

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 10

Session of
2001

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ADOLPH, METCALFE, HUTCHINSON, BENNINGHOFF, CIVERA AND
BASTIAN, JANUARY 24, 2001

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 24, 2001

AN ACT

1 Providing for protection of children from obscene material,
2 child pornography and other unsuitable material on the
3 Internet in public schools and public libraries.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Child
8 Internet Protection Act.

9 Section 2. Declaration of policy.

10 The General Assembly finds and declares as follows:

11 (1) The Commonwealth has a compelling interest and duty
12 to protect children from exposure to obscenity, child
13 pornography and other material harmful to minors.

14 (2) The Commonwealth has a compelling interest in
15 preventing any user from accessing obscene material and child

1 pornography within a public school or public library setting.

2 (3) There is a need to balance the goal of providing
3 free access to educationally suitable information sources on
4 the Internet against the compelling need and duty to protect
5 children from contact with sexual predators and from access
6 to obscene material, child pornography and material harmful
7 to children.

8 (4) The Commonwealth has a compelling interest and duty
9 to protect children against the adverse secondary effects of
10 permitting Internet access to obscenity, child pornography
11 and material harmful to minors available within a public
12 library setting since the availability of such material will
13 attract pedophiles and other sexually disturbed persons who
14 present a danger to children.

15 (5) Pornography in a public library or school setting
16 can create a hostile environment constituting sexual
17 harassment.

18 (6) The Commonwealth has a compelling interest and duty
19 to take reasonable steps to prevent the creation of a hostile
20 environment in public schools and libraries and to prevent
21 the sexual harassment of students, library patrons, library
22 staff and other persons.

23 Section 3. Definitions.

24 The following words and phrases when used in this act shall
25 have the meanings given to them in this section unless the
26 context clearly indicates otherwise:

27 "Acceptable-use policy." A policy for Internet usage that
28 meets the requirements of this act which is acceptable to and
29 adopted by a school board or a governing body of a public
30 library.

1 "Aggrieved parent or guardian." The parent or guardian of:

2 (1) A student who attends a public school within a
3 school district that is the subject of an enforcement action.

4 (2) A child under 17 years of age who has library
5 privileges at a public library that is the subject of an
6 enforcement action.

7 "Child pornography." As described in 18 Pa.C.S. § 6312
8 (relating to sexual abuse of children).

9 "Court of common pleas." The court of common pleas of the
10 county in which a school district's administrative office is
11 located or public library that is the subject of the enforcement
12 action is situated.

13 "Department." The Department of Education of the
14 Commonwealth.

15 "District attorney." The district attorney of the county in
16 which a school district or public library that is the subject of
17 the enforcement action is situated.

18 "Harmful to minors." As defined in 18 Pa.C.S. § 5903
19 (relating to obscene and other sexual materials and
20 performances).

21 "Obscene." As defined for purposes of "obscene materials" in
22 18 Pa.C.S. § 5903 (relating to obscene and other sexual
23 materials and performances).

24 "Public library." A library, other than a college,
25 university or public school district library, that is
26 established or maintained by the Commonwealth, a political
27 subdivision or an authority or which receives State aid pursuant
28 to Article III of the act of June 14, 1961 (P.L.324, No.188),
29 known as The Library Code.

30 "School board." The board of directors of a school district

1 or the board of trustees of a charter school.

2 "School district." All school districts under the act of
3 March 10, 1949 (P.L.30, No.14), known as the Public School Code
4 of 1949, and all charter schools established under Article XVII-
5 A of the Public School Code of 1949.

6 "Secretary." The Secretary of Education of the Commonwealth.
7 Section 4. School district Internet policies.

8 (a) Acceptable-use policy.--Within 180 days after the
9 effective date of this act, each school board shall establish an
10 acceptable-use policy for the international network of computer
11 systems commonly known as the Internet. At a minimum, the policy
12 shall contain provisions which are reasonably designed to:

13 (1) Prevent students of the school district or any other
14 person from using any computer equipment and communications
15 services owned or leased by the school district for sending,
16 receiving, viewing or downloading material, the character of
17 which is such that it is reasonably believed to be obscene or
18 child pornography or harmful to minors and which prohibit the
19 use of such equipment and services for those purposes.

20 (2) Establish appropriate measures to be taken against
21 students and other persons who willfully violate the school
22 district's acceptable-use policy.

