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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 262      Session of  
1999

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INTRODUCED BY HART, BELL, SALVATORE, WENGER, MOWERY, WHITE,  
WAUGH, TOMLINSON, SLOCUM, THOMPSON, DENT, GERLACH, ROBBINS,  
CORMAN, RHOADES, MUSTO, KASUNIC AND COSTA, FEBRUARY 1, 1999

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REFERRED TO JUDICIARY, FEBRUARY 1, 1999

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AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, further providing for obscene and  
3 other sexual materials and performances.

4 The General Assembly finds and declares as follows:

5 (1) The Internet is an increasingly valuable medium for  
6 communication and the dissemination and collection of  
7 information.

8 (2) The children of this Commonwealth utilize the  
9 Internet for entertainment, education and commerce.

10 (3) Many children in this Commonwealth have access to  
11 electronic mail accounts through their parents' accounts,  
12 shared accounts or their own personal accounts.

13 (4) Increasingly advertisers use the Internet to market  
14 obscene materials to millions of users of the Internet.

15 (5) One of the frequently used vehicles for the  
16 marketing of obscene materials via the Internet is  
17 unsolicited electronic mail messages.

18 (6) These unsolicited obscene advertisements are sent to

1 computers in Commonwealth households allowing children to  
2 view or have access to pornographic materials.

3 (7) Although there are an increasing number of Internet  
4 filtering software titles that parents can use to block  
5 access to obscene World Wide Web sites, these filtering  
6 software titles are ineffective against obscene material that  
7 is sent via electronic mail.

8 (8) There is no universal method of identifying  
9 electronic mail messages that market obscene materials.

10 (9) Despite the best efforts of parents to protect their  
11 children from obscene material via electronic mail messages,  
12 they are unable to do so because there is no method by which  
13 they can separate and filter out inappropriate messages from  
14 appropriate messages.

15 (10) The Commonwealth has a compelling interest in  
16 protecting children from obscenity.

17 (11) In doing so, government must enact a narrowly  
18 tailored remedy to avoid interfering with the growth or  
19 accessibility of this important medium and with the rights of  
20 adult users of the Internet under the first amendment to the  
21 Constitution of the United States.

22 (12) This act empowers parents to decide what type of  
23 messages are inappropriate for their children and effectively  
24 block those messages from their children's electronic mail  
25 accounts.

26 (13) This act does not restrict or prevent the senders  
27 of unsolicited obscene electronic mail messages from sending  
28 those messages to any and all prospective recipients.

29 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. Section 5903(a) and (b) of Title 18 of the  
3 Pennsylvania Consolidated Statutes are amended and the section  
4 is amended by adding subsections to read:

5 § 5903. Obscene and other sexual materials and performances.

6 (a) Offenses defined.--No person, knowing the obscene  
7 character of the materials or performances involved, shall:

8 (1) display or cause or permit the display of any  
9 explicit sexual materials as defined in subsection (c) in or  
10 on any window, showcase, newsstand, display rack, billboard,  
11 display board, viewing screen, motion picture screen, marquee  
12 or similar place in such manner that the display is visible  
13 from any public street, highway, sidewalk, transportation  
14 facility or other public thoroughfare, or in any business or  
15 commercial establishment where minors, as a part of the  
16 general public or otherwise, are or will probably be exposed  
17 to view all or any part of such materials;

18 (2) sell, lend, distribute, exhibit, give away or show  
19 any obscene materials to any person 18 years of age or older  
20 or offer to sell, lend, distribute, exhibit or give away or  
21 show, or have in his possession with intent to sell, lend,  
22 distribute, exhibit or give away or show any obscene  
23 materials to any person 18 years of age or older, or  
24 knowingly advertise any obscene materials in any manner;

25 (3) design, copy, draw, photograph, print, utter,  
26 publish or in any manner manufacture or prepare any obscene  
27 materials;

28 (4) write, print, publish, utter or cause to be written,  
29 printed, published or uttered any advertisement or notice of  
30 any kind giving information, directly or indirectly, stating

1 or purporting to state where, how, from whom, or by what  
2 means any obscene materials can be purchased, obtained or  
3 had;

4 (5) produce, present or direct any obscene performance  
5 or participate in a portion thereof that is obscene or that  
6 contributes to its obscenity;

7 (6) hire, employ, use or permit any minor child to do or  
8 assist in doing any act or thing mentioned in this  
9 subsection;

10 (7) knowingly take or deliver in any manner any obscene  
11 material into a State correctional institution, county  
12 prison, regional prison facility or any other type of  
13 correctional facility;

14 (8) possess any obscene material while such person is an  
15 inmate of any State correctional institution, county prison,  
16 regional prison facility or any other type of correctional  
17 facility; [or]

