

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 907

Short Title: Limit Child's Access/Computer Porn.

(Public)

Sponsors: Senators Cooper; Hoyle, Kerr, Perdue, Rand, and Reeves.

Referred to: Judiciary I.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE DISSEMINATION OF OBSCENITIES BY COMPUTER TRANSMISSION, TO PROHIBIT THE USE OF STATE COMPUTERS TO ACCESS OBSCENITIES, TO REGULATE CERTAIN USES OF STATE COMPUTERS, AND TO REQUIRE THE INSTALLATION OF APPROPRIATE SOFTWARE ON CERTAIN COMPUTERS ACCESSIBLE TO THE PUBLIC OR THE USE OF OTHER APPROPRIATE MANAGEMENT SCHEMES TO SHIELD MINORS FROM OBSCENITIES TRANSMITTED BY COMPUTER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-190.1(a) reads as rewritten:

"§ 14-190.1. Obscene literature and exhibitions.

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

- (1) Sells, ~~delivers or provides~~ delivers, makes accessible to another person by computer, or provides or offers or agrees to sell, ~~deliver or provide~~ deliver, make accessible to another person by computer, or provide any obscene writing, picture, record or other representation or embodiment of the obscene; or

- 1 (2) Presents or directs an obscene play, dance or other performance or
2 participates directly in that portion thereof which makes it obscene; or
3 (3) Publishes, exhibits or otherwise makes available anything obscene; or
4 (4) Exhibits, presents, rents, sells, delivers or provides; or offers or agrees
5 to exhibit, present, rent or to provide: any obscene still or motion
6 picture, film, filmstrip, or projection slide, or sound recording, sound
7 tape, or sound track, or any matter or material of whatever form which
8 is a representation, embodiment, performance, or publication of the
9 obscene.
- 10 (b) For purposes of this Article any material is obscene if:
11 (1) The material depicts or describes in a patently offensive way sexual
12 conduct specifically defined by subsection (c) of this section; and
13 (2) The average person applying contemporary community standards
14 relating to the depiction or description of sexual matters would find that
15 the material taken as a whole appeals to the prurient interest in sex; and
16 (3) The material lacks serious literary, artistic, political, or scientific value;
17 and
18 (4) The material as used is not protected or privileged under the
19 Constitution of the United States or the Constitution of North Carolina.
- 20 (c) As used in this Article, "sexual conduct" means:
21 (1) Vaginal, anal, or oral intercourse, whether actual or simulated, normal
22 or perverted; or
23 (2) Masturbation, excretory functions, or lewd exhibition of uncovered
24 genitals; or
25 (3) An act or condition that depicts torture, physical restraint by being
26 fettered or bound, or flagellation of or by a nude person or a person clad
27 in undergarments or in revealing or bizarre costume.
- 28 (d) Obscenity shall be judged with reference to ordinary adults except that it shall
29 be judged with reference to children or other especially susceptible audiences if it appears
30 from the character of the material or the circumstances of its dissemination to be
31 especially designed for or directed to such children or audiences.
- 32 (e) It ~~shall be~~ is unlawful for any ~~person, firm or corporation~~ person to knowingly
33 and intentionally create, buy, procure or possess obscene material with the purpose and
34 intent of disseminating it unlawfully.
- 35 (f) It ~~shall be~~ is unlawful for a ~~person, firm or corporation~~ person to advertise or
36 otherwise promote the sale of material represented or held out by ~~said person, firm or~~
37 ~~corporation~~ the person as obscene.
- 38 (g) Violation of this section is a Class I felony.
- 39 (h) Obscene material disseminated, procured, or promoted in violation of this
40 section is contraband.
- 41 (i) Nothing in this section shall be deemed to preempt local government
42 regulation of the location or operation of sexually oriented businesses to the extent
43 consistent with the constitutional protection afforded free speech.

