 information obtained from the statewide registry shall not be disclosed for any purpose
19 other than for prescreening its users or comparing the database of registered users of the
20 entity against the list of online identifiers of persons in the statewide registry to protect
21 children from online sexual predators and shall also require that the entity notify the
22 Division when a comparison of the online identifier information and the entity users
23 indicates that a registered offender's online identifier is being used on the entity's
24 system.

25 (e) Any entity complying with this section in good faith shall be immune from
26 any civil or criminal liability resulting from:

- 27 (1) the entity's refusal to provide system service to a person on the basis
28 that the entity reasonably believed that the person was subject to
29 registration under State sex offender registry laws, or
30 (2) a person's criminal or tortious acts when the person is subject to the
31 State sex offender registry laws, and the person:
32 a. complied with the requirement to register their online
33 identifier, and
34 b. committed the criminal or tortious acts against a minor
35 with whom they had communicated on the entity's
36 system by using their registered online identifier."

37 **SECTION 10.** Part 2 of Article 27A of Chapter 14 of the General Statutes is
38 amended by adding the following new section to read:

39 **"§ 14-208.18. Forfeiture of licensing privileges for failure to register on the sex**
40 **offender and public protection registry.**

41 (a) As used in this section, the term:

- 42 (1) 'Licensing board' means a department, division, agency, officer, board,
43 or other unit of State government that issues hunting, fishing, trapping,
44 drivers, or occupational licenses or licensing privileges.

1 (2) 'Licensing privilege' means the privilege of a person to be authorized
2 to engage in an activity as evidenced by hunting, fishing, or trapping
3 licenses, regular and commercial drivers licenses, and occupational,
4 professional, and business licenses.

5 (3) 'Occupational license' means a license, certificate, permit, registration,
6 or any other authorization issued by a licensing board that allows a
7 person to engage in an occupation or profession.

8 (b) Upon a finding by the sentencing judge that a person who has a reportable
9 conviction or is a recidivist has failed to register with the statewide sex offender and
10 public protection registry, and upon findings as to any specific licensing privileges held
11 by the person, the court may revoke some or all of the privileges until the person has
12 registered with the registry. Upon an order revoking the privileges of a person who has
13 failed to register, the clerk of superior court shall notify the appropriate licensing board
14 that the person has failed to register and that the person's licensing privileges are
15 revoked until the licensing board receives proof of certification by the clerk that the
16 person has registered.

17 (c) A person may file a request with the clerk of superior court for certification
18 that the person has registered with the statewide registry. A person whose licensing
19 privileges have been revoked under subsection (b) of this section because of a willful
20 failure to comply with the registration requirement may file a request with the clerk of
21 superior court for certification that the person has met the requirements of or is no
22 longer subject to the registry requirement. The clerk shall provide a form to be used for
23 a request for certification. If the clerk finds that the person whose licensing privileges
24 have been revoked under subsection (b) of this section for failure to comply with
25 registering on the statewide registry has complied with or is no longer subject to the
26 registry requirement, then the clerk shall certify that the person has met the
27 requirements of or is no longer subject to the requirements and shall provide a copy of
28 the certification to the person. Upon request of the person, the clerk shall mail a copy of
29 the certification to the appropriate licensing board.

30 (d) If licensing privileges are revoked under this section, the person may petition
31 the district court for a reinstatement of the person's privileges. The court may order the
32 privileges reinstated conditioned upon compliance with this Article. The court may
33 order the privileges reinstated if the person has complied with or is no longer subject to
34 the registry requirement. Upon reinstatement of the person whose licensing privileges
35 were revoked based on failure to comply with this Article, the clerk of superior court
36 shall certify that the person has complied with or is no longer subject to the
37 requirements of this Article and provide a copy of the certification to the person. Upon
38 request of the person whose licensing privileges are reinstated, the clerk shall mail a
39 copy of the certification to the appropriate licensing board.

40 (e) A person whose licensing privileges are reinstated under this section may
41 provide a copy of the certification set forth in either subsection (c) or (d) of this section
42 to each licensing agency to which the person applies for reinstatement of licensing
43 privileges. Upon request of the person, the clerk shall mail a copy of the certification to

1 the appropriate licensing board. Upon receipt of a copy of the certification, the licensing
2 board shall reinstate the license.

3 (f) Upon receipt of notification by the clerk that a person's licensing privileges
4 are revoked pursuant to this section, the board shall note the revocation on its records
5 and take all necessary steps to implement and enforce the revocation. These steps shall
6 not include the board's independent revocation process pursuant to Article 3A of
7 Chapter 150B of the General Statutes, the Administrative Procedure Act, which process
8 is replaced by the court process prescribed by this section. The revocation pertaining to
9 a person shall remain in full force and effect until the board receives certification under
10 this section that the person has complied with the requirements of this Article. The
11 revocation pertaining to the person whose licensing privileges were revoked on the basis
12 of failure to comply with this Article shall remain in full force and effect until the board
13 receives certification of reinstatement under subsection (d) of this section."