18 (9) knowingly permit any obscene material to enter any  
19 State correctional institution, county prison, regional  
20 prison facility or any other type of correctional facility if  
21 such person is a prison guard or other employee of any  
22 correctional facility described in this paragraph[.]; or

23 (10) transmit or cause to be transmitted via an  
24 electronic communication system to one or more persons within  
25 this Commonwealth an unsolicited advertisement that contains  
26 obscene material or performances or a uniform resource  
27 locator to a World Wide Web site that contains obscene  
28 material or performances without including in the electronic  
29 communication the term "ADV-ADULT" at the beginning of the  
30 subject line of the electronic communication.

1 (b) Definitions.--As used in this section the following  
2 words and phrases shall have the meanings given to them in this  
3 subsection:

4 "Community." For the purpose of applying the "contemporary  
5 community standards" in this section, community means the State.

6 "Knowing." As used in subsection (a), knowing means having  
7 general knowledge of, or reason to know or a belief or ground  
8 for belief which warrants further inspection or inquiry of, the  
9 character and content of any material or performance described  
10 therein which is reasonably susceptible of examination by the  
11 defendant.

12 "Material." Any literature, including any book, magazine,  
13 pamphlet, newspaper, storypaper, bumper sticker, comic book or  
14 writing; any figure, visual representation, or image, including  
15 any drawing, photograph, picture, videotape or motion picture.

16 "Nude." Means showing the human male or female genitals,  
17 pubic area or buttocks with less than a fully opaque covering,  
18 or showing the female breast with less than a fully opaque  
19 covering of any portion thereof below the top of the nipple.

20 "Obscene." Any material or performance, if:

21 (1) the average person applying contemporary community  
22 standards would find that the subject matter taken as a whole  
23 appeals to the prurient interest;

24 (2) the subject matter depicts or describes in a  
25 patently offensive way, sexual conduct of a type described in  
26 this section; and

27 (3) the subject matter, taken as a whole, lacks serious  
28 literary, artistic, political, educational or scientific  
29 value.

30 "Performance." Means any play, dance or other live

1 exhibition performed before an audience.

2 "Sadomasochistic abuse." Means, in a sexual context,  
3 flagellation or torture by or upon a person who is nude or clad  
4 in undergarments, a mask or in a bizarre costume or the  
5 condition of being fettered, bound or otherwise physically  
6 restrained on the part of one who is nude or so clothed.

7 "Sexual conduct." Patently offensive representations or  
8 descriptions of ultimate sexual acts, normal or perverted,  
9 actual or simulated, including sexual intercourse, anal or oral  
10 sodomy and sexual bestiality; and patently offensive  
11 representations or descriptions of masturbation, excretory  
12 functions, sadomasochistic abuse and lewd exhibition of the  
13 genitals.

14 "Subject line." The area of an electronic communication that  
15 contains a summary description of the content of the message.

16 "Transportation facility." Any conveyance, premises or place  
17 used for or in connection with public passenger transportation,  
18 whether by air, rail, motor vehicle or any other method,  
19 including aircraft, watercraft, railroad cars, buses, and air,  
20 boat, railroad and bus terminals and stations.

21 "Uniform resource locator." An Internet address for a  
22 resource, object or information that is accessible via the  
23 Internet.

24 "World Wide Web site." A web page or collection of web pages  
25 that is organized around a central theme or purpose. Each web  
26 page is a single computer file that may contain text, images and  
27 other multimedia materials to present information that can be  
28 viewed via the World Wide Web.

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30 (1) Penalty for attempt to evade prosecution.--Any person

1 who violates subsection (a)(10) and attempts to avoid  
2 prosecution by knowingly including false or misleading  
3 information in the return address portion of the electronic mail  
4 message such that the recipient would be unable to send a reply  
5 message to the original, authentic sender shall, in addition to  
6 any other penalty imposed, upon conviction, be sentenced to pay  
7 a fine of not less than \$100 nor more than \$500 per message or  
8 to imprisonment for not more than 90 days, or both, for a first  
9 offense and a fine of not less than \$500 nor more than \$1,000 or  
10 to imprisonment for not more than one year, or both, for a  
11 second offense.

12 (m) Concurrent jurisdiction to prosecute.--The Attorney  
13 General shall have the concurrent prosecutorial jurisdiction  
14 with the district attorney for cases arising under subsection  
15 (a)(10) and may refer to the district attorney, with the  
16 district attorney's consent, any violation or alleged violation  
17 of subsection (a)(10) which may come to the Attorney General's  
18 attention.

19 Section 2. This act shall take effect in 60 days.