23 (3) Provide for expedited review and resolution of a
24 claim that the policy is denying a student or other person
25 access to material that is not within the prohibition of the
26 acceptable-use policy.

27 (b) Implementation and enforcement.--The school board shall
28 take such steps as it deems appropriate to implement and enforce
29 the school district policy, which shall include, but need not be
30 limited to:

1 (1) use of software programs reasonably designed to
2 block access to material, the character of which is
3 reasonably believed to be obscene, child pornography or
4 harmful to minors; or

5 (2) selection of on-line servers that block access to
6 material, the character of which is reasonably believed to be
7 obscene, child pornography or harmful to minors.

8 (c) Adoption of policy.--The school board may adopt a school
9 district policy that seeks to prevent student access to Internet
10 material which is pervasively indecent and vulgar or which is
11 not reasonably related to legitimate pedagogical concerns, as
12 specifically defined by the policy.

13 (d) Copy of policy for parents or guardians.--A school
14 district shall provide, upon written request of a parent or
15 guardian, a copy of the acceptable-use policy it has adopted
16 under this section.

17 Section 5. Public library Internet policies.

18 (a) Acceptable-use policy.--Within 180 days after the
19 effective date of this act, the governing body of every public
20 library shall establish an acceptable-use policy for the
21 international network of computer systems commonly known as the
22 Internet. The policy shall contain provisions which are
23 reasonably designed to:

24 (1) Prevent any person from using the library's computer
25 equipment and communications services for sending, receiving,
26 viewing or downloading material, the character of which is
27 reasonably believed to be obscene, child pornography or
28 harmful to minors.

29 (2) Establish appropriate measures to be taken against
30 persons who willfully violate the policy.

1 (b) Implementation and enforcement of policy.--The governing
2 body of the public library shall take such steps as it deems
3 appropriate to implement and enforce the requirements of
4 subsection (a). These steps shall include, but need not be
5 limited to, the following:

6 (1) the use of software programs designed to block
7 access by any person to material, the character of which is
8 reasonably believed to be obscene, child pornography or
9 harmful to minors; or

10 (2) the selection of on-line servers that block access
11 by any person to material, the character of which is
12 reasonably believed to be obscene, child pornography or
13 harmful to minors.

14 (c) Expedited review procedure.--Each public library shall
15 establish an expedited procedure for the review and resolution,
16 by personnel designated for this purpose, of any claim that a
17 software program or other policy of the public library is
18 denying a user access to material that is not within the
19 prohibition of this section for that user.

20 (d) Appeal.--A person aggrieved by an adverse decision of a
21 public library regarding access to Internet material or by
22 failure of a public library to make a decision within two
23 business days after making a request for Internet access may
24 file an appeal with the court of common pleas. The court shall
25 hold a de novo hearing within three business days after the
26 appeal is filed and shall issue a final decree within 24 hours
27 after the close of the hearing. The public library shall have
28 the burden of proof in the judicial proceeding.

29 (e) Immunity.--A public library shall not be subject to
30 civil liability for damages to any person as a result of the

1 failure of any approved software program or approved on-line
2 server to block access to material, the character of which is
3 reasonably believed to be obscene, child pornography or harmful
4 to minors. Nothing in this section shall be deemed to abrogate
5 or lessen any immunity or other protection against liability
6 accorded to public libraries under existing law or court
7 decision.

8 Section 6. Powers and duties of Attorney General and
9 department.

10 (a) Review of software programs.--The secretary, in
11 consultation with the Attorney General, shall review the
12 capacity of software programs and on-line servers to meet the
13 requirements of sections 4(b) and 5(b). Within 90 days after the
14 effective date of this act and at least annually thereafter, the
15 secretary shall send to each school district and public library
16 and publish in the Pennsylvania Bulletin a list of software
17 programs and on-line servers which, in the secretary's
18 determination, have the capacity to meet the requirements of
19 sections 4(b) and 5(b).

20 (b) Assistance to public libraries and school districts.--
21 The Attorney General and the secretary shall consult with and
22 assist any public library or school district that requests such
23 assistance in the development and implementation of an
24 acceptable-use policy under this act.

