



**House
Legislative
Analysis
Section**

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RESTRICT INTERNET ACCESS

Senate Bill 936 as passed by the Senate First Analysis (4-25-00)

Sponsor: Sen. Mike Rogers
House Committee: Family and Civil Law
Senate Committee: Judiciary

THE APPARENT PROBLEM:

Young readers visit libraries to collect information from a variety of sources, often to complete school assignments. Among the many research tools available at the library is the Internet. Although the Internet provides access to a host of web sites that are educational, it also allows young people unlimited access to web sites that contain pornography and obscenity.

Libraries seldom deny Internet access, citing the need to guarantee free speech under the First Amendment of the U.S. Constitution. However, constitutional law recognizes different kinds of speech, and court opinions have been issued to place limits on certain forms of expression. As a result, limits to Internet access often are a matter of library policy. For example, a computer can be equipped with various levels of restriction, called filtering software, in order to prevent minors from viewing images and texts that could cause them psychological and emotional harm. And often, library patrons are asked to sign written 'use policies', agreeing to follow library rules which prohibit using computing resources to display obscene materials.

Many schools and some libraries use filtering software. Although recent changes in the law were made to alert local library boards to the fact that certain kinds of limits on speech are lawful, and in particular that access to Internet pornography can be limited, in order to protect young readers, some have argued that the current law is too lenient and that many libraries continue to make little or no effort to limit children's access to inappropriate materials. It has been suggested that a firmer law is needed to require that libraries take some action to restrict the access of children to certain Internet sites.

THE CONTENT OF THE BILL:

The bill would amend the Library Privacy Act to require that libraries restrict minors' access to the

Internet, and to shield a library, library board, and library employee from civil liability for good faith efforts to comply with the bill. The bill would take effect 90 days after its enactment.

Public Act 37 of 1999 amended the Library Privacy Act. As amended, the act specifies that the governing body of a library that offers Internet access services *may* authorize or require the library to restrict the access of minors. Under the act, a library can restrict access by making one or more computer terminals that are restricted from receiving obscene or sexually explicit matter that is harmful to minors available to persons of any age, and by reserving one or more terminals that are not restricted from receiving any material for persons who are at least 18 years old or minors accompanied by a parent or guardian.

The bill, instead, would require a library's governing body to adopt, and require enforcement of, a policy that would restrict minors' access to the use of the Internet or a computer, computer program, computer network, or computer system by either:

-- Adopting the restrictions currently permitted under the act (i.e., the restrictions added by Public Act 37, as described above; this would include providing one or more limited access terminals and one or more unlimited access terminals); or

-- Using a system or method designed to prevent a minor from viewing obscene matter or sexually explicit matter that is harmful to minors.

In addition, the bill specifies that a library, library governing body, member of a library governing body, or agent or employee of a library or library governing body would not be liable in a civil action for damages resulting from an act or omission made in a good faith effort to comply with the bill.

Finally, the bill's provisions would not apply to any library that was established by a community college

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district, a college or university, or a private library that was open to the public.

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FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal impact on state government, but could have an impact upon local units. Costs could occur as a result of the requirement to restrict Internet access, depending upon the Internet service already in place, and the need to purchase filter software or to subscribe to the filter for a fee. However, savings could also be realized due to the elimination of litigation costs under the immunity provisions. (4-19-00)

ARGUMENTS:

For:

Public Act 37 of 1999 [enrolled House Bill 4191] made changes to the Library Privacy Act to allow libraries to restrict children's access to obscene or sexually explicit matters available over the Internet. Unfortunately, due to the permissive nature of the language in the act, many libraries have done little or nothing to protect children from exploring areas of the Internet that could be harmful to them.

The Internet is a jungle - full of dangers for children. It is largely unregulated and provides access to some of the vilest obscenity available on the planet. Further, it also provides a hiding place for some of the worst types of sex offenders. Fortunately, there are means to protect children from accidentally viewing obscene sites or from engaging in virtual conversations with sexual predators. Libraries of all places, if they are unwilling to do so on their own, should be required to provide some means of ensuring that children are protected from these things.

The Internet offers a wide variety of educational and learning opportunities for both young and old; however, although it opens doors to an almost endless array of learning opportunities, it also offers a number of doors that many parents would just as soon their children not open. It is not unreasonable for parents to hope that their children might be allowed to avail themselves of all of the good things that access to the Internet offers without the parents being required to constantly look over the child's shoulder to prevent the child from receiving sexually explicit or otherwise inappropriate materials over the Internet. Parents have every right to hope to limit their children's access to

such material, and in particular they have the right to expect that their public library take steps to limit children's access to such materials.

For:

Like alcohol and drugs, pornography destroys lives. In order to protect children from pornographic or obscene images, texts, and virtual conversations--the kinds of experience that can unnecessarily trouble and could traumatize young lives--public libraries should be required to restrict young readers' access to certain Internet web sites. This legislation allows that kind of restriction, but leaves to the discretion of the local library board how and what would be blocked. This bill meets three tests, each important to ensure its constitutionality and effectiveness: First, the bill acknowledges that there is a compelling state interest in protecting minor children; second, the bill is drafted narrowly to prevent access to pornographic and obscene websites only by minors (unless they are accompanied by an adult); third, the bill ensures that local control is maintained, vesting the decision on how to limit access in the local library.

