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HOUSE BILL NO. 348

Offered January 15, 1998

A BILL to amend the Code of Virginia by adding in Title 42.1 a chapter numbered 2.1, consisting of sections numbered 42.1-45.1 through 42.1-45.7, relating to public libraries; information infrastructure access; penalties.

Patron—Marshall

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 42.1 a chapter numbered 2.1, consisting of sections numbered 42.1-45.1 through 42.1-45.7, as follows:

CHAPTER 2.1.**INFORMATION INFRASTRUCTURE ACCESS IN PUBLIC LIBRARIES.****§ 42.1-45.1. Statement of purpose.**

A. It is the intent of the General Assembly to ensure that the Commonwealth's public libraries furnish educational and research environments conducive to the health, safety and welfare of (i) juveniles and other patrons of library facilities, and (ii) library employees.

B. Many libraries in the Commonwealth maintain collections of materials, including sexually oriented materials, that may be offensive or harmful to juveniles and other library patrons. Nevertheless, these materials are often archived and made available to patrons on a restricted-access basis, striking a balance between the marketplace of ideas ingrained in our constitutions and culture, on the one hand, and legitimate concerns about the health, safety and welfare of juveniles and others who may be significantly harmed by exposure to such materials, on the other.

C. Accordingly, it is the intent of the General Assembly in enacting this chapter to:

1. Promote public library information infrastructure access in a manner that (i) furnishes library patrons the maximum benefits of this powerful, revolutionary medium and (ii) provides juveniles and others protections from the potentially harmful aspects of the information infrastructure;

2. Provide maximum access by juveniles as well as adults to as much of the valuable and educational information, data, and materials on the Internet and World Wide Web without acquiring, providing, or exposing them to materials that are unlawful, harmful, fraudulent, harassing, pervasively vulgar, lacking in serious literary, artistic, political, and scientific value, or are otherwise undesirable or inappropriate;

3. Affirm and facilitate the ability and responsibility of library board and staff to determine what materials should be included in or excluded from the library's collection, services, databases, and interactive computer services and to determine the appropriateness, value, desirability, and character of materials, without prior judicial or legal adjudication;

4. Comply with current state and federal laws regarding child exploitation, child pornography, obscenity, and providing or displaying materials harmful to minors;

5. Encourage and facilitate the use of screening and filtering software programs, hardware, and services, including access software providers as defined in 47 U.S.C. § 230 (e) (4), so as to avoid, exclude, or restrict selection of, or access to, unlawful, offensive, or inappropriate materials, or other materials the library does not wish to select, offer or provide access to as part of the services or resources made available to the public, whether or not such materials, services, or resources are otherwise protected or lawful in other settings or by other private or public persons or institutions;

6. Recognize and facilitate the ability of libraries to comply with and achieve the privileges and immunities provided by federal law for use of blocking and screening software and devices as provided in 47 U.S.C. § 230 (c); and

7. Encourage and facilitate the adoption and use of technological or other means to perform those functions and to facilitate policies and practices governing subscription, acquisition, provision, and use of library resources, computers, and services that accomplish these purposes.

§ 42.1-45.2. Definitions.

For the purpose of this chapter:

"Child pornography," shall have the same meaning as that contained in § 18.2-374.1.

"Harmful to juveniles" shall have the same meaning as that contained in § 18.2-390.

"Information infrastructure" means telecommunications, cable, and computer networks and includes the Internet, the World Wide Web, Usenet, bulletin board systems, on-line systems, and telephone networks, and shall also include interactive computer services as defined in 47 U.S.C. § 230 (e).

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60 "Public, county or regional library" or "library" (i) shall mean those libraries subject to the
61 provisions of Chapters 2 (§ 42.1-33 et seq.) and 3 (42.1-46 et seq.) of this title and (ii) shall not mean
62 the library of any public or private elementary or secondary school within the Commonwealth.

63 "Obscene" shall have the same meaning as that contained in § 18.2-372.

64 "Unrestricted information infrastructure access" means access to and use of the information
65 infrastructure, unimpeded by computer hardware or software inhibiting or limiting access to certain
66 information infrastructure sites, files or databases.

67 § 42.1-45.3. Juvenile access to information infrastructure.