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

4 Section 2. G.S. 14-190.8 reads as rewritten:

5 **"§ 14-190.8. Dissemination to minors under the age of 13 years.**

6 Every person 18 years of age or older who knowingly disseminates to any minor
7 under the age of 13 years any material which ~~he~~ the person knows or reasonably should
8 know to be obscene within the meaning of G.S. 14-190.1 shall be punished as a ~~Class I~~
9 Class H felon."

10 Section 3. G.S. 14-190.13 reads as rewritten:

11 **"§ 14-190.13. Definitions for certain offenses concerning minors.**

12 The following definitions apply to G.S. 14-190.14, displaying material harmful to
13 minors; G.S. 14-190.14A, allowing computer access to material harmful to minors; G.S.
14 14-190.15, disseminating or exhibiting to minors harmful material or performances; G.S.
15 14-190.16, first degree sexual exploitation of a minor; G.S. 14-190.17, second degree
16 sexual exploitation of a minor; G.S. 14-190.17A, third degree sexual exploitation of a
17 minor; G.S. 14-190.18, promoting prostitution of a minor; ~~and~~—G.S. 14-190.19,
18 participating in prostitution of a ~~minor~~ minor; and G.S. 14-202.6, protection for 'Good
19 Samaritan' blocking screening of offensive material.

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

- 23 a. The average adult person applying contemporary community
24 standards would find that the material or performance has a
25 predominant tendency to appeal to a prurient interest of minors in
26 sex; and
27 b. The average adult person applying contemporary community
28 standards would find that the depiction of sexually explicit nudity
29 or sexual activity in the material or performance is patently
30 offensive to prevailing standards in the adult community
31 concerning what is suitable for minors; and
32 c. The material or performance lacks serious literary, artistic,
33 political, or scientific value for minors.

34 (2) Material. – Pictures, drawings, video recordings, ~~films~~ films, digital
35 images made accessible to another person by computer, or other visual
36 depictions or representations but not material consisting entirely of
37 written words.

38 (3) Minor. – An individual who is less than 18 years old and is not married
39 or judicially emancipated.

40 (4) Prostitution. – Engaging or offering to engage in sexual activity with or
41 for another in exchange for anything of value.

42 (5) Sexual Activity. – Any of the following acts:

- 1 a. Masturbation, whether done alone or with another human or an
2 animal.
- 3 b. Vaginal, anal, or oral intercourse, whether done with another
4 human or with an animal.
- 5 c. Touching, in an act of apparent sexual stimulation or sexual
6 abuse, of the clothed or unclothed genitals, pubic area, or
7 buttocks of another person or the clothed or unclothed breasts of
8 a human female.
- 9 d. An act or condition that depicts torture, physical restraint by
10 being fettered or bound, or flagellation of or by a person clad in
11 undergarments or in revealing or bizarre costume.
- 12 e. Excretory functions; provided, however, that this sub-subdivision
13 shall not apply to G.S. 14-190.17A.
- 14 f. The insertion of any part of a person's body, other than the male
15 sexual organ, or of any object into another person's anus or
16 vagina, except when done as part of a recognized medical
17 procedure.

18 (6) Sexually Explicit Nudity. – The showing of:

- 19 a. Uncovered, or less than opaquely covered, human genitals, pubic
20 area, or buttocks, or the nipple or any portion of the areola of the
21 human female breast, except as provided in G.S. 14-190.9(b); or
22 b. Covered human male genitals in a discernibly turgid state."

23 Section 4. G.S. 14-190.15 reads as rewritten:

24 **"§ 14-190.15. Disseminating harmful material to minors; exhibiting harmful**
25 **performances to minors.**

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

- 29 (1) Sells, furnishes, presents, makes accessible by computer, or distributes
30 to a minor material that is harmful to minors; or
31 (2) Allows a minor to ~~review or peruse~~review, peruse, or access by
32 computer material that is harmful to minors.

