

FIRST REGULAR SESSION

SENATE BILL NO. 765

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR NICOLA.

3084S.01I

KRISTINA MARTIN, Secretary

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.

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Section A. Section 182.827, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 162.116 and 182.827, to read as follows: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

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

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

23 (6) "Material", any of the following:

24 (a) A book, magazine, newspaper, or other printed or
25 written material;

26 (b) A picture, drawing, photograph, film, video,
27 computer-generated image, or other pictorial representation;

28 (c) A statue, figure, device, theatrical production,
29 or electrical reproduction; or

30 (d) Other similar articles, equipment, machines, or
31 materials;

32 (7) "Obscene", spoken or written matter that, when
33 taken as a whole:

34 (a) The average person would find to predominantly
35 appeal to prurient interest;

36 (b) The average person applying contemporary community
37 standards would find to depict or describe sexual conduct in
38 a patently offensive way; and

39 (c) Lacks serious literary, artistic, political, or
40 scientific value;

41 (8) "Parent", a parent, guardian, or other person
42 having control or custody of a child;

43 (9) "Patently offensive", going substantially beyond
44 customary limits of candor in describing or representing
45 such subject;

46 (10) "Public school", the same definition as in
47 section 160.011. The term shall be construed to include a
48 charter school;

49 (11) "School board", the same definition as in section
50 160.011;

51 (12) "School district", the same definition as in
52 section 160.011.

53 2. No school district or public school shall allow
54 obscene material or material that is harmful to minors to be
55 available to a child:

56 (1) In a school library controlled by the school
57 district or public school; or

58 (2) From materials kept or used by a teacher in the
59 course of preparing for or providing instruction to children
60 enrolled in a public school.

61 3. (1) Each school board and governing board shall
62 adopt a policy that allows a parent of a child enrolled in a
63 public school to report to the public school administration
64 if the parent becomes aware that obscene material or
65 material that is harmful to minors is made available to
66 children as described in subsection 2 of this section.

67 (2) The policy required under subdivision (1) of this
68 subsection shall require the public school administration to
69 remove the material reported by a parent as obscene or
70 harmful to minors for at least thirty calendar days to allow
71 the school board or governing board, as applicable, to
72 review the material to determine whether the material is
73 obscene, harmful to minors, or appropriate for students.

74 (3) (a) The school board or governing board, as
75 applicable, shall determine if the material is obscene or
76 harmful to minors before the next regularly scheduled
77 meeting of the school board or governing board, as
78 applicable, after the thirty-day removal period of the
79 material as described in subdivision (2) of this subsection.

80 (b) If the school board or governing board determines
81 that the material is obscene or harmful to minors, the board
82 shall permanently remove the material from the public school.

83 (c) If the school board or governing board determines
84 that the material is appropriate for students, the board
85 shall return the material to each school library or teacher
86 from which the material was removed upon the board's
87 determination that the material is appropriate for students
88 or at the end of the thirty-day removal period described in
89 subdivision (2) of this subsection, whichever is earlier.

90 (4) The policy adopted under this section shall not be
91 construed to:

92 (a) Be the exclusive means to remove material from a
93 school; or

94 (b) Preclude a school district or governing board from
95 developing or implementing additional policies, practices,
96 or procedures for the removal of materials from the school.

97 (5) If a public school fails to comply with a policy
98 adopted under this section, the department may withhold an
99 amount of state funds, as determined by the department, from
100 the public school until the public school is in compliance
101 with the policy.

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

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

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

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

17 2. The department of elementary and secondary
18 education shall establish rules and regulations for the
19 enforcement of subsection 1 of this section. Any rule or
20 portion of a rule, as that term is defined in section
21 536.010, that is created under the authority delegated in
22 this section shall become effective only if it complies with
23 and is subject to all of the provisions of chapter 536 and,
24 if applicable, section 536.028. This section and chapter
25 536 are nonseverable and if any of the powers vested with
26 the general assembly pursuant to chapter 536 to review, to
27 delay the effective date or to disapprove and annul a rule
28 are subsequently held unconstitutional, then the grant of
29 rulemaking authority and any rule proposed or adopted after
30 August 28, 2002, shall be invalid and void.

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

33 (1) Equip the computer with software that will limit
34 minors' ability to gain access to material that is
35 pornographic for minors or purchase internet connectivity
36 from an internet service provider that provides filter
37 services to limit access to material that is pornographic
38 for minors;

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

43 4. The secretary of state shall establish rules and
44 regulations for the enforcement of subsection 3 of this
45 section. Any rule or portion of a rule, as that term is
46 defined in section 536.010, that is created under the
47 authority delegated in this section shall become effective
48 only if it complies with and is subject to all of the
49 provisions of chapter 536 and, if applicable, section
50 536.028. This section and chapter 536 are nonseverable and
51 if any of the powers vested with the general assembly
52 pursuant to chapter 536 to review, to delay the effective
53 date or to disapprove and annul a rule are subsequently held
54 unconstitutional, then the grant of rulemaking authority and
55 any rule proposed or adopted after August 28, 2002, shall be
56 invalid and void.

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

62 6. A public school or public school board member,
63 officer or employee, including library personnel, public
64 library or public library board member, officer, employee or
65 trustee that complies with subsection 1 or 3 of this section
66 or an internet service provider providing internet
67 connectivity to such public school or library in order to
68 comply with this section shall not be criminally liable or
69 liable for any damages that might arise from a minor gaining
70 access to material that is pornographic for minors through

71 the use of a public access computer that is owned or
72 controlled by the public school or public library.

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