14 **SECTION 11.** Chapter 93B of the General Statutes is amended by adding a
15 new section to read:

16 **"§ 93B-13.1. Revocation when licensing privilege forfeited for failure to register on**
17 **the sex offender and public protection registry.**

18 (a) Upon receipt of a court order, pursuant to G.S. 14-208.18, revoking the
19 occupational license of a licensee under its jurisdiction, an occupational licensing board
20 shall note the revocation in its records, report the action within 30 days to the
21 Department of Justice, Division of Criminal Information, and follow the normal
22 post-revocation rules and procedures of the board as if the revocation had been ordered
23 by the board. The revocation shall remain in effect until the board receives certification
24 by the clerk of superior court or the Division of Criminal Information that the licensee
25 has complied with the registry requirements under Part 2 of Article 27A of Chapter 14
26 of the General Statutes or is no longer subject to the registry requirements that were the
27 basis for the revocation.

28 (b) If at the time the court revokes a license pursuant to subsection (a) of this
29 section the occupational licensing board has revoked the same license under the
30 licensing board's disciplinary authority over licensees under its jurisdiction and that
31 revocation period is greater than the revocation period resulting from forfeiture pursuant
32 to G.S. 14-208.18, then the revocation period imposed by the occupational licensing
33 board applies.

34 (c) Immediately upon certification by the clerk of superior court that the licensee
35 whose license was revoked pursuant to subsection (a) of this section because of failure
36 to comply with the registry requirement is in compliance with or no longer subject to
37 the registry requirement, the occupational licensing board shall reinstate the license.
38 Reinstatement of a license pursuant to this section shall be made at no additional cost to
39 the licensee."

40 **SECTION 12.** By December 1, 2007, the Administrative Office of the
41 Courts, in consultation with the North Carolina Department of Justice, North Carolina
42 Department of Correction, and the North Carolina Sheriffs' Association shall develop a
43 procedure to ensure timely notification to the Division of Criminal Information,
44 Department of Justice, and to sheriffs regarding any person subject to registration under

1 Article 27A of Chapter 14 of the General Statutes who does not receive an active term
2 of imprisonment, as specified in G.S. 14-208.7(a).

3 **SECTION 13.(a)** Funds are authorized to be allocated to the Governor's
4 Crime Commission for award as grants to eligible sheriffs' offices to assist with the
5 enforcement of the State's sex offender laws. The grants shall be awarded specifically
6 to enhance and support law efforts by sheriffs to do the following: (i) process and
7 conduct in-person sex offender registrations, (ii) monitor compliance of sex offenders as
8 required under Article 27A of Chapter 14 of the General Statutes, and (iii) conduct
9 activities to investigate and apprehend persons who commit reportable offenses as
10 defined under Article 27A of Chapter 14 of the General Statutes. The grants shall be
11 awarded on a matching basis of one State dollar (\$1.00) for every one non-State dollar
12 (\$1.00).

13 **SECTION 13.(b)** The Commission shall establish the criteria regarding the
14 eligibility and amount of the awards for the grants described in this section. The grant
15 criteria shall include consideration of all of the following:

- 16 (1) The number of convicted sex offenders in the county of the applicant.
- 17 (2) The level of community support for the grant award.
- 18 (3) Whether the application identifies a problem that is consistent with the
19 purposes of this initiative.
- 20 (4) The development and maintenance by the applicant with other public
21 safety agencies to regularly exchange information and intelligence.
- 22 (5) Whether the application articulates clearly the jurisdiction's goals,
23 outcomes, and objectives and describes the accountability system and
24 performance measures to determine progress towards achieving them.

25 **SECTION 13.(c)** Any grants allocated shall not revert to the General Fund
26 but shall remain with the Commission for the purposes described in this section.

27 **SECTION 13.(d)** The grant funds described by this section shall
28 supplement, and not supplant, existing funds and services provided for the tracking of
29 registered sex offenders. The grants shall be subject to established fiscal controls,
30 annual reporting, and accountability requirements specified by the Commission.

31 **SECTION 13.(e)** This section is effective only if funds are appropriated to
32 implement it. Nothing in this section shall obligate or require the State to appropriate
33 funds for the purposes set forth in the section.

34 **SECTION 14.** Section 12 of this act is effective when it becomes law.
35 Section 13 of this act becomes effective July 1, 2007. The remainder of this act
36 becomes effective December 1, 2007, and applies to persons who are on the sex
37 offender registry as of that date, and any person required by law to be on the sex
38 offender registry on or after that date.