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

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

- 40 (1) The defendant was a parent or legal guardian of the minor.
41 (2) The defendant was a school, church, museum, public library,
42 governmental agency, medical clinic, or hospital carrying out its
43 legitimate function; or an employee or agent of such an organization

- 1 acting in that capacity and carrying out a legitimate duty of ~~his~~ the
2 person's employment.
- 3 (3) Before disseminating or exhibiting the harmful material or performance,
4 the defendant requested and received a ~~driver's~~ drivers license, student
5 identification card, or other official governmental or educational
6 identification card or paper indicating that the minor to whom the
7 material or performance was disseminated or exhibited was at least 18
8 years old, and the defendant reasonably believed the minor was at least
9 18 years old.
- 10 (3a) The material made accessible to another person by computer:
- 11 a. Included on the first page of the text set out from surrounding
12 written or graphical material so as to be conspicuous the
13 following statement: 'Warning: Viewer discretion and parental
14 guidance is advised. These materials may be harmful to minors.';
15 and
- 16 b. Is located at a registered web site with a domain address assigned
17 only to adult-oriented sites in compliance with the policies
18 established by the Internet Corporation for Assigned Names and
19 Numbers (ICANN), the United States Department of Commerce,
20 or any other entity approved by the federal government to assign
21 domain names.
- 22 (4) The dissemination was made with the prior consent of a parent or
23 guardian of the recipient.
- 24 (d) Punishment. – Violation of this section is a Class 1 misdemeanor."
25 Section 5. Article 26 of Chapter 14 of the General Statutes is amended by
26 adding the following new section to read:
27 **"§ 14-190.14A. Allowing computer access to material harmful to minors.**
- 28 (a) Offense. – A person commits the offense of allowing computer access to
29 material that is harmful to minors if:
- 30 (1) The person has custody, control, or supervision of a computer in a
31 public or commercial location;
- 32 (2) The computer is accessible to minors as part of the invited general
33 public; and
- 34 (3) The person knowingly allows a minor to access material that is harmful
35 to minors on that computer, knowing the character or content of the
36 material.
- 37 (b) Defenses. – Except as provided in subdivisions (3) and (4) of this subsection, a
38 mistake of age is not a defense to a prosecution under this section. It is an affirmative
39 defense to a prosecution under this section that:
- 40 (1) The defendant was a parent or legal guardian of the minor.
- 41 (2) The defendant was a school, church, museum, public library,
42 governmental agency, medical clinic, or hospital carrying out its
43 legitimate function; or an employee or agent of such an organization

1 acting in that capacity and carrying out a legitimate duty of the person's
2 employment.

3 (3) Before allowing the minor to access by computer the harmful material,
4 the defendant requested and received a drivers license, student
5 identification card, or other official governmental or educational
6 identification card or paper indicating that the minor to whom the
7 material or performance was disseminated or exhibited was at least 18
8 years old, and the defendant reasonably believed the minor was at least
9 18 years old.

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

12 (c) Punishment. – Violation of this section is a Class 1 misdemeanor."

13 Section 6. Article 26 of Chapter 14 of the General Statutes is amended by
14 adding the following sections:

15 **"§ 14-202.4. Unlawful to access or disseminate obscenities on a governmental**
16 **computer.**

17 (a) Except to the extent required in conjunction with a bona fide, government-
18 approved research project or other government-approved undertaking, no person shall
19 utilize a government computer to access, download, print, or store any information
20 infrastructure files or services having obscene content. The approval for the research
21 project or undertaking shall be in writing and signed by the appropriate governmental
22 official. Any such approval shall be a public record available to the public as provided
23 by Chapter 132 of the General Statutes.

24 (b) A violation of this section is a Class 1 misdemeanor. A violation of this
25 section is also grounds for disciplinary action under Chapter 126 of the General Statutes.

26 (c) The following definitions apply in this section:

27 (1) 'Computer' includes all of the following terms as those terms are defined
28 in G.S. 14-453: computer, computer network, computer program,
29 computer software, computer system, and data.

