S T A T E O F N E W Y O R K

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I N A S S E M B L Y

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Introduced by M. of A. ERRIGO, ALFANO, BURLING, DUPREY, KOLB, McDONOUGH, TOBACCO, WALKER, FINCH -- Multi-Sponsored by -- M. of A. BARCLAY, BARRA, CROUCH, HAWLEY, JORDAN, McKEVITT, MOLINARO, QUINN, SPANO, THIELE, TOWNSEND -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, the education law and the public service law, in relation to creating the internet protection act; and repealing certain provisions of the penal law relating to disseminating indecent material to minors in the first degree

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "internet protection act".

S 2. Section 235.20 of the penal law is amended by adding five new subdivisions 8, 9, 10, 11 and 12 to read as follows:

8. "INTERNET" MEANS A MATRIX OF NETWORKS THAT CONNECTS COMPUTERS AROUND THE WORLD.

9. "SEXUALLY EXPLICIT MATTER" MEANS SEXUALLY EXPLICIT VISUAL MATERIAL, SEXUALLY EXPLICIT VERBAL MATERIAL, OR SEXUALLY EXPLICIT PERFORMANCE.

10. "SEXUALLY EXPLICIT PERFORMANCE" MEANS A MOTION PICTURE, EXHIBITION, SHOW, REPRESENTATION, OR OTHER PRESENTATION THAT, IN WHOLE OR IN PART, DEPICTS NUDITY, SEXUAL EXCITEMENT, EROTIC FONDLING, SEXUAL INTERCOURSE, OR SADOMASOCHISTIC ABUSE. SEXUALLY EXPLICIT PERFORMANCE INCLUDES, BUT IS NOT LIMITED TO, ANY PERFORMANCE DESCRIBED IN THIS SUBDIVISION COMMUNICATED, TRANSMITTED, DISPLAYED, OR OTHERWISE MADE AVAILABLE BY MEANS OF THE INTERNET OR A COMPUTER OR ACCESS SOFTWARE.

11. "SEXUALLY EXPLICIT VERBAL MATERIAL" MEANS ANY BOOK, PAMPHLET, MAGAZINE, PRINTED MATTER REPRODUCED IN ANY MANNER, OR SOUND RECORDING THAT CONTAINS AN EXPLICIT AND DETAILED VERBAL DESCRIPTION OR NARRATIVE ACCOUNT OF SEXUAL EXCITEMENT, EROTIC FONDLING, SEXUAL INTERCOURSE, OR SADOMASOCHISTIC ABUSE. SEXUALLY EXPLICIT VERBAL MATERIAL INCLUDES, BUT IS NOT LIMITED TO, ANY VERBAL MATERIAL DESCRIBED IN THIS SUBDIVISION

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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COMMUNICATED, TRANSMITTED, DISPLAYED, OR OTHERWISE MADE AVAILABLE BY MEANS OF THE INTERNET OR A COMPUTER OR COMPUTER ACCESS SOFTWARE.

12. "SEXUALLY EXPLICIT VISUAL MATERIAL" MEANS A PICTURE, PHOTOGRAPH, DRAWING, SCULPTURE, MOTION PICTURE FILM, OR SIMILAR VISUAL REPRESENTATION THAT DEPICTS NUDITY, SEXUAL EXCITEMENT, EROTIC FONDLING, SEXUAL INTERCOURSE, OR SADOMASOCHISTIC ABUSE, OR A BOOK, MAGAZINE, OR PAMPHLET THAT CONTAINS SUCH A VISUAL REPRESENTATION. AN UNDEVELOPED PHOTOGRAPH, MOLD OR SIMILAR VISUAL MATERIAL MAY BE SEXUALLY EXPLICIT MATERIAL NOTWITHSTANDING THAT PROCESSING OR OTHER ACTS MAY BE REQUIRED TO MAKE ITS SEXUALLY EXPLICIT CONTENT APPARENT. SEXUALLY EXPLICIT VISUAL MATERIAL INCLUDES, BUT IS NOT LIMITED TO, ANY VISUAL MATERIAL DESCRIBED IN THIS SUBDIVISION COMMUNICATED, TRANSMITTED, DISPLAYED, OR OTHERWISE MADE AVAILABLE BY MEANS OF THE INTERNET OR A COMPUTER OR COMPUTER ACCESS SOFTWARE.

