

No. 2000-25

AN ACT

SB 262

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for explicit sexual materials.

The General Assembly finds and declares as follows:

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

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

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

(4) Increasingly advertisers use the Internet to market explicit sexual materials to millions of users of the Internet.

(5) One of the frequently used vehicles for the marketing of explicit sexual materials via the Internet is unsolicited electronic mail messages.

(6) These unsolicited explicit sexual advertisements are sent to computers in Commonwealth households allowing children to view or have access to pornographic materials.

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

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

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

(10) The Commonwealth has a compelling interest in protecting children from explicit sexual material.

(11) In doing so, government must enact a narrowly tailored remedy to avoid interfering with the growth or accessibility of this important medium and with the rights of adult users of the Internet under the first amendment to the Constitution of the United States and section 7 of Article I of the Constitution of Pennsylvania.

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

(13) This act does not restrict or prevent the sending of unsolicited explicit sexual electronic advertisements to any and all prospective

recipients as long as an appropriate warning accompanies such advertisements.

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

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

§ 5903. Obscene and other sexual materials and performances.

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

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

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

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

(4) write, print, publish, utter or cause to be written, printed, published or uttered any advertisement or notice of any kind giving information, directly or indirectly, stating or purporting to state where, how, from whom, or by what means any obscene materials can be purchased, obtained or had;

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

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

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

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

(9) knowingly permit any obscene material to enter any State correctional institution, county prison, regional prison facility or any

other type of correctional facility if such person is a prison guard or other employee of any correctional facility described in this paragraph.

(a.1) Dissemination of explicit sexual material via an electronic communication.—*No person, knowing the content of the advertisement to be explicit sexual materials as defined in subsection (c)(1) and (2), shall transmit or cause to be transmitted an unsolicited advertisement in an electronic communication as defined in section 5702 (relating to definitions) to one or more persons within this Commonwealth that contains explicit sexual materials as defined in subsection (c)(1) and (2) without including in the advertisement the term “ADV-ADULT” at the beginning of the subject line of the advertisement.*

(b) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Community.” For the purpose of applying the “contemporary community standards” in this section, community means the State.

“Knowing.” As used in [subsection (a)] *subsections (a) and (a.1)*, knowing means having general knowledge of, or reason to know or a belief or ground for belief which warrants further inspection or inquiry of, the character and content of any material or performance described therein which is reasonably susceptible of examination by the defendant.

“Material.” Any literature, including any book, magazine, pamphlet, newspaper, storypaper, bumper sticker, comic book or writing; any figure, visual representation, or image, including any drawing, photograph, picture, videotape or motion picture.

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

“Obscene.” Any material or performance, if:

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

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

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

“Performance.” Means any play, dance or other live exhibition performed before an audience.

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

“Sexual conduct.” Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, anal or oral sodomy and sexual bestiality; and patently

offensive representations or descriptions of masturbation, excretory functions, sadomasochistic abuse and lewd exhibition of the genitals.

“Subject line.” The area of an electronic communication that contains a summary description of the content of the message.

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

* * *

(h) Criminal prosecution.—

(1) Any person who violates subsection (a), (a.1) or (f) is guilty of a misdemeanor of the first degree. Violation of subsection (a) is a felony of the third degree if the offender has previously been convicted of a violation of subsection (a) or if the material was sold, distributed, prepared or published for the purpose of resale.

* * *

(l) Penalty for attempt to evade prosecution.—Any person who violates subsection (a.1) and attempts to avoid prosecution by knowingly including false or misleading information in the return address portion of the electronic communications such that the recipient would be unable to send a reply message to the original, authentic sender shall, in addition to any other penalty imposed, upon conviction, be sentenced to pay a fine of not less than \$100 nor more than \$500 per message or to imprisonment for not more than 90 days, or both, for a first offense and a fine of not less than \$500 nor more than \$1,000 or to imprisonment for not more than one year, or both, for a second or subsequent offense.

(m) Concurrent jurisdiction to prosecute.—The Attorney General shall have the concurrent prosecutorial jurisdiction with the district attorney for cases arising under subsection (a.1) and may refer to the district attorney, with the district attorney’s consent, any violation or alleged violation of subsection (a.1) which may come to the Attorney General’s attention.

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

APPROVED—The 13th day of June, A.D. 2000.

THOMAS J. RIDGE