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Senate Bill 936 (as enrolled)
Sponsor: Senator Mike Rogers
Senate Committee: Judiciary
House Committee: Family and Civil Law

PUBLIC ACT 212 of 2000

Date Completed: 1-31-01

RATIONALE

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

Reportedly, libraries seldom restrict their patrons' access to the Internet, citing the need to guarantee freedom of speech under the First Amendment to the United States Constitution. Constitutional law recognizes different kinds of speech, however, and limits have been placed on certain forms of expression. As a result, restrictions on Internet access often are a matter of individual libraries' policy, and are not consistent from library to library. A computer can be equipped with various levels of restriction, through filtering software or programs, in order to prevent minors from viewing images and texts that could cause them psychological and emotional harm; some libraries apparently have acquired and used these resources. Also, in some libraries, patrons apparently are asked to sign written "use policies", agreeing to follow library rules that prohibit the use of computers to display obscene materials. Other libraries neither regulate usage in this manner nor use filtering technology.

In an effort to address minors' unfettered access to pornographic and obscene web sites at libraries, Public Act 37 of 1999 amended the Library Privacy Act to specify that, if a library offered use of the Internet or a computer or computer program, network, or system to the public, its governing body could authorize or require the library to restrict access by minors. Under those provisions, a library could restrict access by making available to persons of any age one or more terminals that were restricted from receiving obscene or sexually explicit matter harmful to minors, and by reserving one or more terminals that were not restricted from receiving any

material for persons at least 18 years old or minors accompanied by a parent or guardian. Some people believed that these alternatives were too limited and that restricting minors' access under the Public Act 37 amendments was too permissive. They advocated requiring that libraries have a policy to restrict minors' access to the Internet and allowing the use of a filtering system to prevent minors from viewing certain types of material on the Internet.

CONTENT

The bill amended the Library Privacy Act to require that libraries restrict minors' access to the Internet, and to immunize a library, library board, and library employee from civil liability for the exercise or discharge of a governmental function. The bill does not apply to a library established by a community college district, a college or university, or a private library open to the public. The bill took effect on October 1, 2000.

The bill requires that a library's governing body adopt and require enforcement of a policy that restricts minors' access to the use of the Internet or a computer, computer program, computer network, or computer system in one of the following ways:

- Adopting both of the restrictions previously permitted under the Act (i.e., the restrictions added by Public Act 37, as described above in RATIONALE).
- 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 is immune from liability in a civil action as provided in MCL 691.1407. (That section states that a governmental agency is immune from tort liability if the agency is engaged in the exercise or discharge of a governmental function.)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Internet can be a useful and efficient tool for business, a vast educational resource, and a forum for entertainment and communication. With its almost unlimited potential for storing and delivering all sorts of textual, audio, and visual material, however, some people also might view the Internet as a virtual den of iniquity. Web sites that include pornography are fairly common and it has been reported that pedophiles sometimes use the Internet and e-mail to display inappropriate material and make contact with potential victims. Like alcohol and drugs, pornography can be harmful to minors, and communities should protect children from it by restricting access. While it is entirely appropriate that libraries provide computer terminals with Internet access so that their users, especially students, can gain access to useful and important information, those libraries also should have some method to protect minors from the harmful material that can be found on many sites.

Public Act 37 of 1999 amended the Library Privacy Act to allow libraries to shield children from exposure to certain material by preventing access to some Internet sites on some computers or simply monitoring minors' Internet usage. Proponents of Public Act 37 had hoped that, with statutory authority, libraries would voluntarily take these measures. Nevertheless, many libraries reportedly did little or nothing to restrict access or monitor usage. The bill, therefore, compels libraries to take some action to restrict Internet access by minors, but maintains local decision-making authority as to how to comply with that mandate. Libraries retain the option of using methods allowed by Public Act 37, but also may employ such methods as installing so-called Internet filters on their computers to restrict usage. Evidently, several types of filters on the market may be used by libraries and other Internet users to block certain types of sites from appearing on the computer screen.

Response: The bill is too weak to protect minors from harmful web sites. It is imperative that children be prevented from viewing sexually explicit material on the Internet at libraries. The bill should require that all libraries install filters on all computers available to minors for Internet connection so that children may not stumble upon or be directed or detoured to harmful pornographic sites. While such

a requirement may cause concern over the funding of a State mandate upon local units of government, the cost of the mandate would be minimal. Reportedly, one library in Macomb County has purchased filtering software for only \$27. Supplying the same type of software to public libraries statewide would not be cost prohibitive.

Supporting Argument

The bill is in keeping with the recently enacted "Children's Internet Protection Act", which was attached to a Federal spending measure passed by Congress in December (PL 106-554). Under this legislation, schools and libraries that have computers with Internet access must begin using technology that filters or blocks child pornography and material that is obscene; the technology used by a library also must filter any other material that the library determines to be inappropriate for minors. Schools and libraries that fail to comply will risk losing the discount on telecommunications service rates that they otherwise are entitled to under Federal law.

Opposing Argument

By requiring that citizens' access to information be restricted, the bill goes too far in limiting public access to the free press. Material on the Internet enjoys the same protections as printed newspapers enjoy. Screening or filtering technology cannot effectively regulate access of inappropriate material by minors without also infringing on free speech. Protecting minors from harm due to possible exposure to pornographic or obscene material is certainly a laudable goal, but chipping away at First Amendment protections does more harm than good. It is questionable whether the bill will withstand a constitutional challenge.

Response: Rather than infringing on First Amendment rights, the bill focuses on the well-established standard of protecting children from exposure to obscene material or sexually explicit matter that is harmful to minors. Also, under the provisions added by Public Act 37 and retained by the bill, a library may meet its requirements by reserving for adults or minors accompanied by a parent or guardian at least one computer terminal that is not restricted from receiving any material.

Opposing Argument

Filtering software can create a false sense of security. Internet filters can be ineffective, blocking either too many sites or not enough. Web sites that depict legitimate artwork, poetry, or political expression, as well as some medical sites, reportedly may be inaccessible with some filtering software. On the other hand, some pornographic web sites may

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

use legitimate-sounding names to circumvent filtering technology. Even if Internet filters worked consistently, the decision of what material is prohibited is inappropriately turned over to the developer of the software rather than resting with either parents or courts. The bill will be ineffectual.

Response: The bill does not require the use of Internet filters, but requires only that a library adopt and enforce a policy restricting minors' Internet access. A library's governing body has wide latitude as to how to satisfy that requirement. If a library does choose to employ filtering technology, several types are reportedly available, and some of them are flexible enough to block different types of material depending on the user or the desired search. If a student were blocked from viewing information on human anatomy for a science project, for instance, a librarian could assist that student in disarming or limiting the filter or securing the information on a computer terminal without a filter.

Opposing Argument

The State should not be in the business of policing the Internet or regulating what material people may or may not view. If libraries choose to regulate patrons' use of their computer facilities, they may do so without a State mandate. Ultimately, of course, it is up to parents to monitor or restrict their children's activities and the State should not supercede that parental authority. On the other hand, parents cannot be aware of everything their children see or do, especially when the parents are not present. Community resources, such as libraries, should be expected to provide useful, educational, and safe surroundings for children, including a public forum free of pornography.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill will have an indeterminate impact on local units of government. The savings related to the immunity provision will depend on potential future litigation that is not determinable.

Fiscal Analyst: B. Bowerman