



Sub. S.B. 144*

125th General Assembly
(As Reported by S. Judiciary)

Sens. Austria, Harris, Jacobson, Jordan

BILL SUMMARY

- Expands the offense of "disseminating matter harmful to juveniles" to also prohibit a person, with knowledge of its character or content, from recklessly directly selling, delivering, furnishing, disseminating, providing, exhibiting, renting, or presenting a *prepaid adult entertainment card* (defined in the bill) to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles, or directly offering or agreeing to do so.
- Specifies that the board of trustees of a free public library cannot use any state money it has received from any entity or any source, or any money it has received from any county library and local government support fund, to purchase computers used to access the Internet or to pay for direct costs associated with accessing the Internet, unless all of the following apply: (1) the board has installed and operates, subject to the disable/override exception described in the next dotpoint, a filtering device or filtering software that protects against Internet access to material that is obscene or harmful to juveniles on computers located at the library that are accessible to juveniles, (2) the board has installed and operates, subject to the disable/override exception described in the next dotpoint, a filtering device or filtering software that protects against Internet access to material that is obscene on each computer located at the library that is accessible to any patron of the library, and (3) the board has adopted and enforces a policy prohibiting a juvenile from borrowing

* *This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

from the library any video material unless the juvenile's parent or guardian, after being notified that some video materials available for borrowing from the library might include materials that are harmful to juveniles, has given express permission for the juvenile to borrow video materials.

- Provides that: (1) if a board of library trustees installs and operates a filtering device or filtering software on computers located at a library under the provisions described in clauses (1) and (2) of the preceding dotpoint, upon the request of any person, any administrator, supervisor, or other official or employee of the library may disable or override the device or software on a computer to enable the person to have full access to that computer for *bona fide* research, medical, scientific, educational, governmental, judicial, or other lawful purposes (if the person making the request is 18 years of age or older, the person is not required to explain, and cannot be asked to explain, the reason or purpose for which the person is requesting full access to the computer), and (2) nothing in provisions described in the preceding dotpoint or in clause (1) of this dotpoint limits, restricts, or prohibits a board of library trustees, or any administrator, supervisor, or other official or employee of a library, from regulating, limiting, restricting, or prohibiting any person from having access while at the library, on the Internet or in any other manner, to material other than material that is obscene or harmful to juveniles.
- Makes funding of public libraries from state money contingent upon the recipient library's submission of a resolution asserting current and future compliance with the bill's restrictions regarding the use of public moneys and juvenile Internet access to obscene or harmful material, patron Internet access to obscene material, and juvenile borrowing of videos, as described in the second preceding dotpoint.

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CONTENT AND OPERATION

Disseminating matter harmful to juveniles--expansion to include prepaid adult entertainment cards

Overview; definition of "prepaid adult entertainment card"

The bill expands the prohibition that constitutes the offense of "disseminating matter harmful to juveniles" to also prohibit in specified circumstances the sale, delivery, furnishing, etc., of a "prepaid adult entertainment card" to one or more juveniles or one or more law enforcement officers posing as juveniles. The bill defines "prepaid adult entertainment card," for purposes of R.C. Chapter 2907., as either of the following: (1) a product that, by means of a predetermined cardholder identification and a password unique to the card, provides, or permits access to, one or more Internet sites containing, including by link or reference to another Internet site, any "electronic communication" that is "harmful to juveniles" or "obscene" (see "**Relevant definitions**," below, for definitions of the terms in quotation marks) or (2) a product that, by means of a telephone number and an access code or password unique to the card and for a predetermined number of minutes, provides, or permits access to, an electronic communication that is harmful to juveniles or obscene. (R.C. 2907.01(Q).)