S 3. Section 235.22 of the penal law is REPEALED and a new section 235.22 is added to read as follows:

S 235.22 DISSEMINATING INDECENT MATERIAL TO A MINOR IN THE FIRST DEGREE.

1. A PERSON IS GUILTY OF DISSEMINATING INDECENT MATERIAL TO A MINOR IN THE FIRST DEGREE WHEN SUCH PERSON:

(A) KNOWINGLY DISSEMINATES OR EXHIBITS TO A MINOR SEXUALLY EXPLICIT VISUAL OR VERBAL MATERIAL THAT IS HARMFUL TO MINORS DEPICTING ACTUAL OR SIMULATED NUDITY, SEXUAL CONDUCT OR SADOMASOCHISTIC ABUSE; AND

(B) BY MEANS OF SUCH DISSEMINATION OR EXHIBITION SUCH PERSON IMPORTUNES, INVITES OR INDUCES A MINOR TO ENGAGE IN SEXUAL INTERCOURSE OR SEXUAL CONTACT WITH SUCH PERSON, OR TO ENGAGE IN A SEXUAL PERFORMANCE, OBSCENE SEXUAL PERFORMANCE, OR SEXUAL CONDUCT FOR SUCH PERSON'S BENEFIT.

2. A PERSON KNOWINGLY DISSEMINATES INDECENT MATERIAL TO A MINOR IF THE PERSON KNOWS, IN WHOLE OR IN PART, BOTH THE NATURE OF THE MATTER AND THE STATUS OF THE MINOR TO WHOM THE MATTER IS DISSEMINATED.

3. EXCEPT AS PROVIDED IN SUBDIVISION SIX OF THIS SECTION, A PERSON KNOWS THE NATURE OF THE MATTER IF THE PERSON EITHER IS AWARE OF ITS CHARACTER AND CONTENT OR RECKLESSLY DISREGARDS CIRCUMSTANCES SUGGESTING ITS CHARACTER AND CONTENT.

4. EXCEPT AS PROVIDED IN SUBDIVISION SIX OF THIS SECTION, A PERSON KNOWS THE STATUS OF A MINOR IF THE PERSON EITHER IS AWARE THAT THE PERSON TO WHOM THE DISSEMINATION IS MADE IS UNDER EIGHTEEN YEARS OF AGE OR RECKLESSLY DISREGARDS A SUBSTANTIAL RISK THAT THE PERSON TO WHOM THE DISSEMINATION IS MADE IS UNDER EIGHTEEN YEARS OF AGE.

5. SUBDIVISIONS THREE AND FOUR OF THIS SECTION DO NOT APPLY TO AN INTERNET OR COMPUTER NETWORK SERVICE PROVIDER WHO IN GOOD FAITH, AND WITHOUT KNOWLEDGE OF THE NATURE OF THE INDECENT MATERIAL OR THE STATUS OF A MINOR, PROVIDES THE MEDIUM FOR DISSEMINATING INDECENT MATERIAL TO THE MINOR.

6. A VIOLATION OR ATTEMPTED VIOLATION OF THIS SECTION INVOLVING THE INTERNET OR A COMPUTER, COMPUTER PROGRAM, COMPUTER SYSTEM, OR COMPUTER NETWORK OCCURS IF THE VIOLATION ORIGINATES, TERMINATES, OR BOTH ORIGINATES AND TERMINATES IN THIS STATE.

7. A VIOLATION OR ATTEMPTED VIOLATION OF THIS SECTION INVOLVING THE INTERNET OR A COMPUTER, COMPUTER PROGRAM, COMPUTER SYSTEM, OR COMPUTER NETWORK MAY BE PROSECUTED IN ANY JURISDICTION IN WHICH THE VIOLATION ORIGINATED OR TERMINATED.

8. THIS SECTION DOES NOT APPLY TO THE DISSEMINATION OF INDECENT MATERIAL TO A MINOR BY ANY OF THE FOLLOWING:

(A) A PARENT OR GUARDIAN WHO DISSEMINATES INDECENT MATERIAL TO HIS OR HER CHILD OR WARD.

(B) A TEACHER OR ADMINISTRATOR AT A PUBLIC OR PRIVATE ELEMENTARY OR SECONDARY SCHOOL, AND WHO DISSEMINATES INDECENT MATERIAL TO A STUDENT AS PART OF A SCHOOL PROGRAM PERMITTED BY LAW.