30 (2) 'Government' means the State of North Carolina or any agency or
31 political subdivision of the State.

32 (3) 'Government computer' means a computer used for government
33 purposes that is owned or leased in whole or in part or otherwise under
34 the control and general management of, the State or any agency or
35 political subdivision of the State.

36 **"§ 14-202.5. Internet service provider shall provide software or services to block or**
37 **screen obscene material or material that is harmful to minors; civil**
38 **penalty.**

39 (a) The following definitions apply in G.S. 14-202.5 and G.S. 14-202.6:

40 (1) 'Freeware' means software that is distributed to a person free of charge
41 regardless of whether use of the software is subject to certain
42 restrictions.

- 1 (2) 'Information content provider' means any person or entity that is
2 responsible, in whole or in part, for the creation or development of
3 information provided thorough the Internet or any other interactive
4 computer service.
- 5 (3) 'Internet' means the largest nonproprietary nonprofit cooperative public
6 computer network, popularly known as the Internet.
- 7 (4) 'Interactive computer service' means any information service or system
8 that provides or enables computer access by multiple users to the
9 Internet.
- 10 (5) 'Internet service provider' means any information, service, or access
11 software provider that meets all of the following requirements:
12 a. The provider provides or enables computer access to the Internet
13 by multiple users by a computer server.
14 b. The provider charges users' fees for access to its computer server.
15 c. The provider is domiciled or does business in this State.
- 16 (6) 'Shareware' means copyrighted software in which the copyright owner
17 sets certain conditions for its use and distribution, including requiring
18 payment to the copyright owner after a person who has secured a copy
19 of the software decides to use the software, regardless of whether the
20 payment is for additional support or functionality for the software.
- 21 (b) An Internet service provider shall provide free of charge to each subscriber of
22 the service in this State a link leading to fully functional shareware, freeware, or
23 demonstration versions of the software or to a service that, for at least one operating
24 system, enables the subscriber to automatically block or screen material on the Internet.
- 25 (c) An Internet service provider is considered to be in compliance with this section
26 if the Internet service provider places, on the provider's first page of world wide web text
27 information accessible to a subscriber, a link leading to the software or a service
28 described by this section. The identity of the link or other on-screen depiction of the link
29 shall appear set out from surrounding written or graphical material so as to be
30 conspicuous.
- 31 (d) An Internet service provider who provides a link that complies with this
32 section is not liable to a subscriber for any temporary inoperability of the link or for the
33 effectiveness of the software or service to which the person links.
- 34 (e) An Internet service provider is liable to the State for a civil penalty of two
35 thousand dollars (\$2,000) for each day on which the Internet service provider provides an
36 interactive computer service for a fee but fails to provide a link to software or a service as
37 required by this section. The aggregate civil penalty shall not exceed sixty thousand
38 dollars (\$60,000).
- 39 (f) The Attorney General may institute a suit to recover the civil penalty. Before
40 filing suit, the Attorney General shall give the Internet service provider notice of the
41 provider's noncompliance and liability for a civil penalty. If the Internet service provider
42 complies with the requirements of this section not later than the 30th day after the date of

1 the notice, the violation is considered cured and the Internet service provider is not liable
2 for the civil penalty.

3 **"§ 14-202.6. Protection for 'Good Samaritan' blocking and screening of offensive**
4 **material.**

5 (a) For purposes of this Article, no provider of an interactive computer service
6 shall be treated as the publisher or speaker of any information provided by another
7 information content provider.

8 (b) No provider of an interactive computer service shall be held civilly liable on
9 account of:

10 (1) Any action voluntarily taken in good faith to restrict access to or
11 availability of material that the provider considers to be obscene,
12 harmful to minors, or otherwise objectionable, whether or not such
13 material is constitutionally protected; or

14 (2) Any action taken to enable or make available to information content
15 providers or others the technical means to restrict access to material
16 described in this section.