Disseminating matter harmful to juveniles--prohibition

Existing law. Existing law prohibits a person, with knowledge of its character or content, from recklessly doing any of the following: (1) directly selling, delivering, furnishing, disseminating, providing, exhibiting, renting, or presenting (see "**Meaning of "directly sell, deliver, furnish, etc. to a juvenile"**," below) to a juvenile, a group of juveniles, a law enforcement officer posing as a

juvenile, or a group of law enforcement officers posing as juveniles any "material" or "performance" that is "obscene" or "harmful to juveniles" (see "**Relevant definitions**," below, for definitions of the terms in quotation marks), (2) directly offering or agreeing to sell, deliver, furnish, disseminate, provide, exhibit, rent, or present (see "**Meaning of 'directly sell, deliver, furnish, etc., to a juvenile'**," below) to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles any material or performance that is obscene or harmful to juveniles, or (3) while in the physical proximity of the juvenile or law enforcement officer posing as a juvenile, allowing any juvenile or law enforcement officer posing as a juvenile to review or peruse any material or view any live performance that is harmful to juveniles (R.C. 2907.31(A)).

Operation of the bill. The bill expands the prohibition that constitutes the offense to also prohibit in specified circumstances the sale, delivery, furnishing, etc., of a prepaid adult entertainment card to one or more juveniles or one or more law enforcement officers posing as juveniles. Specifically, under the bill, in addition to the conduct it currently proscribes, the prohibition constituting the offense also prohibits a person, with knowledge of its character or content, from recklessly directly selling, delivering, furnishing, disseminating, providing, exhibiting, renting, or presenting (see "**Meaning of 'directly sell, deliver, furnish, etc., to a juvenile'**," below) a prepaid adult entertainment card to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles, or directly offering or agreeing to do so. (R.C. 2907.31(A)(4); see **COMMENT 1**.)

Disseminating matter harmful to juveniles--penalties

Existing law. Existing law specifies that a violation of the prohibition described above is the offense of "disseminating matter harmful to juveniles." If the material or performance involved is *harmful to juveniles*, except as otherwise described in this paragraph, a violation of the prohibition is a misdemeanor of the first degree. If the material or performance involved is *obscene*, except as otherwise described in this paragraph, a violation of the prohibition is a felony of the fifth degree. If the material or performance involved is *obscene and the juvenile* to whom it is sold, delivered, furnished, etc., the juvenile to whom the offer is made or who is the subject of the agreement, or the juvenile who is allowed to review, peruse, or view it *is under 13 years of age*, a violation of the prohibition is a felony of the fourth degree. (R.C. 2907.31(F).)

Operation of the bill. Under the bill, a violation of the expansion to the prohibition that is added by the bill, as described above, also is the offense of "disseminating matter harmful to juveniles." But the bill enacts a distinct penalty provision that applies to a person who commits the offense in violation of that

expansion to the prohibition. Under the bill, if a person is convicted of or pleads guilty to recklessly, with knowledge of the character or content of the card, directly selling, delivering, furnishing, disseminating, providing, exhibiting, renting, or presenting a prepaid adult entertainment card to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles, or directly offering or agreeing to do so, the offense is one of the following: (1) generally, a misdemeanor of the first degree, or (2) if the juvenile to whom the "prepaid entertainment card" is sold, delivered, furnished, etc., or the juvenile to whom the offer is made or who is the subject of the agreement, is under 13 years of age, a felony of the fifth degree. (R.C. 2907.31(F)(2).)

Meaning of "directly sell, deliver, furnish, etc., to a juvenile"

Existing law. Existing law provides that a person directly sells, delivers, furnishes, disseminates, provides, exhibits, rents, or presents or directly offers or agrees to sell, deliver, furnish, disseminate, provide, exhibit, rent, or present material or a performance to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles in violation of the prohibition constituting disseminating matter harmful to juveniles by means of an electronic method of remotely transmitting information if the person knows or has reason to believe that the person receiving the information is a juvenile or the persons in the group of persons receiving the information are juveniles.

However, a person remotely transmitting information by means of a method of mass distribution does not directly sell, deliver, furnish, etc., or directly offer or agree to sell, deliver, furnish, etc., the material or performance in question to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles in violation of the prohibition constituting the offense if either: the person has inadequate information to know or have reason to believe that a particular recipient of the information or offer is a juvenile; or the method of mass distribution does not provide the person the ability to prevent a particular recipient from receiving the information. (R.C. 2907.31(D).)