Against:

The *Detroit Free Press*, in an editorial dated 2-3-99, says that finding a way to shield kids from Internet smut is likely going to fall to parents and businesses, as it should. Unfortunately, the technology does not yet exist to regulate it without infringing on free speech, and the fast evolution of the technology means any laws would become quickly outdated. Some may argue that restricting everyone's access to some protected materials in order to prevent children from having access to obscene material is a small price to pay. However, it has long been noted that the path of limiting Americans' hard-won freedoms in this way is a dangerous one. The editorial notes that a U.S. district judge who recently blocked enforcement of the federal Child Online Protection Act, designed to keep pornography away from minors using the Internet, said he hated to delay anything that protects kids, but added, "Perhaps we do the minors of this country harm if First Amendment protections, which they will with age inherit fully, are chipped away in the name of their protection."

Against:

According to a report in the May 1999 issue of *Government Technology*, there was a landmark ruling concerning filtering software issued in November 1998, when U.S. District Judge Leonie Brinkema of Virginia ruled Loudoun County's highly restrictive Internet policy unconstitutional. According to the judge's

decision, the library's policy violated the First Amendment, failed to serve a compelling government interest, was too broadly applied, and had inadequate procedures to ensure judicial review. The judge ruled that although a library is under no obligation to provide Internet access to its patrons, if it has chosen to do so, it must comply with the First Amendment.

According to the report, the American Civil Liberties Union expects the Loudoun County ruling to trigger more lawsuits. To prevent suits, a number of libraries have taken heed of the decision. Library systems in Hillsborough County, Florida, and Hennepin County, Minnesota, for example, have dropped plans to install filters according to a report in the *Library Journal News*.

Response:

Judge Brinkema's ruling is only legally binding on public libraries in the U.S. District of Eastern Virginia and does not set a national precedent. So far, Loudoun County is the only library system mandated by a court to drop its filtering policy. According to the American Library Association, 60 percent of the country's public libraries offer Internet access directly to the public, up from 28 percent in 1996. About 15 percent of libraries with Internet access have installed filters. Some of the leading products include SurfWatch from Spyglass, Inc., Cybersitter from Solid Oak Software, Cyber Sentinel from Security Software Systems, and Cyber Patrol from The Learning Company.

Against:

The bill is too weak. It is difficult to overstate the devastating power of pornography when it is foisted or forced on young or tender minds. In order to prevent sexual predation, it is imperative that adults who value moral excellence as comprising virtue, goodness, morality, rectitude, and righteousness, work to support and model a public policy of caring and compassion; to ensure safety and prevent unnecessary harm; and to insist upon decency in our public squares, the public places where citizens young and old gather together, throughout our communities. The bill should be more specific as to what sort of means must be used to prevent minors from viewing obscene or sexually explicit materials. Furthermore, it is wrong to create an exception for certain libraries and to give libraries immunity for the harm that could be done to children if they are allowed to view obscene or sexually explicit materials. Finally, the bill needs to include a better means of enforcement; for example, requiring the governing body of each library to make an annual report to its community indicating its plan to protect children from the dangers of the Internet and the effectiveness of that plan.

Response:

The more restrictive the bill is made, the less likely it is that the bill will pass constitutional muster. The main problem with many attempts to restrict access to sexually explicit material is that not all sexually explicit material is obscene. While obscenity is not afforded First Amendment protection, much sexually explicit material is afforded such protection. Unfortunately, when free speech issues arise over access to sexually explicit materials, those encouraging regulation often blur the line between protected material and obscenity. All too often, particularly in the case of Internet issues, the proponents of regulation cite the most egregious forms of obscenity as being representative of what would be barred under the suggested regulation and accuse opponents of regulation as being in favor of protecting those types of obscenity. Opposition to regulation like that proposed in this bill is not offered to protect child molesters or sites that provide access to obscene materials, it is offered to protect the rights of individuals to find, for example, information on sexual health matters or other legitimate and constitutionally protected materials of a sexually explicit nature. While this might not sit well with everyone, particularly those who feel that sexually explicit material of any sort does not deserve any level of First Amendment protection, public institutions (such as libraries) may not infringe upon constitutionally protected speech merely because it bothers some people or because it is not appropriate for children.

Against:

The bill creates a potentially confusing issue of immunity. Current law already provides immunity for governmental entities like libraries and, rather than attempting to create a new standard of immunity, it would be wiser to make reference to the existing statute. Since the bill's provisions appear to offer a different level of immunity than existing statute, questions could arise as to which grant of immunity would take precedence when a lawsuit arose. This would be particularly true since the new immunity provision in the bill would likely be subjected to challenge in court. Furthermore, if it is the intent of the bill to provide a greater or lesser level of immunity than is currently provided in the governmental immunity statute, it would presumably be necessary to amend that statute to note this exception to those provisions.

POSITIONS:

The Department of State Police supports the concept of the bill. (4-24-00)

Right to Decency, Inc. supports the concept of the bill, but feels that it must be strengthened in order to be effective. (4-24-00)

The Michigan Trial Lawyers Association has requested a clarification of the bill's immunity provisions. (4-24-00)

A representative of the Michigan Library Association indicated to the committee that the association is not opposing the bill. (4-20-00)

The American Civil Liberties Union does not support the use of filters on all terminals in public libraries. (4-20-00)

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.