17 (c) Nothing in this section shall be construed to impair the enforcement of any
18 criminal law of Chapter 14 of the General Statutes or any other State or federal criminal
19 statute."

20 Section 7. G.S. 14-196 reads as rewritten:

21 **"§ 14-196. Using profane, indecent or threatening language to any person over**
22 **telephone; ~~by electronic communications~~; annoying or harassing by**
23 **repeated ~~telephoning~~ electronic communications or making false**
24 **statements ~~over telephone~~ by electronic communications.**

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

26 (1) To use in ~~telephonic~~ electronic communications any words or language
27 of a profane, vulgar, lewd, lascivious or indecent character, nature or
28 connotation;

29 (2) To use in ~~telephonic~~ electronic communications any words or language
30 threatening to inflict bodily harm to any person or physical injury to the
31 property of any person, or for the purpose of extorting money or other
32 things of value from any person;

33 (3) To ~~telephone~~ electronically communicate to another repeatedly, whether
34 or not conversation ensues, for the purpose of abusing, annoying,
35 threatening, terrifying, harassing or embarrassing any person at the
36 called ~~number~~; phone number or electronic address;

37 (4) To ~~make a telephone call~~ electronically communicate and fail to hang up
38 or disengage the connection with the intent to disrupt the service of
39 another;

40 (5) To ~~telephone~~ electronically communicate with another and to knowingly
41 make any false statement concerning death, injury, illness,
42 disfigurement, indecent conduct or criminal conduct of the person
43 ~~telephoned~~ electronically contacted or of any member of ~~his~~ the person's

1 family or household with the intent to abuse, annoy, threaten, terrify,
2 harass, or embarrass;

- 3 (6) To knowingly permit any ~~telephone~~electronic communication device
4 under ~~his~~the person's control to be used for any purpose prohibited by
5 this section.

6 (b) Any of the above offenses may be deemed to have been committed at either the
7 place at which the ~~telephone call or calls were made~~electronic communication originated or
8 at the place where the ~~telephone call or calls were~~electronic communication was received.
9 For purposes of this section, ~~the term "telephonic communications" shall include the terms~~
10 'electronic communications', 'electronically communicated', and 'electronically contacted'
11 include communications made or received by way of a telephone answering machine or
12 recorder, telefacsimile machine, ~~or computer modem~~modem, electronic mail, and all of
13 the following as defined in G.S. 14-453: computer, computer network, computer
14 program, computer software, and computer system.

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

17 Section 8. By January 1, 2000, the Department of Administration shall adopt
18 rules governing the use of State computers, the Internet, and electronic mail by State
19 employees to implement this act.

20 Section 9. By January 1, 2000, the Department of Public Instruction, in
21 conjunction with the local school districts, shall evaluate the use of computers in the
22 public school system and recommend to the State Board of Education appropriate
23 software to shield students from obscene materials transmitted by computer. Upon
24 receiving the recommendation from the Department of Public Instruction, the State Board
25 of Education shall select appropriate software that is client-based or server-based or the
26 functional equivalent to shield students from obscene materials. The State Board of
27 Education shall supervise the statewide installation and maintenance of the software in
28 the public school system if that option is selected.

29 Section 10. By January 1, 2000, public libraries that operate computers with
30 Internet access that is available to minors shall take one of the following actions with
31 respect to such computers:

- 32 (1) Install by January 1, 2000, and maintain thereafter, appropriate software
33 that is client-based or server-based, or the functional equivalent, to
34 shield users from obscene material.
- 35 (2) Use an Internet service provider that provides freeware to shield users
36 from obscene material.
- 37 (3) Permit access to such computers by a minor only if: (i) the minor is
38 accompanied and monitored by the minor's parent, guardian, or by
39 another authorized adult or library personnel; or (ii) the minor has
40 written consent from the minor's parent or legal guardian granting
41 permission for the minor to have access to the computer without adult
42 supervision.

1 Section 11. This act becomes effective December 1, 1999, and applies to
2 offenses committed on or after that date.