

By Senator Wise

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A bill to be entitled

An act relating to Internet screening in public libraries; creating s. 257.44, F.S.; defining terms; requiring public libraries to provide technology that protects against Internet access to specified proscribed visual depictions; allowing adults to request disablement of the technology for specified purposes; prohibiting a public library from maintaining a record of adults who request such disablement; requiring a public library to post notice of its Internet safety policy; providing for the assessment of a fine and attorney's fees and costs in connection with a violation by a public library; directing the Division of Library and Information Services within the Department of State to adopt rules requiring a written attestation of compliance as a condition of state funding; providing that no cause of action arises for a violation by a public library except as provided; providing a finding of important state interest; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 257.44, Florida Statutes, is created to read:

257.44 Internet screening in public libraries.--

(1) As used in this section, the term:

1 (a) "Administrative unit" means the entity designated
2 by a local government body as responsible for the
3 administration of all public library locations established or
4 maintained by that local government body.

5 (b) "Child pornography" has the same meaning as in s.
6 847.001.

7 (c) "Harmful to minors" means any picture, image,
8 graphic image file, or other visual depiction that:

9 1. Taken as a whole and with respect to minors,
10 appeals to a prurient interest in nudity, sex, or excretion;

11 2. Depicts, describes, or represents, in a patently
12 offensive way with respect to what is suitable for minors, an
13 actual or simulated sexual act or sexual contact, an actual or
14 simulated normal or perverted sexual act, or a lewd exhibition
15 of the genitals; and

16 3. Taken as a whole, lacks serious literary, artistic,
17 political, or scientific value as to minors.

18 (d) "Minor" means an individual who is younger than 18
19 years of age.

20 (e) "Obscene" has the same meaning as in s. 847.001.

21 (f) "Public computer" means a computer that is made
22 available to the public and that has Internet access.

23 (g) "Public library" means any library that is open to
24 the public and that is established or maintained by one or
25 more of the following local government bodies in this state:
26 county; municipality; consolidated city-county government;
27 special district; or special tax district. The term does not
28 include a library that is open to the public and that is
29 established or maintained by a community college or state
30 university.

31

1 (h) "Reasonable efforts" means the public library, in
2 implementing the policy required by subsection (2), in its
3 ordinary course of business:

4 1. Posts its Internet safety policy;

5 2. Uses a technology protection measure on all public
6 computers; and

7 3. Disables the technology protection measure upon an
8 adult's request to use the computer for bona fide research or
9 other lawful purpose.

10 (i) "Technology protection measure" means software or
11 equivalent technology that blocks or filters Internet access
12 to the visual depictions that are proscribed under subsection
13 (2).

14 (2)(a) Each public library shall enforce an Internet
15 safety policy that provides for:

16 1. Installation and operation of a technology
17 protection measure on all public computers in the public
18 library which protects against access through such computers
19 by adults to visual depictions that are obscene or constitute
20 child pornography and by minors to visual depictions that are
21 obscene, constitute child pornography, or are harmful to
22 minors; and

23 2. Disablement of the technology protection measure by
24 an employee of the public library upon an adult's request to
25 use the computer for bona fide research or other lawful
26 purpose.

27 (b) Each public library shall post a notice in a
28 conspicuous area of the public library which indicates that an
29 Internet safety policy has been adopted and informs the public
30 that the Internet safety policy is available for review at
31 each public library.

1 (c) A public library may not maintain a record of
2 names of adults who request that the technology protection
3 measure be disabled under this subsection.

4 (3) If a public library knowingly fails to make
5 reasonable efforts to comply with subsection (2), a resident
6 of this state may seek enforcement as provided in this
7 subsection.

8 (a) Before instituting a civil action under paragraph
9 (b), the resident shall, within 45 days after a public
10 library's alleged failure to make such reasonable efforts,
11 mail a written notice of intended civil action for enforcement
12 to the head of the applicable administrative unit. The notice
13 must identify each public library location involved and
14 specify the facts and circumstances alleged to constitute a
15 violation of subsection (2). Within 45 days after the receipt
16 of such notice, the head of the administrative unit shall mail
17 a written response to the resident who provided the notice.
18 The written response must specify the efforts, if any, which
19 each public library location identified in the notice is
20 making to comply with the requirements of subsection (2). All
21 mailings required by this paragraph shall be certified with
22 return receipt requested.

23 (b) If the resident does not receive the written
24 response required in paragraph (a) within 60 days after
25 receipt of the notice by the head of the administrative unit,
26 or if the written response fails to indicate that the public
27 library is making reasonable efforts to comply with subsection
28 (2), the resident may institute a civil action in the circuit
29 court of the county in which the administrative unit is
30 located to seek injunctive relief to enforce compliance with
31 subsection (2).

1 (c) In connection with an enforcement action under
2 paragraph (b), the court shall:

3 1. Impose a civil fine upon the administrative unit in
4 the amount of \$100 per day per public library location that is
5 found to have not made reasonable efforts to comply with
6 subsection (2). Accrual of the fine shall be for the period
7 between the date that the head of the administrative unit
8 received the notice of intended civil action for enforcement
9 and the date upon which the public library location begins
10 making reasonable efforts to comply with subsection (2).

11 2. Order an administrative unit that is fined pursuant
12 to subparagraph 1. to pay reasonable attorney's fees and costs
13 to a prevailing resident. If the court finds that the filing
14 of the action was in bad faith or frivolous, it shall order
15 the resident who filed the action to pay reasonable attorney's
16 fees and costs to the administrative unit.

17 (d) The clerk of the circuit court shall act as the
18 depository for all civil fines paid pursuant to this
19 subsection. The clerk may retain a service charge of \$1 for
20 each such payment and shall, on a monthly basis, transfer the
21 moneys collected for such fines to the Department of Revenue
22 for deposit in the Records Management Trust Fund within the
23 Department of State.

24 (4) The Division of Library and Information Services
25 within the Department of State shall adopt rules pursuant to
26 ss. 120.536(1) and 120.54 which require the head of each
27 administrative unit to annually attest in writing, under
28 penalty of perjury, that all public library locations for
29 which the administrative unit is responsible are in compliance
30 with subsection (2), as a condition of the receipt of any
31 state funds distributed under chapter 257.

1 (5) No cause of action, except as authorized in
2 subsection (3), shall arise in favor of any person due to a
3 public library's failure to comply with subsection (2).

4 Section 2. In accordance with s. 18, Art. VII of the
5 State Constitution, the Legislature finds that the
6 installation and operation by public libraries of technology
7 protection measures that protect against access by adults to
8 visual depictions that are obscene or constitute child
9 pornography and by minors to visual depictions that are
10 obscene, constitute child pornography, or are harmful to
11 minors fulfills an important state interest.

12 Section 3. This act shall take effect October 1, 2005.

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15 SENATE SUMMARY

16 Requires public libraries to provide technology that
17 blocks or filters Internet access by adults to visual
18 depictions that are obscene or that constitute child
19 pornography and by minors to visual depictions that are
20 obscene, that constitute child pornography, or that are
21 harmful to minors. Allows adults to request disablement
22 of the technology. Bars a public library from maintaining
23 a list of persons who request such disablement. Requires
24 a public library to post notice of its Internet safety
25 policy. Provides for enforcement, including fines, and
26 for assessment of attorney's fees and court costs.
27 Provides a finding of important state interest.