Operation of the bill. The bill expands both of the existing provisions described above that prescribe the meaning of "directly sell, deliver, furnish, etc., to a juvenile" so that the provisions also include a reference to prepaid entertainment cards. Under the bill, the provisions specify that (R.C. 2907.31(D)):

(1) A person directly sells, delivers, furnishes, etc., or directly offers or agrees to sell, deliver, furnish, etc., material, a performance, *or a prepaid adult entertainment card* to a juvenile, a group of juveniles, a law enforcement officer

posing as a juvenile, or a group of law enforcement officers posing as juveniles in violation of the prohibition constituting the offense by means of an electronic method of remotely transmitting information if the person knows or has reason to believe that the person receiving the information is a juvenile or the group of persons receiving the information are juveniles.

(2) A person remotely transmitting information by means of a method of mass distribution does not directly sell, deliver, furnish, etc., or directly offer or agree to sell, deliver, furnish, etc., the material, performance, *or card* in question to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles in violation of the prohibition described above if either: the person has inadequate information to know or have reason to believe that a particular recipient of the information or offer is a juvenile; or the method of mass distribution does not provide the person the ability to prevent a particular recipient from receiving the information.

Affirmative defenses--material or a performance that is harmful to juveniles but not obscene

Existing law. Existing law provides the following affirmative defenses to a charge under the prohibition constituting disseminating matter harmful to juveniles *that involves material or a performance that is harmful to juveniles but not obscene*: (1) the defendant is the parent, guardian, or spouse of the juvenile involved, (2) the juvenile involved, at the time of the conduct in question, was accompanied by the juvenile's parent or guardian who, with knowledge of its character, consented to the material or performance being furnished or presented to the juvenile, or (3) the juvenile exhibited to the defendant or to the defendant's agent or employee a draft card, driver's license, birth record, marriage license, or other official or apparently official document purporting to show that the juvenile was 18 years of age or over or married, and the person to whom that document was exhibited did not otherwise have reasonable cause to believe that the juvenile was under 18 and unmarried (R.C. 2907.31(B)).

Operation of the bill. The bill modifies the existing affirmative defenses regarding a charge under the prohibition constituting the offense *that involves material or a performance that is harmful to juveniles but not obscene* in the following ways (R.C. 2907.31(B)):

(1) In the introductory clause to the affirmative defenses, it adds language specifying that the affirmative defenses apply to a charge under the expanded new prohibition added by the bill that pertains to prepaid adult entertainment cards (see above); the added language does not limit the application of the affirmative defenses to the expanded new prohibition to circumstances in which the charge involves material or a performance that is harmful to juveniles but not obscene.

(2) In the portion of the affirmative defenses described in clause (2) of "Existing law," above, it adds new language that applies only regarding a charge under the expanded new prohibition added by the bill that pertains to prepaid adult entertainment cards. The new language added by the bill specifies that, regarding a charge under that expanded new prohibition, it is an affirmative defense that the juvenile involved, at the time of the conduct in question, was accompanied by the juvenile's parent or guardian and that parent or guardian, with knowledge of the purpose for which the card may be used, consented to the prepaid adult entertainment card being sold, delivered, furnished, disseminated, provided, exhibited, rented, or presented, or being offered or agreed to be sold, delivered, furnished, etc., to the juvenile.

(3) It does not change the portions of the affirmative defenses described in clauses (1) and (3) of "Existing law," above, but, as a result of the change it makes in the introductory clause to the affirmative defenses, as described above in (1), those portions of the affirmative defenses also apply to a charge under the expanded new prohibition added by the bill that pertains to prepaid adult entertainment cards.

