

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 1032
Judiciary II Committee Substitute Adopted 4/25/01
Third Edition Engrossed 4/25/01

Short Title: Minors' Internet Access.

(Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT REQUIRING PUBLIC LIBRARIES AND SCHOOLS TO IMPLEMENT POLICIES TO PROTECT MINORS FROM OBSCENE MATERIAL OR MATERIAL HARMFUL TO MINORS THROUGH USE OF THE INTERNET, TO PROHIBIT THE DISSEMINATION OF OBSCENITIES BY COMPUTER TRANSMISSION, TO INCREASE THE PENALTIES FOR CERTAIN CRIMINAL OFFENSES CONCERNING MINORS AND OBSCENITY, TO PROHIBIT THE USE OF STATE COMPUTERS TO ACCESS OBSCENITIES, AND TO REGULATE CERTAIN USES OF STATE COMPUTERS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 125 of the General Statutes is amended by adding a new section to read:

"Article 4.

"Minors' Internet Access.

"§ 125-20. Protection of minors from certain material on the Internet.

(a) Each public library must adopt a policy governing acceptable use of the Internet by library users. The policy shall outline how the library will assist children in accessing educational resources on the Internet and work to prevent children's access to materials that are harmful to minors on the Internet. The policy shall be approved by the library's governing authority and shall be filed with the State Library in order to receive grants from the Aid to Public Libraries Fund.

(b) In addition to the requirements of subsection (a) of this section, public libraries shall make available to individuals of any age at least one computer that meets the following requirements:

(1) The computer is equipped with software that will limit minors' ability to gain access to obscene materials or material harmful to minors.

1 (2) The computer uses Internet connectivity from an Internet service
2 provider that provides filter services to limit access to obscene
3 materials or material harmful to minors.

4 Computers that do not meet the requirements of subdivision (1) or (2) of this subsection
5 shall be reserved for individuals 18 years of age or older, or for minors who are
6 accompanied by their parent or guardian.

7 These requirements shall not apply to public libraries that are located in rural
8 counties and that have fewer than four computers.

9 (c) As used in this section, the term 'public library' does not apply to a library
10 established by a North Carolina community college, a private or public college or
11 university, or a private library open to the public. The term 'rural county' shall apply to
12 a county with a density of fewer than 200 people per square mile based on the 1990
13 decennial census."

14 **SECTION 2.** Chapter 115C of the General Statutes is amended by adding a
15 new section to read:

16 **"§ 115C-102.9. Protection of minors from certain material on the Internet.**

17 (a) Policy and Procedures. – On or before January 1, 2002, the State Board of
18 Education shall adopt a policy regarding minors' access to the Internet. At a minimum,
19 the policy shall contain provisions that seek to prevent access by minors to obscene
20 material and material that is harmful to minors and establish appropriate measures to be
21 taken against persons who violate the policy. The policy shall include either or both of
22 the following features:

23 (1) Equipping the computers with software that will limit minors' ability to
24 gain access to obscene materials or material harmful to minors.

25 (2) Purchasing Internet connectivity from an Internet service provider that
26 provides filter services to limit access to obscene materials or material
27 harmful to minors.

28 (b) Implementation and Compliance. – The Department of Public Instruction
29 shall make the policy available to all local boards of education that shall be responsible
30 for implementing the policy. Each local board of education shall report annually to the
31 State Board on its efforts to implement the provisions set out in subsection (a) of this
32 section.

33 (c) Technical Assistance or Information. – The Department of Public Instruction
34 shall provide technical assistance or information to any public school to aid the school
35 in evaluating available and developing technologies that may be used to comply with
36 the provisions of this section."

37 **SECTION 3.** G.S. 14-190.1 reads as rewritten:

38 **"§ 14-190.1. Obscene literature and exhibitions.**

39 (a) It shall ~~be~~ ~~is~~ unlawful for any ~~person, firm or corporation~~ person to
40 intentionally disseminate obscenity. A ~~person, firm or corporation~~ person disseminates
41 obscenity within the meaning of this Article if ~~he or it~~ the person:

