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## Local Government Committee

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### HB 1635

**Brief Description:** Requiring public libraries to adopt internet safety policies to address minor access to harmful material.

**Sponsors:** Representatives Caldier, Frame, Van Werven, Chambers, Orwall, Graham, Kilduff, Eslick, Ormsby and Bergquist.

#### Brief Summary of Bill

- Requires libraries that provide internet access on public computer terminals to adopt and enforce an internet access policy that addresses minor access to harmful internet material.
- Requires libraries to block or filter obscene depictions and child pornography from all patrons, but may authorize certain library employees to disable the filter upon request by an adult library patron engaged in research or other lawful purposes.
- Provides a proposition and ballot measure process to allow library districts to be exempt from the internet access policy requirements.

**Hearing Date:** 2/12/19

**Staff:** Robbi Kesler (786-7153).

#### Background:

Obscenity and child pornography are not protected by the First Amendment of the United States Constitution. Pornography that does not constitute obscenity or child pornography is protected by the First Amendment; however, this material may be “obscene as to minors” and states have the ability to regulate a minor’s access to pornographic material.

Children’s Internet Protection Act (CIPA), federal law enacted in 2000, provides three different types of funding: (1) aid to elementary and secondary schools; (2) Library Services and Technology Act (LSTA) grants to states for support of public libraries; and (3) the E-rate program that provides technology discounts to schools and public libraries. CIPA requires public

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libraries that participate in the LSTA and E-rate programs to certify that they are using computer filtering software to prevent the on-screen depiction of obscenity, child pornography or other material harmful to minors. The act allows adult library patrons to request that a librarian disable the filtering software. In order to receive E-rate discounts, libraries are not allowed to disable filtering programs for minor users.

In 2003, the U.S. Supreme Court upheld CIPA, overturning an earlier court ruling that had prevented the law from taking effect in libraries. In *United States v. American Library Association*, the court ruled that CIPA does not violate the First Amendment, even though it may block some legitimate sites, because libraries may disable the filters for adult patrons upon request.

In 2010, the Washington State Supreme Court considered the issue of the constitutionality of public library internet filtering policies under the state constitution. In *Bradburn v. North Central Regional Library District*, the Court considered the use of a library internet filtering policy under which the library would not disable the filter at the request of an adult patron if the material was appropriately blocked under the internet use policy (even though the material was constitutionally protected speech for an adult). In this case, the library would only disable the filter if the material was erroneously blocked under the internet filtering policy standards. The Court upheld the filtering policy, finding a library's decision about what materials it makes available does not constitute a prior restraint on speech and does not present an overbreadth problem, noting that libraries need to exercise judgment in making collection decisions and have no obligation to make available all constitutionally protected material available on the internet. The Court's opinion holds that a library may, consistent with the state constitution, filter internet access for all patrons without disabling the filter upon request of an adult patron where the policy is reasonable in light of the libraries mission and allows for disabling of the filter when material is erroneously blocked. The federal district court also reached the same conclusion as to the federal constitution, and this decision was not appealed. The three-member dissent in the *Bradburn v. North Central Regional Library District* case argued that the majority's opinion is at odds with the U.S. Supreme Court decision in *American Library Association*, noting that that content filtering by a public library is constitutional only if the filter can be disabled to allow access to constitutionally protected speech at the request of an adult patron.

### **Summary of Bill:**

The Board of Trustees of a library that provides internet access on public computer terminals must adopt and enforce an internet access policy that addresses minor access to harmful internet material.

The internet safety policy must include the use of a technology protection measure with respect to any of the library's computers with internet access that prevents:

- all library patrons from gaining access to visual depictions that are obscene or child pornography; and
- minors from gaining access to visual depictions that are harmful to minors.

A technology protection measure is defined as software or other technology that blocks or filters internet access to visual depictions.

The internet safety policy may authorize a library administrator, supervisor, or other library designee to disable the technology protection measure upon the request of an adult library patron to enable access for bona fide research or other lawful purposes.

A library is exempt from the internet access policy requirements if the voters of the library district adopt a proposition to exempt the library. In order to be included on a ballot, the proposition must be adopted by a library's board of trustees at a public meeting after notice and an opportunity for public comment.

The bill includes definitions for various terms including child pornography, obscene, and harmful to minors.

**Appropriation:** None.

**Fiscal Note:** Requested on February 7, 2019.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.