(C) A LICENSED PHYSICIAN OR LICENSED PSYCHOLOGIST WHO DISSEMINATES INDECENT MATERIAL IN THE TREATMENT OF A PATIENT.

(D) A LIBRARIAN EMPLOYED BY A LIBRARY OF A PUBLIC OR PRIVATE ELEMENTARY OR SECONDARY SCHOOL OR A LIBRARIAN EMPLOYED BY A PUBLIC LIBRARY AND WHO DISSEMINATES INDECENT MATERIAL IN THE COURSE OF THAT PERSON'S EMPLOYMENT.

(E) ANY PUBLIC OR PRIVATE COLLEGE OR UNIVERSITY OR ANY OTHER PERSON WHO DISSEMINATES INDECENT MATERIAL FOR A LEGITIMATE MEDICAL, SCIENTIFIC, GOVERNMENTAL, OR JUDICIAL PURPOSE.

(F) A PERSON WHO DISSEMINATES INDECENT MATERIAL THAT IS A PUBLIC DOCUMENT, PUBLICATION, RECORD, OR OTHER MATERIAL ISSUED BY A STATE, LOCAL, OR FEDERAL OFFICIAL, DEPARTMENT, BOARD, COMMISSION, AGENCY, OR OTHER GOVERNMENTAL ENTITY, OR AN ACCURATE REPUBLICATION OF SUCH A PUBLIC DOCUMENT, PUBLICATION, RECORD, OR OTHER MATERIAL.

DISSEMINATING INDECENT MATERIAL TO A MINOR IN THE FIRST DEGREE IS A CLASS D FELONY.

S 4. The penal law is amended by adding a new section 235.25 to read as follows:

S 235.25 DISPLAYING SEXUALLY EXPLICIT MATTER TO MINORS.

1. A PERSON IS GUILTY OF DISPLAYING SEXUALLY EXPLICIT MATTER TO A MINOR IF THAT PERSON POSSESSES MANAGERIAL RESPONSIBILITY FOR A BUSINESS ENTERPRISE SELLING VISUAL MATTER THAT DEPICTS SEXUAL INTERCOURSE OR SADOMASOCHISTIC ABUSE AND IS HARMFUL TO MINORS, AND THAT PERSON KNOWINGLY PERMITS A MINOR WHO IS NOT ACCOMPANIED BY A PARENT OR GUARDIAN TO EXAMINE THAT MATTER.

2. A PERSON KNOWINGLY PERMITS A MINOR TO EXAMINE VISUAL MATTER THAT DEPICTS SEXUAL INTERCOURSE OR SADOMASOCHISTIC ABUSE AND IS HARMFUL TO MINORS IF THE PERSON KNOWS BOTH THE NATURE OF THE MATTER AND THE STATUS OF THE MINOR PERMITTED TO EXAMINE THE MATTER.

3. A PERSON KNOWS THE NATURE OF THE MATTER IF THE PERSON EITHER IS AWARE OF ITS CHARACTER AND CONTENT OR RECKLESSLY DISREGARDS CIRCUMSTANCES SUGGESTING ITS CHARACTER AND CONTENT.

4. A PERSON KNOWS THE STATUS OF A MINOR IF THE PERSON EITHER IS AWARE THAT THE PERSON WHO IS PERMITTED TO EXAMINE THE MATTER IS UNDER EIGHTEEN YEARS OF AGE OR RECKLESSLY DISREGARDS A SUBSTANTIAL RISK THAT THE PERSON WHO IS PERMITTED TO EXAMINE THE MATTER IS UNDER EIGHTEEN YEARS OF AGE.

DISPLAYING SEXUALLY EXPLICIT MATTER TO A MINOR IS A CLASS B MISDEMEANOR.

S 5. Section 263.00 of the penal law is amended by adding a new subdivision 9 to read as follows:

9. "INTERNET" MEANS A MATRIX OF NETWORKS THAT CONNECTS COMPUTERS AROUND THE WORLD.

S 6. The penal law is amended by adding a new section 263.17 to read as follows:

S 263.17 USE OF THE INTERNET.

A PERSON SHALL NOT USE THE INTERNET TO COMMUNICATE WITH A CHILD FOR THE PURPOSE OF COMMITTING ANY CRIME DEFINED IN THIS ARTICLE.

USE OF THE INTERNET FOR THE COMMISSION OF SUCH CRIMES IS A CLASS C FELONY.

