

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2262 Session of 2003

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, YOUNGBLOOD, CORRIGAN AND KILLION, DECEMBER 16, 2003

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, MAY 12, 2004

AN ACT

1 Providing for protection of children from obscene material,
2 child pornography and other ~~unsuitable material~~ MATERIAL THAT <—
3 IS HARMFUL TO MINORS on the Internet in public schools and
4 public libraries; AND providing for the duties of the <—
5 Secretary of Education.; ~~and 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 THAT IS 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.~~ ENTITY. <—

30 "SCHOOL ENTITY." A PUBLIC SCHOOL DISTRICT, CHARTER SCHOOL,

1 INTERMEDIATE UNIT OR AREA VOCATIONAL-TECHNICAL SCHOOL.

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

3 Section 4. School ~~district~~ ENTITY Internet policies. <—

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

9 (1) Prevent students ~~of the school district or any other~~ <—
10 ~~person~~ AND EMPLOYEES OF THE SCHOOL ENTITY from using any <—
11 computer equipment and communications services owned or
12 leased by the school district for sending, receiving, viewing
13 or downloading visual depictions, ~~the character of which is~~ <—
14 ~~such that it is reasonably believed to be obscene or child~~
15 ~~pornography or~~ OF OBSCENITY, CHILD PORNOGRAPHY OR MATERIAL <—
16 THAT IS harmful to minors and which prohibit the use of such
17 equipment and services for those purposes.

18 (2) Establish appropriate measures to be taken against
19 students and ~~other persons~~ SCHOOL EMPLOYEES who willfully <—
20 violate the school ~~district's~~ ENTITY'S acceptable-use policy. <—

21 (3) Provide for expedited review and resolution of a
22 claim that the policy is denying a student or ~~other person~~ <—
23 SCHOOL EMPLOYEE access to material that is not within the <—
24 prohibition of the acceptable-use policy.

25 (b) Implementation and enforcement.--The school board shall
26 take such steps as it deems appropriate to implement and enforce
27 the school ~~district~~ ENTITY'S policy, which shall include, but <—
28 need not be limited to:

29 (1) use of software programs reasonably designed to
30 block access to visual depictions, ~~the character of which is~~ <—

1 ~~reasonably believed to be obscene, child pornography or~~ OF ←
2 OBSCENITY, CHILD PORNOGRAPHY OR MATERIAL THAT IS harmful to
3 minors; or

4 (2) selection of online servers that block access to
5 visual depictions, ~~the character of which is reasonably~~ ←
6 ~~believed to be obscene, child pornography or harmful to~~
7 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.~~ OF OBSCENITY, CHILD ←
13 PORNOGRAPHY OR MATERIAL THAT IS HARMFUL TO MINORS.

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

18 Section 5. Public library Internet policies.

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

24 (1) Prevent ~~any person~~ LIBRARY PATRONS, INCLUDING THOSE ←
25 PATRONS UNDER 18 YEARS OF AGE AND LIBRARY EMPLOYEES from using
26 the library's computer equipment and communications services for
27 sending, receiving, viewing or downloading visual depictions, ←
28 ~~the character of which is reasonably believed to be obscene,~~
29 ~~child pornography or~~ OF OBSCENITY, CHILD PORNOGRAPHY OR MATERIAL ←
30 THAT IS harmful to minors.

1 (2) Establish appropriate measures to be taken against
2 ~~persons~~ LIBRARY PATRONS AND EMPLOYEES who willfully violate <—
3 the policy.

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

9 (1) the use of software programs designed to block
10 access by ~~any person to visual depictions, the character of~~ <—
11 ~~which is reasonably believed to be obscene, child pornography~~
12 ~~or~~ LIBRARY PATRONS AND EMPLOYEES TO VISUAL DEPICTIONS OF <—
13 OBSCENITY, CHILD PORNOGRAPHY OR MATERIAL THAT IS harmful to
14 minors; or

15 (2) the selection of on-line servers that block access
16 by ~~any person to visual depictions, the character of which is~~ <—
17 ~~reasonably believed to be obscene, child pornography or~~
18 ~~harmful to minors.~~

19 ~~(c) Appeal. The courts shall provide for an expedited~~
20 ~~review of an appeal by a party aggrieved by an adverse public~~
21 ~~library decision relating to access to Internet material~~
22 ~~pursuant to this act. The public library shall have the burden~~
23 ~~of proof in such judicial proceeding.~~ LIBRARY PATRONS AND <—
24 EMPLOYEES TO VISUAL DEPICTIONS OF OBSCENITY, CHILD PORNOGRAPHY
25 OR MATERIAL THAT IS HARMFUL TO MINORS.

