

No. 2004-197

## AN ACT

HB 2262

Providing for protection of children from obscene material, child pornography and other material that is harmful to minors on the Internet in public schools and public libraries; and providing for the duties of the Secretary of Education.

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

**Section 1. Short title.**

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

**Section 2. Declaration of policy.**

The General Assembly finds and declares as follows:

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

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

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

(4) It is not the intent of this act to create or impose liability on software program or Internet service providers that make available information created by third parties by treating the software or service provider as the publisher or speaker of such information. Nor should this act be construed as imposing any liability on software program or Internet service providers for creating and making available to users monitoring and screening functions that serve to restrict access to offensive material. Indeed, it is the intent of the General Assembly to minimize such liability on software program and Internet service providers in order to encourage the development and deployment of blocking and screening technologies and in order to promote the widest possible dissemination of such technologies to libraries, schools and end users.

**Section 3. Definitions.**

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

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

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

“Department.” The Department of Education of the Commonwealth.

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

“Internet.” The international network of computer systems.

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

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

“School board.” The board of directors of a school entity.

“School entity.” A public school district, charter school, cyber charter school, intermediate unit or area vocational-technical school.

“Secretary.” The Secretary of Education of the Commonwealth.

Section 4. School entity Internet policies.

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

(1) Prevent students and employees of the school entity from using any computer equipment and communications services owned or leased by the school entity for sending, receiving, viewing or downloading visual depictions of obscenity, child pornography or material that is harmful to minors.

(2) Establish appropriate measures to be taken against students and school employees who willfully violate the school entity’s acceptable-use policy.

(3) Provide for expedited review and resolution of a claim that the policy is denying a student or school employee access to material that is not within the prohibition of the acceptable-use policy.

(b) Implementation and enforcement.—The school board shall take such steps as it deems appropriate to implement and enforce the school entity’s policy, which shall include, but need not be limited to:

(1) use of software programs reasonably designed to block access to visual depictions of obscenity, child pornography or material that is harmful to minors; or

(2) selection of online servers that block access to visual depictions of obscenity, child pornography or material that is harmful to minors.

(c) Copy of policy for parents or guardians.—A school entity shall provide, upon written request of a parent or guardian, a copy of the acceptable-use policy it has adopted under this act.

**Section 5. Public library Internet policies.**

(a) **Acceptable-use policy.**—Within 180 days after the effective date of this act, the governing body of each public library shall adopt an acceptable-use policy for the Internet. At a minimum, the policy shall contain provisions which are reasonably designed to:

(1) Prevent library patrons, including those patrons under 18 years of age and library employees, from using the library's computer equipment and communications services for sending, receiving, viewing or downloading visual depictions of obscenity, child pornography or material that is harmful to minors.

(2) Establish appropriate measures to be taken against library patrons and employees who willfully violate the policy.

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

(1) the use of software programs designed to block access by library patrons and employees to visual depictions of obscenity, child pornography or material that is harmful to minors; or

(2) the selection of online servers that block access by library patrons and employees to visual depictions of obscenity, child pornography or material that is harmful to minors.

(c) **Immunity.**—A public library shall not be subject to civil liability for damages to any person as a result of the failure of any approved software program or approved online server to block access to visual depictions of obscenity, child pornography or material that is harmful to minors. Nothing in this section shall be deemed to abrogate or lessen any immunity or other protection against liability accorded to public libraries under existing law or court decision.

**Section 6. Consultation on acceptable-use policies.**

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

**Section 7. Reports.**

(a) **Copy of policy to be filed.**—Within 200 days after the effective date of this act, each school entity and public library shall file with the secretary a copy of the acceptable-use policy of the school entity and public library which has been adopted under this act. Each revision to the acceptable-use policy shall be transmitted to the secretary in accordance with section 8.

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

**Section 8. Enforcement of acceptable-use policies.**

(a) Review of acceptable-use policies.—The secretary shall review each acceptable-use policy filed by a public library and school entity under this act and each revision thereof. If the secretary determines after review that a policy or revision is not designed to achieve the requirements of section 4 or 5, the secretary shall provide written notice to the school entity or public library explaining the nature of such noncompliance and shall afford the school entity or public library a 30-day period for correcting any failure to comply with this act. The secretary may provide a reasonable extension of time for submission of a revised acceptable-use policy on a showing of good cause.

(b) Revision of policies.—No revision of an acceptable-use policy which has been approved by the secretary under subsection (a) shall be implemented until such revision is approved by the secretary. If the secretary fails to disapprove the revision within 60 days after submission to the secretary, the school entity or public library may proceed with the implementation of the revision of its acceptable-use policy.

(c) Withholding of funding from school entities and public libraries.—The secretary shall withhold a portion of State funding to a school entity or public library if the school entity or public library:

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

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

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

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

#### Section 9. Duties of the secretary.

(a) Procedure.—

(1) The secretary shall be responsible for conducting investigations and making written determinations as to whether or not a public library or school entity has violated the requirements of this act.

(2) If the secretary determines that a school entity or public library is in violation, the secretary shall direct the school entity or public library to acknowledge and correct the violation within a 30-day period and to develop a corrective plan for preventing future recurrences.

(b) Construction.—Nothing in this section shall limit the authority of the secretary to withhold funds pursuant to section 8(c) in an appropriate case.

#### Section 10. Disabling blocking technology for use by certain persons.

(a) General rule.—Notwithstanding any other section of this act to the contrary, an administrator, supervisor or their designee may disable the software program or online server for an adult or a minor who provides

written consent from a parent or guardian to enable access for bona fide research or other lawful purpose.

(b) Construction.—Nothing in this section shall be construed to permit any person to have access to material the character of which is illegal under Federal or State law.

**Section 11. Severability.**

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

**Section 12. Applicability.**

School entities and public libraries fulfilling the requirements of the Children's Internet Protection Act (Public Law 106-554, 114 Stat. 2763A-335) are not required to fulfill the requirements of this act.

**Section 13. Repeal.**

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

**Section 14. Effective date.**

This act shall take effect immediately.

APPROVED—The 30th day of November, A.D. 2004.

EDWARD G. RENDELL