S 7. Subdivision 2 of section 253 of the education law is amended to read as follows:

2. The term "public" library as used in this chapter shall be construed to mean a library, [other than professional, technical or

public school library, established for free public purposes by official action of a municipality or district or the legislature, where the whole interests belong to the public] ESTABLISHED BY THE STATE; COUNTY, CITY, TOWNSHIP, VILLAGE, SCHOOL DISTRICT OR OTHER LOCAL UNIT OF GOVERNMENT OR AUTHORITY OR COMBINATION OF LOCAL UNITS OF GOVERNMENTS AND AUTHORITIES; A COMMUNITY COLLEGE DISTRICT; A COLLEGE OR UNIVERSITY; OR ANY PRIVATE LIBRARIES OPEN TO THE PUBLIC; the term "association" library shall be construed to mean a library established and controlled, in whole or in part, by a group of private individuals operating as an association, closed corporation or as trustees under the provisions of a will or deed of trust; and the term "free" as applied to a library shall be construed to mean a library maintained for the benefit and free use on equal terms of all the people of the community in which the library is located.

S 8. The education law is amended by adding a new section 253-a to read as follows:

S 253-A. INTERNET ACCESS IN A PUBLIC LIBRARY. 1. AS USED IN THIS SECTION THE TERM "INTERNET" MEANS A MATRIX OF NETWORKS THAT CONNECTS COMPUTERS AROUND THE WORLD.

2. IF A PUBLIC LIBRARY OFFERS INTERNET ACCESS SERVICES TO THE PUBLIC, THE GOVERNING BODY OF THAT LIBRARY IS MANDATED TO REQUIRE SUCH LIBRARY RESTRICT ACCESS TO MINORS BY PROVIDING THE INTERNET ACCESS SERVICES IN THE FOLLOWING MANNER:

(A) BY MAKING AVAILABLE, TO PERSONS OF ANY AGE, ONE OR MORE INTERNET ACCESS COMPUTER TERMINALS THAT ARE RESTRICTED FROM RECEIVING OBSCENE OR PORNOGRAPHIC MATERIAL; OR

(B) BY RESERVING, TO PERSONS EIGHTEEN YEARS OF AGE OR OLDER OR TO PERSONS UNDER THE AGE OF EIGHTEEN YEARS THAT ARE ACCOMPANIED BY THE PERSON'S PARENT OR GUARDIAN, ONE OR MORE INTERNET ACCESS COMPUTER TERMINALS THAT ARE NOT RESTRICTED FROM RECEIVING ANY MATERIAL.

S 9. Paragraph h of subdivision 1 of section 272 of the education law, as amended by chapter 787 of the laws of 1978, is amended to read as follows:

h. (1) The commissioner shall by regulation provide the standard of service with which such a public library system must comply. Such regulations shall, among other things, relate to the total book stock; the diversity of such book stock with respect to general subjects and type of literature, provided that such regulations shall not, directly or indirectly, prohibit the inclusion of a particular book, periodical or material or the works of a particular author or the expression of a particular point of view; annual additions to book stock; circulation of book stock; maintenance of catalogues; number and location of libraries or branch libraries; hours of operation and number and qualifications of personnel, necessary to enable a public library system to render adequate service. Such regulations may establish standards which differ on the basis of population; density of population; the actual valuation of the taxable property within the area served; the condition of library facilities in existence on April first, nineteen hundred fifty-seven; the amount raised by taxation by or for the area served; the relation of such amount to population and actual value of the property taxed; the relation of the amount of funds received by a public library system from local taxes to that derived from private contributions; or on such other basis as the commissioner finds necessary to provide for the equitable distribution of state aid.

(2) SUCH REGULATIONS SHALL ALSO INCLUDE THE FOLLOWING PROVISIONS PERTAINING TO INTERNET USE.

(I) EACH PUBLIC LIBRARY SHALL DEVELOP A POLICY FOR ACCEPTABLE INTERNET USE BY ITS PATRONS. EACH PUBLIC LIBRARY SHALL, AS PART OF SUCH POLICY, ADOPT AND IMPLEMENT MEASURES TO RESTRICT THE ACCESS OF MINORS, AS SUCH TERM IS DEFINED IN SUBDIVISION ONE OF SECTION 235.20 OF THE PENAL LAW, TO MATERIAL THAT IS OBSCENE, AS SUCH TERM IS DEFINED IN SUBDIVISION ONE OF SECTION 235.00 OF THE PENAL LAW, OR THAT IS HARMFUL TO MINORS, AS SUCH TERM IS DEFINED IN SUBDIVISION SIX OF SECTION 235.20 OF THE PENAL LAW, USING ANY COMPUTER EQUIPMENT OR SERVICE AVAILABLE FOR PUBLIC USE.