- 1 (1) ~~Sells, delivers or provides~~ delivers, makes accessible to another person
2 by computer, or provides or offers or agrees to sell, ~~deliver or~~
3 ~~provided~~ deliver, make accessible to another person by computer, or
4 provide any obscene writing, picture, record or other representation or
5 embodiment of the obscene; or
- 6 (2) Presents or directs an obscene play, dance or other performance or
7 participates directly in that portion thereof which makes it obscene; or
- 8 (3) Publishes, exhibits or otherwise makes available anything obscene; or
- 9 (4) Exhibits, presents, rents, sells, delivers or provides; or offers or agrees
10 to exhibit, present, rent or to provide: any obscene still or motion
11 picture, film, filmstrip, or projection slide, or sound recording, sound
12 tape, or sound track, or any matter or material of whatever form which
13 is a representation, embodiment, performance, or publication of the
14 obscene.
- 15 (b) For purposes of this Article any material is obscene if:
- 16 (1) The material depicts or describes in a patently offensive way sexual
17 conduct specifically defined by subsection (c) of this section; and
- 18 (2) The average person applying contemporary community standards
19 relating to the depiction or description of sexual matters would find
20 that the material taken as a whole appeals to the prurient interest in
21 sex; and
- 22 (3) The material lacks serious literary, artistic, political, or scientific
23 value; and
- 24 (4) The material as used is not protected or privileged under the
25 Constitution of the United States or the Constitution of North Carolina.
- 26 (c) As used in this Article, "sexual conduct" means:
- 27 (1) Vaginal, anal, or oral intercourse, whether actual or simulated, normal
28 or perverted; or
- 29 (2) Masturbation, excretory functions, or lewd exhibition of uncovered
30 genitals; or
- 31 (3) An act or condition that depicts torture, physical restraint by being
32 fettered or bound, or flagellation of or by a nude person or a person
33 clad in undergarments or in revealing or bizarre costume.
- 34 (d) Obscenity shall be judged with reference to ordinary adults except that it shall
35 be judged with reference to children or other especially susceptible audiences if it
36 appears from the character of the material or the circumstances of its dissemination to
37 be especially designed for or directed to such children or audiences.
- 38 (e) It ~~shall be~~ is unlawful for any ~~person, firm or corporation~~ person
39 knowingly and intentionally create, buy, procure or possess obscene material with the
40 purpose and intent of disseminating it unlawfully.

1 (f) It ~~shall be~~ is unlawful for a ~~person, firm or corporation~~ person to advertise or
2 otherwise promote the sale of material represented or held out by said person, firm or
3 corporation as obscene.

4 (g) Violation of this section is a Class ~~F~~ H felony.

5 (h) Obscene material disseminated, procured, or promoted in violation of this
6 section is contraband.

7 (i) Nothing in this section shall be deemed to preempt local government
8 regulation of the location or operation of sexually oriented businesses to the extent
9 consistent with the constitutional protection afforded free speech.

10 (j) For purposes of this Article, the term "person" means an individual, a firm, a
11 partnership, an association, a corporation, or any other organization or group acting as a
12 unit."

13 **SECTION 4.** G.S. 14-190.6 reads as rewritten:

14 **"§ 14-190.6. Employing or permitting minor to assist in offense under Article.**

15 Every person 18 years of age or older who intentionally, in any manner, hires,
16 employs, uses or permits any minor under the age of 16 years to do or assist in doing
17 any act or thing constituting an offense under this Article and involving any material,
18 act or thing he knows or reasonably should know to be obscene within the meaning of
19 G.S. 14-190.1, shall be guilty of a Class ~~F~~ H felony."

20 **SECTION 5.** G.S. 14-190.7 reads as rewritten:

21 **"§ 14-190.7. Dissemination to minors under the age of 16 years.**

22 Every person 18 years of age or older who knowingly disseminates to any minor
23 under the age of 16 years any material which he knows or reasonably should know to be
24 obscene within the meaning of G.S. 14-190.1 shall be guilty of a Class ~~F~~ H felony."

25 **SECTION 6.** G.S. 14-190.8 reads as rewritten:

26 **"§ 14-190.8. Dissemination to minors under the age of 13 years.**

27 Every person 18 years of age or older who knowingly disseminates to any minor
28 under the age of 13 years any material ~~which he~~ that the person knows or reasonably
29 should know to be obscene within the meaning of G.S. 14-190.1 shall be punished as a
30 ~~Class F~~ Class G felon."

31 **SECTION 7.** G.S. 14-190.13 reads as rewritten:

32 **"§ 14-190.13. Definitions for certain offenses concerning minors.**

33 The following definitions apply to G.S. 14-190.14, displaying material harmful to
34 minors; G.S. 14-190.15, disseminating or exhibiting to minors harmful material or
35 performances; G.S. 14-190.16, first degree sexual exploitation of a minor; G.S.
36 14-190.17, second degree sexual exploitation of a minor; G.S. 14-190.17A, third degree
37 sexual exploitation of a minor; G.S. 14-190.18, promoting prostitution of a minor; and
38 G.S. 14-190.19, participating in prostitution of a minor.