Affirmative defense--material or a performance that is obscene or harmful to juveniles

Existing law. Existing law also provides that it is an affirmative defense to a charge under the prohibition constituting disseminating matter harmful to juveniles, *involving material or a performance that is obscene or harmful to juveniles*, that the material or performance was furnished or presented for a *bona fide* medical, scientific, educational, governmental, judicial, or other proper purpose, by a physician, psychologist, sociologist, scientist, teacher, librarian, clergyman, prosecutor, judge, or other proper person (R.C. 2907.31(C)(1)).

Operation of the bill. The bill expands the existing affirmative defense regarding a charge under the prohibition constituting the offense that involves material or a performance that is obscene or harmful to juveniles by specifying that the affirmative defense also applies to a charge under the expanded new prohibition added by the bill that pertains to prepaid adult entertainment cards. Thus, under the bill, the provision specifies that it is an affirmative defense to a charge under the existing portions of the prohibition involving material or a performance that is obscene or harmful to juveniles *or to a charge under the expanded new prohibition added by the bill that pertains to prepaid entertainment cards*, that the material, performance, *or card* was furnished or presented for a *bona fide* medical, scientific, educational, governmental, judicial, or other proper purpose, by a physician, psychologist, sociologist, scientist, teacher, librarian, clergyman, prosecutor, judge, or other proper person (R.C. 2907.31(C)(1)).

Mistake of age

Existing law, substantively unchanged by the bill specifies that, except as provided in clause (3) of "*Existing law*" under "*Affirmative defense--material or a performance that is harmful to juveniles but not obscene,*" mistake of age is not a defense to a charge under R.C. 2907.31 (R.C. 2907.31(C)(2)).

Severability

Existing law, unchanged by the bill, provides that, if any provision of R.C. 2907.31, or the application of any provision of that section to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the section or related sections that can be given effect without the invalid provision or application. To that end, the provisions are severable. (R.C. 2907.31(E).)

Relevant definitions

The following definitions, which apply to all of R.C. Chapter 2907., are relevant to the bill (except for "harmful to juveniles," "obscene," and "electronic communication," the definitions are existing definitions unchanged by the bill):

Harmful to juveniles. Under existing law, "harmful to juveniles" means that quality of any material or performance describing or representing nudity, sexual conduct, sexual excitement, or sado-masochistic abuse in any form to which all of the following apply: (1) the material or performance, when considered as a whole, appeals to the prurient interest in sex of juveniles, (2) the material or performance is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for juveniles, and (3) the material or performance, when considered as a whole, lacks serious literary, artistic, political, and scientific value for juveniles.

The bill modifies this definition so that it means that quality of *any electronic communication provided or accessed through a prepaid adult entertainment card*, any material, or any performance describing or representing nudity, sexual conduct, sexual excitement, or sado-masochistic abuse in any form to which all of the following apply: (1) the *electronic communication*, material, or performance, when considered as a whole, appeals to the prurient interest in sex of juveniles, (2) the *electronic communication*, material, or performance is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for juveniles, and (3) the *electronic communication*, material, or performance, when considered as a whole, lacks serious literary, artistic, political, and scientific value for juveniles. (R.C. 2907.01(E); see **COMMENT 2**.)

Obscene. Under existing law, when considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is "obscene" if any of the following apply: (1) its dominant appeal is to prurient interest, (2) its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement, or nudity in a way that tends to represent human beings as mere objects of sexual appetite, (3) its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality, (4) its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral, or artistic purpose, or (5) it contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is primarily for its own sake or for commercial exploitation, rather than primarily for a genuine scientific, educational, sociological, moral, or artistic purpose.

The bill modifies this definition so that it specifies that, when considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, *any electronic communication provided or accessed through a prepaid adult entertainment card*, any material, or any performance is "obscene" if any of the criteria described in clauses (1) to (5) of the preceding paragraph apply. (R.C. 2907.01(F); see **COMMENT 3**.)