26 ~~(d)~~ (C) Immunity.--A public library shall not be subject to <—
27 civil liability for damages to any person as a result of the
28 failure of any approved software program or approved on-line
29 server to block access to ~~material, the character of which is~~ <—
30 ~~reasonably believed to be obscene, child pornography or~~ VISUAL <—

1 DEPICTIONS OF OBSCENITY, CHILD PORNOGRAPHY OR MATERIAL THAT IS
2 harmful to minors. Nothing in this section shall be deemed to
3 abrogate or lessen any immunity or other protection against
4 liability accorded to public libraries under existing law or
5 court decision.

6 Section 6. Consultation on acceptable-use policies.

7 The Attorney General and the secretary shall consult with and
8 assist any public library or school ~~district~~ ENTITY that <—
9 requests such assistance in the development and implementation
10 of an acceptable-use policy under this act.

11 Section 7. Reports.

12 (a) Copy of policy to be filed.--Within 200 days after the
13 effective date of this act, ~~the superintendent of each school~~ <—
14 ~~district and the chief administrative officer of each public~~
15 EACH SCHOOL ENTITY AND PUBLIC library shall file with the <—
16 secretary a copy of the acceptable-use policy of the school
17 ~~district~~ ENTITY and public library which have been adopted under <—
18 this act. Each revision to the acceptable-use policy shall be
19 transmitted to the secretary in accordance with section 8.

20 (b) Identification of software program and online servers.--
21 Each acceptable-use policy filed with the department shall
22 identify any software program or on-line server that is being
23 utilized to block access to material in accordance with sections
24 4(b) and 5(b).

25 ~~(c) Report to General Assembly. Within 90 days after the~~ <—
26 ~~deadline for initial filing under subsection (a), and in~~
27 ~~December of each subsequent year, the secretary shall submit a~~
28 ~~report to the chairman and minority chairman of the Education~~
29 ~~Committee of the Senate and the chairman and minority chairman~~
30 ~~of the Education Committee of the House of Representatives which~~

1 ~~summarizes the acceptable use policies and any revisions thereof~~
2 ~~filed with the secretary under this act.~~

3 Section 8. Enforcement of ~~public library provisions~~ ACCEPTABLE- <—
4 USE POLICIES.

5 (a) Review of acceptable-use policies ~~of public libraries.~~-- <—

6 The secretary shall review each acceptable-use policy filed by a
7 public library ~~under this act and each revision thereof and~~ <—

8 ~~shall approve each policy or revision that is designed to~~
9 ~~achieve the requirements of section 5 and shall disapprove any~~

10 ~~policy or revision that is not reasonably designed to achieve~~
11 ~~the requirements of this act. Except as otherwise provided in~~

12 ~~subsection (b), a public library shall implement its acceptable-~~
13 ~~use policy during the review period.~~ AND SCHOOL ENTITY UNDER <—

14 THIS ACT AND EACH REVISION THEREOF. IF THE SECRETARY DETERMINES

15 AFTER REVIEW THAT A POLICY OR REVISION IS NOT DESIGNED TO

16 ACHIEVE THE REQUIREMENTS OF SECTION 4 OR 5, THE SECRETARY SHALL

17 PROVIDE WRITTEN NOTICE TO THE SCHOOL ENTITY OR PUBLIC LIBRARY

18 EXPLAINING THE NATURE OF SUCH NONCOMPLIANCE AND SHALL AFFORD THE

19 SCHOOL ENTITY OR PUBLIC LIBRARY A 30-DAY PERIOD FOR CORRECTING

20 ANY FAILURE TO COMPLY WITH THIS ACT. THE SECRETARY MAY PROVIDE A

21 REASONABLE EXTENSION OF TIME FOR SUBMISSION OF A REVISED

22 ACCEPTABLE-USE POLICY, ON A SHOWING OF GOOD CAUSE.

23 (b) Revision of policies ~~of public libraries.~~--No revision <—

24 of an acceptable-use policy ~~of a public library,~~ which has been <—

25 approved by the secretary under subsection (a), shall be

26 implemented until such revision is approved by the secretary. If

27 the secretary fails to disapprove the revision within 60 days

28 after submission to the secretary, the SCHOOL ENTITY OR public <—

29 library may proceed with the implementation of the revision of

30 its acceptable-use policy.

