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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**

**No. 2262** Session of  
2003

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INTRODUCED BY EGOLF, ARMSTRONG, BALDWIN, BARRAR, BASTIAN, BEBKO-JONES, BENNINGHOFF, BIRMELIN, BOYD, BROWNE, CLYMER, COLEMAN, CRAHALLA, CREIGHTON, DALLY, DeLUCA, DENLINGER, FLICK, FORCIER, GEIST, GEORGE, GOOD, GOODMAN, HARHAI, HARRIS, HENNESSEY, HERMAN, HERSHEY, HESS, HICKERNELL, HORSEY, HUTCHINSON, KELLER, KENNEY, KIRKLAND, KOTIK, LAUGHLIN, LEDERER, LYNCH, MAITLAND, MARSICO, MELIO, METCALFE, MICOZZIE, PAYNE, PICKETT, REICHLLEY, ROHRER, SATHER, SCAVELLO, SCHRODER, STERN, E. Z. TAYLOR, THOMAS, TIGUE, TRUE, WATSON, WILT AND YOUNGBLOOD, DECEMBER 16, 2003

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REFERRED TO COMMITTEE ON JUDICIARY, DECEMBER 16, 2003

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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; providing  
4 for the duties of the Secretary of Education; and  
5 establishing a remedy.

6 The General Assembly of the Commonwealth of Pennsylvania  
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Child  
10 Internet Protection Act.

11 Section 2. Declaration of policy.

12 The General Assembly finds and declares as follows:

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

1           (2) The Commonwealth has a compelling interest in  
2 preventing any user from accessing obscene material and child  
3 pornography within a public school or public library setting.

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

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

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

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

25 Section 3. Definitions.

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

29          "Acceptable-use policy." A policy for Internet usage that  
30 meets the requirements of this act which is acceptable to and

1 adopted by a school board or a governing body of a public  
2 library.

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

4 (1) A student who attends a public school within a  
5 school district that is the subject of the enforcement action  
6 authorized under this act.

7 (2) A child under 17 years of age who has library  
8 privileges at a public library that is the subject of an  
9 enforcement action authorized under this act.

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

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

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

17 "Internet." the International network of computer systems.

18 "Obscene." As defined for purposes of "obscene materials" in  
19 18 Pa.C.S. § 5903 (relating to obscene and other sexual  
20 materials and performances).

21 "Public library." A county or local library that receives  
22 State aid pursuant to Article III of the act of June 14, 1961  
23 (P.L.324, No.188), known as The Library Code.

24 "School board." The board of directors of a school district  
25 or the board of trustees of a charter school.

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

30 "Secretary." The Secretary of Education of the Commonwealth.

1 Section 4. School district Internet policies.

2 (a) Acceptable-use policy.--Within 180 days after the  
3 effective date of this act, each school board shall establish an  
4 acceptable-use policy for the Internet. At a minimum, the policy  
5 shall contain provisions which are reasonably designed to:

6 (1) Prevent students of the school district or any other  
7 person from using any computer equipment and communications  
8 services owned or leased by the school district for sending,  
9 receiving, viewing or downloading visual depictions, the  
10 character of which is such that it is reasonably believed to  
11 be obscene or child pornography or harmful to minors and  
12 which prohibit the use of such equipment and services for  
13 those purposes.

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

17 (3) Provide for expedited review and resolution of a  
18 claim that the policy is denying a student or other person  
19 access to material that is not within the prohibition of the  
20 acceptable-use policy.

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

25 (1) use of software programs reasonably designed to  
26 block access to visual depictions, the character of which is  
27 reasonably believed to be obscene, child pornography or  
28 harmful to minors; or

29 (2) selection of online servers that block access to  
30 visual depictions, the character of which is reasonably

1 believed to be obscene, child pornography or harmful to  
2 minors.

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

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

12 Section 5. Public library Internet policies.

13 (a) Acceptable-use policy.--Within 180 days after the  
14 effective date of this act, the governing body of every public  
15 library shall establish an acceptable-use policy for the  
16 Internet. The policy shall contain provisions which are  
17 reasonably designed to:

18 (1) Prevent any person from using the library's computer  
19 equipment and communications services for sending, receiving,  
20 viewing or downloading visual depictions, the character of  
21 which is reasonably believed to be obscene, child pornography  
22 or harmful to minors.

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

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

30 (1) the use of software programs designed to block

1 access by any person to visual depictions, the character of  
2 which is reasonably believed to be obscene, child pornography  
3 or harmful to minors; or

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

8 (c) Appeal.--The courts shall provide for an expedited  
9 review of an appeal by a party aggrieved by an adverse public  
10 library decision relating to access to Internet material  
11 pursuant to this act. The public library shall have the burden  
12 of proof in such judicial proceeding.