Electronic communication means any material, performance, message, or information transferred, sent, posted, published, disseminated, or otherwise communicated, any material, performance, information, or data received, or any telecommunication made, through the use of an electronic method of remotely transferring information, including, but not limited to, a computer, computer network, computer program, computer system, or telecommunications device (R.C. 2907.01(R), added by the bill).

Computer means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses. "Computer" includes, but is not limited to, all input, output, processing, storage, computer program, or communication facilities that are connected, or related, in a computer system or network to an electronic device of that nature (R.C. 2907.01(S), by reference to existing R.C. 2913.01--not in the bill).

Computer network means a set of related and remotely connected computers and communication facilities that includes more than one computer system that has the capability to transmit among the connected computers and communication facilities through the use of computer facilities (R.C. 2907.01(S), by reference to existing R.C. 2913.01--not in the bill).

Computer program means an ordered set of data representing coded instructions or statements that, when executed by a computer, cause the computer to process data (R.C. 2907.01(S), by reference to existing R.C. 2913.01--not in the bill).

Computer system means a computer and related devices, whether connected or unconnected, including, but not limited to, data input, output, and storage devices, data communications links, and computer programs and data that make the system capable of performing specified special purpose data processing tasks (R.C. 2907.01(S), by reference to existing R.C. 2913.01--not in the bill).

Juvenile means an unmarried person under the age of 18 (R.C. 2907.01(I), unchanged by the bill).

Material means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, phonographic record, or tape, or other tangible thing capable of arousing interest through sight, sound, or touch and includes an image or text appearing on a computer monitor, television screen, liquid crystal display, or similar display device or an image or text recorded on a computer hard disk, computer floppy disk, compact disk, magnetic tape, or similar data storage device (R.C. 2907.01(J), unchanged by the bill).

Nudity means the showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than a full, opaque covering, or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state (R.C. 2907.01(H), unchanged by the bill).

Performance means any motion picture, preview, trailer, play, show, skit, dance, or other exhibition performed before an audience (R.C. 2907.01(K), unchanged by the bill).

Sexual activity means sexual conduct or sexual contact, or both (R.C. 2907.01(C), unchanged by the bill).

Sexual conduct means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or

any instrument, apparatus, or other object into the vaginal or anal cavity of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse. (R.C. 2907.01(A), unchanged by the bill.)

Sexual contact means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person (R.C. 2907.01(B), unchanged by the bill).

Sexual excitement means the condition of human male or female genitals when in a state of sexual stimulation or arousal (R.C. 2907.01(G), unchanged by the bill).

Sado-masochistic abuse means flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained (R.C. 2907.01(P), unchanged by the bill).

Telecommunication means the origination, emission, dissemination, transmission, or reception of data, images, signals, sounds, or other intelligence or equivalence of intelligence of any nature over any communications system by any method, including, but not limited to, a fiber optic, electronic, magnetic, optical, digital, or analog method (R.C. 2907.01(S), by reference to existing R.C. 2913.01--not in the bill).

Telecommunications device means any instrument, equipment, machine, or other device that facilitates telecommunication, including, but not limited to, a computer, computer network, computer chip, computer circuit, scanner, telephone, cellular telephone, pager, personal communications device, transponder, receiver, radio, modem, or device that enables the use of a modem (R.C. 2907.01(S), by reference to existing R.C. 2913.01--not in the bill).

Free public libraries--juvenile Internet access to obscene or harmful materials, patron Internet access to obscene materials, and juvenile borrowing of videos

Restriction on use of specified public moneys by the board of trustees of a free public library

