

SECOND REGULAR SESSION

HOUSE BILL NO. 2374

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CHRISTENSEN.

4412H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 182.827, RSMo, and to enact in lieu thereof two new sections relating to materials in public schools that are obscene or harmful to minors, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 182.827, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 162.116 and 182.827, to read as follows:

162.116. 1. As used in this section, the following terms mean:

(1) "Charter school", the same definition as in section 160.400;

(2) "Department", the Missouri department of elementary and secondary education;

(3) "Explicit material", obscene material or material that is harmful to minors;

(4) "Governing board", the governing board of a charter school established under sections 160.400 to 160.425;

(5) "Harmful to minors", the quality of a description or representation, in whatever form, of nudity, sexual excitement, sexual conduct, excessive violence, or sadomasochistic abuse that:

(a) The average person applying contemporary community standards would find to predominantly appeal to the prurient, shameful, or morbid interests of minors;

(b) Is patently offensive to prevailing standards in the contemporary adult community as a whole with respect to what is suitable for minors; and

(c) When taken as a whole, lacks serious literary, artistic, political, or scientific value for minors;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

- 17 **(6) "Material", any of the following:**
18 **(a) A book, magazine, newspaper, or other printed or written material;**
19 **(b) A picture, drawing, photograph, film, video, computer-generated image, or**
20 **other pictorial representation;**
21 **(c) A statue, figure, device, theatrical production, or electrical reproduction; or**
22 **(d) Other similar articles, equipment, machines, or materials;**
23 **(7) "Obscene", spoken or written matter that, when taken as a whole:**
24 **(a) The average person would find to predominantly appeal to prurient interest;**
25 **(b) The average person applying contemporary community standards would**
26 **find to depict or describe sexual conduct in a patently offensive way; and**
27 **(c) Lacks serious literary, artistic, political, or scientific value;**
28 **(8) "Parent", a parent, guardian, or other person having control or custody of a**
29 **child;**
30 **(9) "Patently offensive", going substantially beyond customary limits of candor**
31 **in describing or representing such subject;**
32 **(10) "Public school", the same definition as in section 160.011. The term shall be**
33 **construed to include a charter school;**
34 **(11) "School board", the same definition as in section 160.011;**
35 **(12) "School district", the same definition as in section 160.011.**
36 **2. No school district or public school shall allow obscene material or material**
37 **that is harmful to minors to be available to a child:**
38 **(1) In a school library controlled by the school district or public school; or**
39 **(2) From materials kept or used by a teacher in the course of preparing for or**
40 **providing instruction to children enrolled in a public school.**
41 **3. (1) Each school board and governing board shall adopt a policy that allows a**
42 **parent of a child enrolled in a public school to report to the public school administration**
43 **if the parent becomes aware that obscene material or material that is harmful to minors**
44 **is made available to children as described in subsection 2 of this section.**
45 **(2) The policy required under subdivision (1) of this subsection shall require the**
46 **public school administration to remove the material reported by a parent as obscene or**
47 **harmful to minors for at least thirty calendar days to allow the school board or**
48 **governing board, as applicable, to review the material to determine whether the**
49 **material is obscene, harmful to minors, or appropriate for students.**
50 **(3) (a) The school board or governing board, as applicable, shall determine if**
51 **the material is obscene or harmful to minors before the next regularly scheduled**
52 **meeting of the school board or governing board, as applicable, after the thirty-day**
53 **removal period of the material as described in subdivision (2) of this subsection.**

54 **(b) If the school board or governing board determines that the material is**
55 **obscene or harmful to minors, the board shall permanently remove the material from**
56 **the public school.**

57 **(c) If the school board or governing board determines that the material is**
58 **appropriate for students, the board shall return the material to each school library or**
59 **teacher from which the material was removed upon the board's determination that the**
60 **material is appropriate for students or at the end of the thirty-day removal period**
61 **described in subdivision (2) of this subsection, whichever is earlier.**

62 **(4) The policy adopted under this section shall not be construed to:**

63 **(a) Be the exclusive means to remove material from a school; or**

64 **(b) Preclude a school district or governing board from developing or**
65 **implementing additional policies, practices, or procedures for the removal of**
66 **materials from the school.**

67 **(5) If a public school fails to comply with a policy adopted under this section, the**
68 **department may withhold an amount of state funds, as determined by the department,**
69 **from the public school until the public school is in compliance with the policy.**

70 **(6) Each public school shall annually report to the department the material that**
71 **is permanently removed under paragraph (b) of subdivision (3) of this subsection.**

182.827. 1. A public school that provides a public access computer shall **apply the**
2 **provisions of section 162.116 that are applicable to materials made available to a child in**
3 **a school library to materials accessed by minors on such public access computer and do**
4 one or both of the following:

5 (1) Equip the computer with software that will limit minors' ability to gain access to
6 material that is pornographic for minors or purchase internet connectivity from an internet
7 service provider that provides filter services to limit access to material that is pornographic
8 for minors;

9 (2) Develop and implement by January 1, 2003, a policy that is consistent with
10 community standards and establishes measures to restrict minors from gaining computer
11 access to material that is pornographic for minors.

12 2. The department of elementary and secondary education shall establish rules and
13 regulations for the enforcement of subsection 1 of this section. Any rule or portion of a rule,
14 as that term is defined in section 536.010, that is created under the authority delegated in this
15 section shall become effective only if it complies with and is subject to all of the provisions of
16 chapter 536 and, if applicable, section 536.028. This section and chapter 536 are
17 nonseverable and if any of the powers vested with the general assembly pursuant to chapter
18 536 to review, to delay the effective date or to disapprove and annul a rule are subsequently

19 held unconstitutional, then the grant of rulemaking authority and any rule proposed or
20 adopted after August 28, 2002, shall be invalid and void.

21 3. A public library that provides a public access computer shall do one or both of the
22 following:

23 (1) Equip the computer with software that will limit minors' ability to gain access to
24 material that is pornographic for minors or purchase internet connectivity from an internet
25 service provider that provides filter services to limit access to material that is pornographic
26 for minors;

27 (2) Develop and implement by January 1, 2003, a policy that is consistent with
28 community standards and establishes measures to restrict minors from gaining computer
29 access to material that is pornographic for minors.

30 4. The secretary of state shall establish rules and regulations for the enforcement of
31 subsection 3 of this section. Any rule or portion of a rule, as that term is defined in section
32 536.010, that is created under the authority delegated in this section shall become effective
33 only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable,
34 section 536.028. This section and chapter 536 are nonseverable and if any of the powers
35 vested with the general assembly pursuant to chapter 536 to review, to delay the effective date
36 or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of
37 rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be invalid
38 and void.

39 5. Any public school board member, officer or employee, including library personnel,
40 who willfully neglects or refuses to perform a duty imposed by this section shall be subject to
41 the penalties imposed pursuant to section 162.091.

42 6. A public school or public school board member, officer or employee, including
43 library personnel, public library or public library board member, officer, employee or trustee
44 that complies with subsection 1 or 3 of this section or an internet service provider providing
45 internet connectivity to such public school or library in order to comply with this section shall
46 not be criminally liable or liable for any damages that might arise from a minor gaining access
47 to material that is pornographic for minors through the use of a public access computer that is
48 owned or controlled by the public school or public library.

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