68 A. No juvenile shall be permitted to utilize any library's computer for unrestricted information
69 infrastructure access unless such juvenile is accompanied and supervised at all times in such utilization
70 by his parent or guardian or by some other responsible adult, teacher, or librarian with express
71 permission from such juvenile's parent or guardian.

72 B. Any library computer with unrestricted information infrastructure access shall be (i) placed in
73 restricted library areas physically separate from areas in which juveniles are permitted unaccompanied
74 by their parent or guardian or other responsible adult, teacher, or librarian with express permission
75 from their parent or guardian, and (ii) identified by conspicuous notices stating that juveniles may not
76 utilize such computers or otherwise access such areas unless accompanied at all times by a parent or
77 guardian or by a teacher, librarian, or other adult with express permission from their parents or
78 guardians.

79 C. Every public, county or regional library providing computers furnishing library patrons
80 unrestricted access to the information infrastructure shall also make available to juveniles separate
81 computers providing access to the information infrastructure, limiting, however, such access to resources
82 and sites free, to the extent technically feasible, from materials described in § 42.1-45.4.

83 § 42.1-45.4. Prohibiting access, display or reproduction of certain materials.

84 A. Notwithstanding any provision in § 18.2-391.1, no library patron utilizing the computer equipment
85 or facilities of a public, county or regional library, shall:

86 1. Willfully access, display or reproduce materials that are harmful to minors via the information
87 infrastructure in any library area within which juveniles are permitted unaccompanied by a parent or
88 guardian or other responsible adult, teacher, or librarian with express permission from his parent or
89 guardian; or

90 2. Willfully access, display or reproduce obscene material or child pornography via the information
91 infrastructure in any library area or on any library computer facility.

92 B. Persons violating the provisions of this section shall be guilty of a Class 1 misdemeanor if the
93 subject matter is harmful to minors or obscene and shall be guilty of a Class 5 felony if the subject
94 matter is child pornography.

95 C. Printed notices containing the provisions of this section and of §§ 18.2-372 through 18.2-374,
96 18.2-374.1 through 18.2-374.3, and 18.2-390 shall be conspicuously displayed on or immediately
97 adjacent to computers or other electronic equipment of a public, county or regional library through
98 which information infrastructure access is provided to library patrons.

99 § 42.1-45.5. State-funded libraries to obtain computer hardware and software.

100 The board, or its equivalent, of any public, county or regional library receiving any funding from
101 this Commonwealth pursuant to Chapter 3 (§ 42.1-46 et seq.) of this title or any other provision of the
102 laws of this Commonwealth, shall immediately obtain and implement the use of computer hardware and
103 software inhibiting, to the fullest extent possible, library patron access via library computers to obscene
104 materials and child pornography.

105 § 42.1-45.6. Library boards and other governing bodies to develop guidelines.

106 A. Public, county and regional library boards, and equivalent governing bodies, shall develop and
107 implement library patron information infrastructure use guidelines designed to prevent potential sexual
108 harassment of library employees via a hostile workplace created by library patron access, display or
109 reproduction of sexually explicit materials on library premises.

110 B. Public, county and regional library boards, and equivalent governing bodies, shall also develop
111 and implement guidelines for library employee supervision and oversight of library patron information
112 infrastructure access via library computers to (i) inhibit library patron access to obscene materials and
113 child pornography, (ii) ensure patron compliance with the provisions of this chapter, and (iii) ensure
114 prompt reporting to law-enforcement authorities of patron violations of § 42.1-45.4 for which reports,
115 when made in good faith and upon reasonable belief, no library employee or his employer shall have
116 any civil or criminal liability therefor.

117 C. The guidelines required by this section shall be implemented not later than January 1, 1999, for
118 existing libraries, and within six months of their establishment for any new library facilities opened
119 thereafter.

120 § 42.1-45.7. Other restrictions on information infrastructure access.

121 Nothing in this chapter shall be construed to prohibit public, county and regional library boards,

122 *and equivalent governing bodies from developing and implementing public library information*
123 *infrastructure access guidelines or policies that are more restrictive than the provisions of this chapter,*
124 *if such guidelines or policies are not in conflict with this chapter or any other laws of this*
125 *Commonwealth or of the United States.*
126 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**
127 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
128 **is \$0.**