39 (1) Harmful to Minors. – That quality of any material or performance that
40 depicts sexually explicit nudity or sexual activity and that, taken as a
41 whole, has the following characteristics:

- 1 a. The average adult person applying contemporary community
2 standards would find that the material or performance has a
3 predominant tendency to appeal to a prurient interest of minors
4 in sex; and
5 b. The average adult person applying contemporary community
6 standards would find that the depiction of sexually explicit
7 nudity or sexual activity in the material or performance is
8 patently offensive to prevailing standards in the adult
9 community concerning what is suitable for minors; and
10 c. The material or performance lacks serious literary, artistic,
11 political, or scientific value for minors.
- 12 (2) Material. – Pictures, drawings, video recordings, ~~films~~–films, digital
13 images made accessible to another person by computer, or other visual
14 depictions or representations but not material consisting entirely of
15 written words.
- 16 (3) Minor. – An individual who is less than 18 years old and is not
17 married or judicially emancipated.
- 18 (4) Prostitution. – Engaging or offering to engage in sexual activity with
19 or for another in exchange for anything of value.
- 20 (5) Sexual Activity. – Any of the following acts:
- 21 a. Masturbation, whether done alone or with another human or an
22 animal.
- 23 b. Vaginal, anal, or oral intercourse, whether done with another
24 human or with an animal.
- 25 c. Touching, in an act of apparent sexual stimulation or sexual
26 abuse, of the clothed or unclothed genitals, pubic area, or
27 buttocks of another person or the clothed or unclothed breasts
28 of a human female.
- 29 d. An act or condition that depicts torture, physical restraint by
30 being fettered or bound, or flagellation of or by a person clad in
31 undergarments or in revealing or bizarre costume.
- 32 e. Excretory functions; provided, however, that this
33 sub-subdivision shall not apply to G.S. 14-190.17A.
- 34 f. The insertion of any part of a person's body, other than the male
35 sexual organ, or of any object into another person's anus or
36 vagina, except when done as part of a recognized medical
37 procedure.
- 38 (6) Sexually Explicit Nudity. – The showing of:
- 39 a. Uncovered, or less than opaquely covered, human genitals,
40 pubic area, or buttocks, or the nipple or any portion of the
41 areola of the human female breast, except as provided in G.S.
42 14-190.9(b); or

b. Covered human male genitals in a discernibly turgid state."

SECTION 8. G.S. 14-190.14(b) reads as rewritten:

"(b) Punishment. – Violation of this section is a Class 21 misdemeanor. Each day's violation of this section is a separate offense."

SECTION 9. G.S. 14-190.15 reads as rewritten:

"§ 14-190.15. Disseminating harmful material to minors; exhibiting harmful performances to minors.

(a) Disseminating Harmful Material. – A person commits the offense of disseminating harmful material to minors if, with or without consideration and knowing the character or content of the material, ~~he~~the person:

(1) Sells, furnishes, presents, makes accessible by computer, or distributes to a minor material that is harmful to minors; or

(2) Allows a minor to ~~review or peruse~~review, peruse, or access by computer material that is harmful to minors.

(b) Exhibiting Harmful Performance. – A person commits the offense of exhibiting a harmful performance to a minor if, with or without consideration and knowing the character or content of the performance, ~~he~~the person allows a minor to view a live performance that is harmful to minors.

(c) Defenses. – Except as provided in subdivision (3), a mistake of age is not a defense to a prosecution under this section. It is an affirmative defense to a prosecution under this section that:

(1) The defendant was a parent or legal guardian of the minor.

(2) The defendant was a school, church, museum, public library, governmental agency, medical clinic, or hospital carrying out its legitimate function; or an employee or agent of such an organization acting in that capacity and carrying out a legitimate duty of ~~his~~the employee's or agent's employment.

(3) Before disseminating or exhibiting the harmful material or performance, the defendant requested and received a ~~driver's~~drivers license, student identification card, or other official governmental or educational identification card or paper indicating that the minor to whom the material or performance was disseminated or exhibited was at least 18 years old, and the defendant reasonably believed the minor was at least 18 years old.

(3a) The material made accessible to another person by computer:

a. Included on the first page of the text set out from surrounding written or graphical material so as to be conspicuous the following statement: 'Warning: Viewer discretion and parental guidance is advised. These materials may be harmful to minors.'; and

b. Is located at a registered web site with a domain address assigned only to adult-oriented sites in compliance with the

1 policies established by the Internet Corporation for Assigned
2 Names and Numbers (ICANN), the United States Department
3 of Commerce, or any other entity approved by the federal
4 government to assign domain names.

5 (4) The dissemination was made with the prior consent of a parent or
6 guardian of the recipient.

7 (d) Punishment. – Violation of this section is a Class 1 misdemeanor."

8 **SECTION 10.** G.S. 14-190.16(d) reads as rewritten:

9 "(d) Punishment and Sentencing. – Violation of this section is a Class ~~D~~C
10 felony."