The bill specifies that the board of library trustees of a "library" (see below) cannot use any state money it has received from any entity or any source, or any money it has received from any county library and local government support fund under R.C. Chapter 5705. (see **County library and local government support fund**," below), to purchase computers used to access the Internet or to pay for direct costs associated with accessing the Internet, unless all of the following apply: (1) the board has installed and has operational, subject to the



disable/override exception described in the next paragraph, a filtering device or filtering software that protects against Internet access to material that is "obscene" or "harmful to juveniles" (see below) on each computer located at the library that is accessible to "*juveniles*" (see below), (2) the board has installed and has operational, subject to the disable/override exception described in the next paragraph, a filtering device or filtering software that protects against Internet access to material that is obscene on each computer located at the library that is accessible to *any patron* of the library, and (3) the board has adopted and enforces a policy prohibiting a juvenile from borrowing from the library any video material unless a parent or guardian, after being notified that some video materials available for borrowing from the library might include materials that are harmful to juveniles, has given permission for the juvenile to borrow video materials (if permission of this nature is given by a parent or guardian to the library, it must be clearly noted on the library card or other identification documentation that has been issued to the juvenile; the notification to the parent required under this provision must be on the application for the library card or for the other identification documentation of the juvenile, if the parent is required to sign the application, or must be provided in any other manner the board determines to be appropriate). (R.C. 3375.351(B); see **COMMENT** 4 and 5.)

If a board of library trustees of a library installs and has operational a filtering device or filtering software on computers located at the library in accordance with the provisions described in clauses (1) and (2) of the preceding paragraph, upon the request of any person, any administrator, supervisor, or other official or employee of the library may disable or override the device or software on a particular computer to enable the person to have full access to that computer for *bona fide* research, medical, scientific, educational, governmental, judicial, or other lawful purposes. If the person making the request is 18 years of age or older, the person is not required to explain, and cannot be asked to explain, the reason or purpose for which the person is requesting full access to the computer. (R.C. 3375.351(C).)

The bill states that nothing in the two preceding paragraphs limits, restricts, or prohibits a board of library trustees of a library, or any administrator, supervisor, or other official or employee of a library, from regulating, limiting, restricting, or prohibiting any person from having access while at the library, on the Internet or in any other manner, to material other than material that is obscene or harmful to juveniles (R.C. 3375.351(D)).

The bill provides that the restrictions described above regarding use of public moneys and juvenile Internet access to obscene and harmful material, patron Internet access to obscene material, and juvenile borrowing of videos apply to boards of library trustees 180 days after the bill's effective date (Section 3(A)).

As used in these provisions (R.C. 3375.351(A)): (1) "harmful to juveniles" and "material" have the same meanings as set forth above in "**Relevant definitions**," (2) "juvenile" means an unmarried person under 18 years of age, (3) "library" means *a free public library*, including both a library that is maintained and regulated under R.C. 715.13 and a library that is created, maintained, and regulated under R.C. Chapter 3375. (see **COMMENT 6**), and (4) "obscene" has the same meaning as set forth above in "**Relevant definitions**," as that provision has been construed by the Ohio Supreme Court.

Restriction on distribution of state money to a board of public library trustees

The bill prohibits any entity from distributing any state money from any source to a "board of public library trustees" unless it has received a resolution from the board stating that "the library" has complied with and will continue to comply with the restrictions the bill enacts regarding use of public moneys and juvenile Internet access to obscene or harmful material, patron Internet access to obscene material, and juvenile borrowing of videos, as described above in "**Restriction on use of specified public moneys by the board of trustees of a free public library**" (R.C. 3375.352).

The bill specifies that the provisions described in the preceding paragraph apply to the distribution of state money beginning 180 days after the bill's effective date (Section 3(B)).

County library and local government support fund

Existing law provides mechanisms that govern county budget commissions in their distribution of the county library and local government support fund to eligible entities, including boards of public library trustees (R.C. 5705.32 and 5705.321, not in the bill).

Existing law also provides that the board of trustees of any public library desiring to participate in the distribution of the county library and local government support fund must adopt appropriate rules extending the benefits of the library service of the library to all the inhabitants of the county on equal terms, unless such library service is by law available to all such inhabitants, and must certify a copy of the rules so adopted to the taxing authority with its estimate of contemplated revenue and expenditures. Where the rules have been so certified or where the adoption of such rules is not required, the taxing authority must include in its budget of receipts such amounts as are specified by the board as contemplated revenue from the county library and local government support fund, and in its budget of expenditures the full amounts requested therefrom by the board. No library association, incorporated or unincorporated, is entitled to

participate in the proceeds of the county library and local government support fund or other public funds unless the association was organized and operating prior to January 1, 1968. (R.C. 5705.28(D)--not in the bill.)