(II) NOTICE OF SUCH POLICY SHALL BE POSTED WITHIN THE PUBLIC LIBRARY AT VARIOUS PLACES, INCLUDING ALL INTERNET ACCESS POINTS. COPIES OF SUCH POLICY SHALL BE MADE AVAILABLE TO ALL PATRONS.

(III) NO PUBLIC LIBRARY SHALL PERMIT ANY CHILD UNDER THE AGE OF SEVENTEEN YEARS TO USE AN INTERNET ACCESS TERMINAL WITHOUT THE PRIOR, WRITTEN CONSENT OF SUCH CHILD'S PARENT OR GUARDIAN. SUCH CONSENT FORM SHALL STATE THAT THE PARENT OR GUARDIAN AND THE CHILD HAVE REVIEWED THE POLICY AND AGREE TO ABIDE BY IT.

(IV) IN ANY PUBLIC LIBRARY HAVING MULTIPLE INTERNET ACCESS TERMINALS, ONE OR MORE TERMINALS SHALL BE SEGREGATED FROM THE OTHERS AND DEDICATED FOR USE BY CHILDREN.

S 10. Subdivision 3 of section 751 of the education law, as amended by section 4 of part A of chapter 436 of the laws of 1997, is amended and a new subdivision 5 is added to read as follows:

3. No school district shall be required to purchase or otherwise acquire software programs, the cost of which shall exceed an amount equal to the software factor multiplied by the sum of the public school district enrollment and the nonpublic school enrollment in the base year as defined in subparagraphs two and three of paragraph n of subdivision one of section thirty-six hundred two of this chapter UNLESS SUCH SCHOOL DISTRICT IS REQUIRED TO PURCHASE COMPUTER PROGRAMS OR OTHER SYSTEMS APPROVED BY THE PUBLIC SERVICE COMMISSION TO FILTER OR BLOCK MATERIAL THAT IS HARMFUL TO MINORS, AS DEFINED IN SECTION 235.20 OF THE PENAL LAW, PURSUANT TO REGULATIONS PROMULGATED BY THE PUBLIC SERVICE COMMISSION AS AUTHORIZED BY SECTION NINETY-TWO-G OF THE PUBLIC SERVICE LAW.

5. A SCHOOL DISTRICT RECEIVING AID UNDER THIS SECTION MUST COMPLY WITH REGULATIONS PROMULGATED BY THE PUBLIC SERVICE COMMISSION PURSUANT TO SECTION NINETY-TWO-G OF THE PUBLIC SERVICE LAW.

S 11. The public service law is amended by adding a new section 92-g to read as follows:

S 92-G. INFORMATION NETWORKS; CERTAIN MATERIAL TO BE FILTERED OR BLOCKED. THE COMMISSION SHALL BE AUTHORIZED TO PROMULGATE REGULATIONS REQUIRING PUBLIC LIBRARIES AND PUBLIC SCHOOLS WHICH UTILIZE TELECOMMUNICATIONS, COMPUTER, DATA, THE INTERNET, AND INFORMATION SYSTEMS, TO UTILIZE COMPUTER PROGRAMS OR OTHER SYSTEMS APPROVED BY THE COMMISSION TO FILTER OR BLOCK MATTER THAT IS DEFINED AS HARMFUL TO MINORS UNDER SECTION 235.20 OF THE PENAL LAW. THE INTERNET SHALL BE DEFINED AS AN INTERNATIONAL COMPUTER NETWORK OF BOTH FEDERAL AND NON-FEDERAL INTEROPERABLE PACKET SWITCHED DATA NETWORKS WHICH USERS MAY ACCESS THROUGH A SERVICE PROVIDER.

S 12. This act shall take effect immediately; provided, however, that sections two, three, four, five and six of this act shall take effect on the first of November next succeeding the date on which it shall have become a law and that any regulations authorized by this act are directed to be adopted or completed 180 days after this act shall have become a law.