1 (c) Withholding of funding from ~~public library.~~ The <—
2 ~~secretary shall withhold State funding provided by Article III~~
3 ~~of the act of June 14, 1961 (P.L.324, No.188), known as The~~
4 ~~Library Code, from any public library that:~~ SCHOOL ENTITIES AND <—
5 PUBLIC LIBRARIES.--THE SECRETARY SHALL WITHHOLD A PORTION OF
6 STATE FUNDING TO A SCHOOL ENTITY OR PUBLIC LIBRARY IF THE SCHOOL
7 ENTITY OR PUBLIC LIBRARY:

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

10 (2) submits an acceptable-use policy that is not
11 reasonably designed to achieve the requirements of section 5 <—
12 4; or <—

13 (3) is not enforcing or is substantially disregarding
14 its acceptable-use policy.

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

24 ~~(e) Appeal by public library~~ (D) APPEAL.--If the secretary <—
25 disapproves an acceptable-use policy or any revision thereof
26 under this section or notifies the SCHOOL ENTITY OR public <—
27 library that it is subject to the withholding of funding
28 pursuant to subsection (c), the aggrieved SCHOOL ENTITY OR <—
29 public library may appeal the decision to the Commonwealth
30 Court.

1 ~~Section 9. Remedy for aggrieved parents and guardians.~~

2 ~~(a) Procedure.~~

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

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

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

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

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

30 ~~(c) Refusal to comply. If a school district or public~~

1 ~~library refuses to comply with a directive of the secretary made~~
2 ~~under subsection (a), the secretary shall petition the~~
3 ~~Commonwealth Court for an enforcement order. Any challenge to~~
4 ~~the determination of the secretary shall be made exclusively~~
5 ~~through the appeal procedure prescribed in subsection (b).~~

6 SECTION 9. DUTIES OF THE SECRETARY. <—

7 (A) PROCEDURE.--

8 (1) THE SECRETARY SHALL BE RESPONSIBLE FOR CONDUCTING
9 INVESTIGATIONS AND MAKING WRITTEN DETERMINATIONS AS TO
10 WHETHER OR NOT A PUBLIC LIBRARY OR SCHOOL ENTITY HAS VIOLATED
11 THE REQUIREMENTS OF THIS ACT.

12 (2) IF THE SECRETARY DETERMINES THAT A SCHOOL ENTITY OR
13 PUBLIC LIBRARY IS IN VIOLATION, THE SECRETARY SHALL DIRECT
14 THE SCHOOL ENTITY OR PUBLIC LIBRARY TO ACKNOWLEDGE AND
15 CORRECT THE VIOLATION WITHIN A 30-DAY PERIOD AND TO DEVELOP A
16 CORRECTIVE PLAN FOR PREVENTING FUTURE RECURRENCES.

17 ~~(d)~~ (B) Construction.--Nothing in this section shall limit <—
18 the authority of the secretary to withhold funds pursuant to
19 section 8(c) in an appropriate case.

20 Section 10. Disabling blocking technology for use by certain
21 persons.

22 (a) General rule.--Notwithstanding any other section of this
23 act to the contrary, an administrator, supervisor or ~~other~~ <—
24 ~~person authorized for this purpose~~ THEIR DESIGNEE may disable <—
25 the software program or online server ~~during use by an adult~~ FOR <—
26 AN ADULT OR A MINOR WHO PROVIDES WRITTEN CONSENT FROM A PARENT
27 OR GUARDIAN, to enable access for bona fide research or other
28 lawful purpose.

29 (b) Construction.--Nothing in this section shall be
30 construed to permit any person to have access to material the

1 character of which is ~~reasonably believed to be obscene or child~~ <—
2 ~~pornography~~. ILLEGAL UNDER FEDERAL OR STATE LAW. <—

3 Section ~~29~~ 11. Severability. <—

4 The provisions of this act are severable. If any provision of
5 this act or its application to any person or circumstance is
6 held invalid, the invalidity shall not affect other provisions
7 or applications of this act which can be given effect without
8 the invalid provision or application.

9 SECTION 12. APPLICABILITY. <—

10 SCHOOL ENTITIES AND PUBLIC LIBRARIES FULFILLING THE
11 REQUIREMENTS OF THE CHILDREN'S INTERNET PROTECTION ACT (PUBLIC
12 LAW 106-554, 114 STAT. 2763A-335) ARE NOT REQUIRED TO FULFILL
13 THE REQUIREMENTS OF THIS ACT.

14 Section ~~30~~ 13. Repeal. <—

15 All acts and parts of acts are repealed insofar as they are
16 inconsistent with this act.

17 Section ~~31~~ 14. Effective date. <—

18 This act shall take effect immediately.