

Senate File 2177 - Introduced

SENATE FILE 2177

BY SALMON

A BILL FOR

1 An Act relating to policies and protection measures a library
2 provider or third party contracting with a library provider
3 must take if the library provider or third party offers
4 digital library services.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. **73B.1 Definitions.**

2 For purposes of this chapter:

3 1. "*Child pornography*" means the same as defined in 18 U.S.C.
4 §2556.

5 2. "*Controlled substance*" means the same as defined in
6 section 124.101.

7 3. "*Digital library service*" means a service that provides
8 access to digital content enabling users to find, retrieve,
9 and use library functions including but not limited to book
10 checkouts, online searches of databases, access to online
11 portals, and remote access to learning and research tools.

12 4. "*Hard-core pornography*" means the same as described in
13 section 728.4.

14 5. "*Library provider*" means the state, a state agency, a city
15 that has established a library by ordinance, a library district,
16 a public school, or a nonpublic school.

17 6. "*Minor*" means an individual who is under eighteen years
18 of age, or who is a student enrolled at a public school or a
19 nonpublic school.

20 7. "*Nonpublic school*" means the same as defined in section
21 280.2.

22 8. "*Obscene material*" means the same as defined in section
23 728.1.

24 9. "*Public school*" means the same as defined in section
25 280.2.

26 10. "*Service provider*" means all of the following:

27 a. An internet service provider.

28 b. An affiliate or subsidiary of an internet service
29 provider.

30 c. A business operating a search engine.

31 d. A business offering cloud computing products or services.

32 11. "*Visual depiction of a minor*" means the same as defined
33 in section 728.12.

34 Sec. 2. NEW SECTION. **73B.2 Digital library services**
35 **restrictions.**

1 1. A library provider shall not offer a digital library
2 service to a minor unless the library provider adopts policies
3 and protection measures that block, prohibit, and prevent a
4 minor from sending, receiving, viewing, or downloading child
5 pornography, hard-core pornography, obscene material, materials
6 that relate to the use of a controlled substance, and visual
7 depictions of a minor.

8 2. If a library provider contracts with a third party to
9 offer digital library services, the third party shall adopt
10 policies and measures as if the third party is a library
11 provider, and the library provider contracting with the third
12 party shall ensure the contract contains all of the following:

13 a. A clause that allows the library provider to withhold
14 payments without penalty if the third party fails to comply with
15 this section.

16 b. (1) (a) A clause that states a third party's failure to
17 comply with this section for thirty consecutive calendar days is
18 a breach of contract.

19 (b) A clause that requires the third party to reduce the
20 amount the library provider owes for the contract by ten percent
21 of the contract's total value if the third party fails to
22 comply with this section for thirty consecutive calendar days
23 and the third party has previously failed under the contract to
24 comply with this section. If the library provider owes less
25 than ten percent of the contract's total value, the third party
26 shall waive further payment and return an amount equal to the
27 difference between the waived payments and ten percent of the
28 contract's total value to the library provider.

29 (c) A clause that requires the contract to terminate and
30 for the third party to refund all paid amounts to the library
31 provider if the third party fails to comply with this section
32 for thirty consecutive calendar days and the third party has
33 previously failed under the contract to comply with this section
34 two or more times.

35 (2) Prior to withholding any payment under subparagraph (1),

1 a library provider shall provide all of the following to the
2 third party:

3 (a) Written notice of the violation, including the nature
4 of the noncompliance; identification of the child pornography,
5 hard-core pornography, obscene material, materials that relate
6 to the use of a controlled substance, or visual depiction of
7 a minor; and how the child pornography, hard-core pornography,
8 obscene material, materials that relate to the use of a
9 controlled substance, or visual depiction of a minor was
10 accessed.

11 (b) Thirty consecutive calendar days from the date the
12 library provider provided written notice of the third party's
13 noncompliance for the third party to present evidence that the
14 third party is compliant or to cure the noncompliance.

15 (c) After thirty consecutive calendar days from the date the
16 library provider provided written notice of the third party's
17 noncompliance, the opportunity for the third party to seek
18 judicial determination of the third party's contractual rights in
19 a court of competent jurisdiction.

20 3. A library provider shall report a third party's failure
21 to comply with this section to the attorney general no later
22 than thirty consecutive calendar days from the date the library
23 provider learned of the third party's noncompliance. A report
24 made under this subsection shall be a public record.

25 4. The attorney general shall investigate and enforce
26 compliance of this section.

27 Sec. 3. NEW SECTION. **73B.3 Limitations on liability.**

28 This chapter shall not apply in any of the following
29 circumstances:

30 1. To a service provider unless the service provider was
31 directly providing a digital library service.

32 2. To digital library services used by a student enrolled in
33 an institution of higher education governed by the state board
34 of regents or a community college as defined in section 260C.2,
35 including dual-enrolled students.

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EXPLANATION

The inclusion of this explanation does not constitute agreement with the explanation's substance by the members of the general assembly.

This bill relates to policies and protection measures a library provider (provider) or third party contracting with a provider must take if the provider or third party offers digital library services.

The bill defines "digital library service" as a service that provides access to digital content enabling users to find, retrieve, and use library functions including but not limited to book checkouts, online searches of databases, access to online portals, and remote access to learning and research tools.

The bill defines "library provider" as the state, a state agency, a city that has established a library by ordinance, a library district, a public school, or a nonpublic school.

The bill also defines "child pornography", "controlled substance", "hard-core pornography", "minor", "nonpublic school", "obscene material", "public school", "service provider", and "visual depiction of a minor".

The bill prohibits a provider from offering a digital library service to a minor unless the provider adopts policies and protection measures that block, prohibit, and prevent a minor from sending, receiving, viewing, or downloading child pornography, hard-core pornography, obscene material, materials that relate to the use of a controlled substance, and visual depictions of a minor. If a provider contracts with a third party to offer digital library services, the third party must adopt policies and measures as if the third party is a provider.

The bill requires a provider contracting with a third party for a digital library service to ensure the contract contains certain clauses related to the consequences of the third party's failure to adopt the required policies and protection measures, the amount of time the third party has to fix a failure or prove an act was not a failure, the notice the provider must provide to the third party relating to the third party's failure, and the

1 third party's right to seek judicial determination.

2 The bill requires a provider to report a third party's failure
3 to comply with the bill to the attorney general no later than 30
4 consecutive calendar days from the date the provider learned of
5 the third party's noncompliance. A report made in this way shall
6 be a public record.

7 The bill requires the attorney general to investigate and
8 enforce compliance with the bill's provisions.

9 The bill does not apply to a service provider, unless
10 the service provider was directly providing a digital library
11 service, and the bill does not apply to digital library services
12 used by a student enrolled in an institution of higher education
13 governed by the state board of regents or a community college,
14 including dual-enrolled students.

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