11 **SECTION 11.** G.S. 14-190.17(d) reads as rewritten:

12 "(d) Punishment and Sentencing. – Violation of this section is a Class ~~F~~E felony."

13 **SECTION 12.** G.S. 14-190.17A(d) reads as rewritten:

14 "(d) Punishment and Sentencing. – Violation of this section is a Class ~~I~~H
15 felony."

16 **SECTION 13.** Article 26 of Chapter 14 of the General Statutes is amended
17 by adding the following new section:

18 "**§ 14-202.5. Unlawful to access or disseminate obscenities on a governmental**
19 **computer.**

20 (a) The following definitions apply in this section:

21 (1) Computer. – Includes all of the following terms as they are defined in
22 G.S. 14-453: computer, computer network, computer program,
23 computer software, computer system, and data.

24 (2) Government. – The State of North Carolina or any agency or political
25 subdivision of the State.

26 (3) Government computer. – A computer used for government purposes
27 that is owned or leased in whole or in part or is otherwise under the
28 control and general management of the State or any agency or political
29 subdivision of the State.

30 (b) Except to the extent required in conjunction with a bona fide government-
31 approved research project or other government-approved undertaking, no person shall
32 willfully and intentionally utilize a government computer to access, download, print, or
33 store any information, infrastructure files, or services having obscene content. The
34 approval for the research project or undertaking shall be in writing and signed by the
35 appropriate governmental official.

36 (c) A violation of this section is a Class 1 misdemeanor. A person who violates
37 this section shall also be dismissed."

38 **SECTION 14.** G.S. 14-196 reads as rewritten:

39 "**§ 14-196. Using profane, indecent or threatening language to any person over**
40 **telephone; ~~by electronic communications;~~ annoying or harassing by**
41 **repeated telephoning ~~electronic communications~~ or making false**
42 **statements over telephone by electronic communications.**

1 (a) It ~~shall be~~ is unlawful for any person:

- 2 (1) To use in ~~telephonic~~ electronic communications any words or language
3 of a profane, vulgar, lewd, lascivious or indecent character, nature or
4 connotation;
- 5 (2) To use in ~~telephonic~~ electronic communications any words or language
6 threatening to inflict bodily harm to any person or to that person's
7 child, sibling, spouse, or dependent or physical injury to the property
8 of any person, or for the purpose of extorting money or other things of
9 value from any person;
- 10 (3) To ~~telephone~~ electronically communicate with another repeatedly,
11 whether or not conversation ensues, for the purpose of abusing,
12 annoying, threatening, terrifying, harassing or embarrassing any
13 person at the called ~~number~~; phone number or electronic address;
- 14 (4) To ~~make a telephone call~~ electronically communicate and fail to hang
15 up or disengage the connection with the intent to disrupt the service of
16 another;
- 17 (5) To ~~telephone~~ electronically communicate with another and to
18 knowingly make any false statement concerning death, injury, illness,
19 disfigurement, indecent conduct or criminal conduct of the person
20 ~~telephoned~~ electronically contacted or of any member of ~~his~~ the
21 person's family or household with the intent to abuse, annoy, threaten,
22 terrify, harass, or embarrass;
- 23 (6) To knowingly permit any ~~telephone~~ electronic communication device
24 under ~~his~~ the person's control to be used for any purpose prohibited by
25 this section.

26 (b) Any of the above offenses may be deemed to have been committed at either
27 the place at which the ~~telephone call or calls were made~~ electronic communication
28 originated or at the place where the ~~telephone call or calls were~~ electronic
29 communication was received. For purposes of this section, ~~the term "telephonic~~
30 ~~communications"~~ shall include the terms 'electronic communications', 'electronically
31 communicated', and 'electronically contacted' include communications made or received
32 by way of a telephone answering machine or recorder, telefacsimile machine, ~~or~~
33 ~~computer modem~~; modem, electronic mail, and all of the following as defined in G.S.
34 14-453: computer, computer network, computer program, computer software, and
35 computer system.

36 (c) Anyone violating the provisions of this section ~~shall be~~ is guilty of a Class 2
37 misdemeanor."

38 **SECTION 15.** By January 1, 2002, the Department of Administration shall
39 adopt rules governing the use of State computers, the Internet, and electronic mail by
40 State employees to implement this act.

41 **SECTION 16.** If any provision of this act or its application is held invalid,
42 the invalidity does not affect other provisions or applications of this act that can be

1 given effect without the invalid provisions or application, and to this end the provisions
2 of this act are severable.

3 **SECTION 17.** Sections 1, 2, 15, 16, and 17 of this act are effective when it
4 becomes law. The remainder of this act becomes effective December 1, 2001, and
5 applies to offenses committed on or after that date.