The bill does not change these provisions. However, as stated above in "*Restriction on the use of specified public moneys by the board of trustees of a free public library*," the bill's restrictions on the use of public moneys by a board of library trustees that are described in that portion of the analysis apply regarding the use of money a board of library trustees receives from any county library and local government support fund. (R.C. 3375.351.)

COMMENT

1. The bill's provisions expanding the offense of disseminating matter harmful to juveniles may raise Constitutional questions regarding freedom of speech and interstate commerce.

2. The bill modifies the definition of "harmful to juveniles," as it applies for use throughout R.C. Chapter 2907. The effect of that change on the offense of "disseminating matter harmful to juveniles" is described in the **CONTENT AND OPERATION** portion of this analysis. The phrase "harmful to juveniles" is used in three other sections contained in R.C. Chapter 2907. and, thus, the definition of the phrase as modified by the bill also applies to those sections. All of the sections use the phrase only in the context of *material* that is harmful to juveniles or a *performance* that is harmful to juveniles. The three sections are: (a) R.C. 2907.311, which sets forth the offense of "displaying matter harmful to juveniles"--it prohibits certain conduct that relates to the *display of material* that is harmful to juveniles, (b) R.C. 2907.33, which sets forth the offense of "deception to obtain matter harmful to juveniles"--it prohibits certain conduct that relates to a juvenile *obtaining or attempting to obtain material, or gaining or attempting to gain admission to a performance*, that is harmful to juveniles, and (c) R.C. 2907.36, which sets forth rules and procedures regarding the bringing of a declaratory judgment action by specified persons to determine whether *particular materials or performances* are harmful to juveniles.

3. The bill modifies the definition of the term "obscene," as it applies for use throughout R.C. Chapter 2907. The effect of that change on the offense of "disseminating matter harmful to juveniles" is described in the **CONTENT AND OPERATION** portion of this analysis. The term "obscene" is used in four other sections contained in R.C. Chapter 2907. and, thus, the definition of the term as modified by the bill also applies to those sections. All of the sections use the term only in the context of *material* that is obscene or a *performance* that is obscene. The four sections are: (a) R.C. 2907.32, which sets forth the offense of "pandering

obscenity"--it prohibits certain conduct that relates to the *creation, production, promotion, advertisement, purchase, possession, or control, etc., of any obscene material or performance*, (b) R.C. 2907.321, which sets forth the offense of "pandering obscenity involving a minor"--it prohibits certain conduct that relates to the *creation, production, promotion, advertisement, purchase, possession, control, or transportation into Ohio, etc., of any obscene material or performance* that involves, in any of a list of specified manners, a minor, (c) R.C. 2907.34, which sets forth the offense of "compelling acceptance of objectionable materials"--it prohibits certain *conduct related to material* reasonably believed to be obscene, and (d) R.C. 2907.36, which sets forth rules and procedures regarding the bringing of a declaratory judgment action by specified persons to determine whether *particular materials or performances* are obscene.