13 (d) Immunity.--A public library shall not be subject to  
14 civil liability for damages to any person as a result of the  
15 failure of any approved software program or approved on-line  
16 server to block access to material, the character of which is  
17 reasonably believed to be obscene, child pornography or harmful  
18 to minors. Nothing in this section shall be deemed to abrogate  
19 or lessen any immunity or other protection against liability  
20 accorded to public libraries under existing law or court  
21 decision.

22 Section 6. Consultation on acceptable-use policies.

23 The Attorney General and the secretary shall consult with and  
24 assist any public library or school district that requests such  
25 assistance in the development and implementation of an  
26 acceptable-use policy under this act.

27 Section 7. Reports.

28 (a) Copy of policy to be filed.--Within 200 days after the  
29 effective date of this act, the superintendent of each school  
30 district and the chief administrative officer of each public

1 library shall file with the secretary a copy of the acceptable-  
2 use policy of the school district and public library which have  
3 been adopted under this act. Each revision to the acceptable-use  
4 policy shall be transmitted to the secretary in accordance with  
5 section 8.

6 (b) Identification of software program and online servers.--  
7 Each acceptable-use policy filed with the department shall  
8 identify any software program or on-line server that is being  
9 utilized to block access to material in accordance with sections  
10 4(b) and 5(b).

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

19 Section 8. Enforcement of public library provisions.

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

29 (b) Revision of policies of public libraries.--No revision  
30 of an acceptable-use policy of a public library, which has been

1 approved by the secretary under subsection (a), shall be  
2 implemented until such revision is approved by the secretary. If  
3 the secretary fails to disapprove the revision within 60 days  
4 after submission to the secretary, the public library may  
5 proceed with the implementation of the revision of its  
6 acceptable-use policy.

7 (c) Withholding of funding from public library.--The  
8 secretary shall withhold State funding provided by Article III  
9 of the act of June 14, 1961 (P.L.324, No.188), known as The  
10 Library Code, from any public library that:

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

13 (2) submits an acceptable-use policy that is not  
14 reasonably designed to achieve the requirements of section 5;  
15 or

16 (3) is not enforcing or is substantially disregarding  
17 its acceptable-use policy.

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

27 (e) Appeal by public library.--If the secretary disapproves  
28 an acceptable-use policy or any revision thereof under this  
29 section or notifies the public library that it is subject to the  
30 withholding of funding pursuant to subsection (c), the aggrieved



1 public library may appeal the decision to the Commonwealth  
2 Court.

3 Section 9. Remedy for aggrieved parents and guardians.

4 (a) Procedure.--

5 (1) An aggrieved parent or guardian may file a complaint  
6 with the secretary if the parent or guardian has reason to  
7 believe that a school district or public library is not in  
8 compliance with its acceptable-use policy or that the  
9 acceptable-use policy of a school district or public library  
10 violates the requirements of this act.

11 (2) The secretary shall conduct an investigation and  
12 shall make a written determination as to whether or not the  
13 complaint possesses any merit.

14 (3) If the secretary determines that the complaint is  
15 meritorious, the secretary shall direct the school district  
16 or public library to acknowledge and correct the violation  
17 and to develop a corrective plan for preventing recurrences.

18 (4) A school district or public library that receives a  
19 determination from the secretary of a violation of the  
20 requirements of this act shall submit a written statement,  
21 signed by the superintendent, in the case of a school  
22 district, and the chief administrative officer, in the case  
23 of a public library, to the secretary, which acknowledges the  
24 violation and sets out the school district's or public  
25 library's corrective plan. The statement shall be a public  
26 record subject to disclosure under the act of June 21, 1957  
27 (P.L.390, No.212), referred to as the Right-to-Know Law.

28 (b) Appeal.--A parent, guardian, school district or public  
29 library aggrieved by a determination of the secretary made  
30 pursuant to subsection (a) may file an appeal with the

1 Commonwealth Court.

2 (c) Refusal to comply.--If a school district or public  
3 library refuses to comply with a directive of the secretary made  
4 under subsection (a), the secretary shall petition the  
5 Commonwealth Court for an enforcement order. Any challenge to  
6 the determination of the secretary shall be made exclusively  
7 through the appeal procedure prescribed in subsection (b).

8 (d) Construction.--Nothing in this section shall limit the  
9 authority of the secretary to withhold funds pursuant to section  
10 8(c) in an appropriate case.

11 Section 10. Disabling blocking technology for use by certain  
12 persons.

13 (a) General rule.--Notwithstanding any other section of this  
14 act to the contrary, an administrator, supervisor or other  
15 person authorized for this purpose may disable the software  
16 program or online server during use by an adult, to enable  
17 access for bona fide research or other lawful purpose.

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

22 Section 29. Severability.

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

28 Section 30. Repeal.

29 All acts and parts of acts are repealed insofar as they are  
30 inconsistent with this act.

1 Section 31. Effective date.

2 This act shall take effect immediately.