25 Section 7. Reports.

26 (a) Copy of policy to be filed.--Within 185 days after the
27 effective date of this act, the superintendent of each school
28 district and the chief administrative officer of each public
29 library shall file with the secretary a copy of the acceptable-
30 use policy of the school district and public library which have

1 been adopted under this act. Each revision to the acceptable-use
2 policy shall be transmitted to the secretary in accordance with
3 section 8.

4 (b) Identification of software program and on-line
5 servers.--Each acceptable-use policy filed with the department
6 shall identify any software program or on-line server that is
7 being utilized to block access to material in accordance with
8 sections 4(b) and 5(b).

9 (c) Report to General Assembly.--Within 90 days after the
10 deadline for initial filing under subsection (a), and in
11 December of each subsequent year, the secretary shall submit a
12 report to the chairman and minority chairman of the Education
13 Committee of the Senate and the chairman and minority chairman
14 of the Education Committee of the House of Representatives which
15 summarizes the acceptable-use policies and any revisions thereof
16 filed with the secretary under this act.

17 Section 8. Enforcement.

18 (a) Review of acceptable-use policy.--The secretary shall
19 review each acceptable-use policy filed by a public library
20 under this act and each revision thereof and shall approve each
21 policy or revision that is designed to achieve the requirements
22 of section 5 and shall disapprove any policy or revision that is
23 not reasonably designed to achieve the requirements of this act.
24 Except as otherwise provided in subsection (b), a public library
25 shall implement its acceptable-use policy during the review
26 period.

27 (b) Revision of policy.--No revision of an acceptable-use
28 policy, which has been approved by the secretary under
29 subsection (a), shall be implemented until such revision is
30 approved by the secretary. If the secretary fails to disapprove

1 the revision within 60 days after submission to the secretary,
2 the public library may proceed with the implementation of the
3 revision of its acceptable-use policy.

4 (c) Withholding of funding from public library.--The
5 secretary shall withhold State funding from any public library
6 that:

7 (1) fails to submit an acceptable-use policy within the
8 time prescribed in this act;

9 (2) submits an acceptable-use policy that is not
10 reasonably designed to achieve the requirements of section 5;

11 (3) is not enforcing or is substantially disregarding
12 its acceptable-use policy; or

13 (4) violates any other provision of this act.

14 (d) Notice of noncompliance.--If the secretary determines
15 that a public library is not in compliance with the requirements
16 of this act, the secretary shall provide the public library with
17 a written notice explaining the nature of such noncompliance and
18 shall afford the public library a 30-day period for correcting
19 any failure to comply with this act before withholding any funds
20 under this section. The secretary may extend the time for
21 submission of a revised acceptable-use policy for good cause.

22 (e) Appeal.--If the secretary disapproves an acceptable-use
23 policy or any revision thereof under this section or notifies
24 the public library that it is subject to the withholding of
25 funding pursuant to subsection (c), the aggrieved public library
26 may appeal the decision to the Commonwealth Court.

27 (f) Court enforcement.--The secretary, the district attorney
28 or an aggrieved parent or guardian shall have standing to bring
29 an action in the court of common pleas seeking a court order
30 directing the school board or public library to enforce an

1 acceptable-use policy filed with the secretary. The court of
2 common pleas shall issue an appropriate order if it determines
3 that the school board or public library is not enforcing or is
4 substantially disregarding its acceptable-use policy.

5 Section 9. Disabling blocking technology for use by certain
6 persons.

7 (a) General rule.--Notwithstanding any other section of this
8 act to the contrary, an administrator, supervisor or other
9 personnel designated for this purpose may disable the software
10 program or on-line server that is being utilized to block access
11 to material in accordance with sections 4(b) and 5(b) during use
12 by any person other than a student, in the case of a school
13 district, or a child under 17 years of age, in the case of a
14 public library, to enable unfiltered access for the purpose of
15 bona fide research or other lawful purpose.

16 (b) Construction.--Nothing in this section shall be
17 construed to permit any person to have access to material the
18 character of which is reasonably believed to be obscene or child
19 pornography.

20 Section 10. Severability.

21 The provisions of this act are severable. If any provision of
22 this act or its application to any person or circumstance is
23 held invalid, the invalidity shall not affect other provisions
24 or applications of this act which can be given effect without
25 the invalid provision or application.

26 Section 11. Repeal.

27 All acts and parts of acts are repealed insofar as they are
28 inconsistent with this act.

29 Section 12. Effective date.

30 This act shall take effect immediately.