4. The bill's provisions restricting the use of public moneys by libraries to purchase computers used to access the Internet or to pay for direct costs associated with accessing the Internet unless they install and have operational the specified filtering devices or filtering software and have adopted and enforce the specified juvenile video borrowing policy may raise Constitutional questions regarding freedom of speech, interstate commerce, and the right of privacy. However, it is important to note that the U.S. Supreme Court recently upheld a federal law (the Children's Internet Protection Act, or CIPA) that forbids public libraries from receiving federal assistance for Internet access unless they install software to block obscene or pornographic images and to prevent minors from accessing material harmful to them. *United States v. American Library Association* (2003), 539 U.S. 194. When Congress passed CIPA, a group of libraries, patrons, Web site publishers, and related parties sued, challenging the constitutionality of CIPA's filtering provisions. The federal district court ruled that CIPA was facially unconstitutional and enjoined the government from withholding federal assistance for failure to comply with CIPA, holding that: (a) Congress had exceeded its authority under the U.S. Constitution's Spending Clause because any public library that complied with CIPA's conditions would necessarily violate the First Amendment, (b) CIPA filtering software constituted a content-based restriction on access to a public forum that was subject to strict scrutiny, and (c) although the government had a compelling interest in preventing the dissemination of obscenity, child pornography, or material harmful to minors, the use of software filters was not narrowly tailored to further that interest. The government appealed to the Supreme Court. The Supreme Court reversed the judgment of the district court, thereby upholding CIPA (six members of the court agreed in the judgment, and wrote three separate opinions).

5. Section 66 of Am. Sub. H.B. 95 of the 125th General Assembly (the biennial appropriations bill for the current state fiscal biennium--not in the bill) contains appropriations to the State Library Board for various purposes. It also

contains descriptive language regarding the use of some of those appropriations, including the following language that is relevant to the bill (emphasis added):

OHIO PUBLIC LIBRARY INFORMATION NETWORK

The foregoing appropriation items 350-604, OPLIN Technology, and, in fiscal year 2005, 350-400, Ohio Public Library Information Network, shall be used for an information telecommunications network linking public libraries in the state and such others as may be certified as participants by the Ohio Public Library Information Network Board.

The Ohio Public Library Information Network Board shall consist of eleven members appointed by the State Library Board from among the staff of public libraries and past and present members of boards of trustees of public libraries, based on the recommendations of the Ohio library community. The Ohio Public Library Information Network Board, in consultation with the State Library, shall develop a plan of operations for the network. The board may make decisions regarding use of the foregoing OPLIN appropriation items 350-604 and may receive and expend grants to carry out the operations of the network in accordance with state law and the authority to appoint and fix the compensation of a director and necessary staff. The State Library shall be the fiscal agent for the network and shall have fiscal accountability for the expenditure of funds. The Ohio Public Library Information Network Board members shall be reimbursed for actual travel and necessary expenses incurred in carrying out their responsibilities.

In order to limit access to obscene and illegal materials through internet use at Ohio Public Library Information Network (OPLIN) terminals, local libraries with OPLIN computer terminals shall adopt policies that control access to obscene and illegal materials. These policies may include use of technological systems to select or block certain internet access. The OPLIN shall condition provision of its funds, goods, and services on compliance with

these policies. The OPLIN Board shall also adopt and communicate specific recommendations to local libraries on methods to control such improper usage. These methods may include each library implementing a written policy controlling such improper use of library terminals and requirements for parental involvement or written authorization for juvenile internet usage.

The OPLIN Board shall research and assist or advise local libraries with regard to emerging technologies and methods that may be effective means to control access to obscene and illegal materials. The OPLIN Executive Director shall biannually provide written reports to the Governor, the Speaker and Minority Leader of the House of Representatives, and the President and Minority Leader of the Senate on any steps being taken by OPLIN and public libraries in the state to limit and control such improper usage as well as information on technological, legal, and law enforcement trends nationally and internationally affecting this area of public access and service.

The Ohio Public Library Information Network, InfOhio, and OhioLink shall, to the extent feasible, coordinate and cooperate in their purchase or other acquisition of the use of electronic databases for their respective users and shall contribute funds in an equitable manner to such effort.

6. Existing R.C. 715.13, not in the bill, permits any municipal corporation to maintain and regulate free public libraries established by the municipal corporation prior to September 4, 1947. Existing R.C. Chapter 3375. includes comprehensive provisions for the creation, maintenance, and regulation of public libraries, including county free public libraries, free township libraries, municipal free public libraries, school libraries for pupils, school district public libraries, county library district libraries, regional library district libraries, and certain law libraries of counties.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	11-07-03	p. 1152
Reported, S. Judiciary	---	---

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