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SENATE BILL 89

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

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AN ACT

RELATING TO OBSCENITY; ENACTING THE HUMAN TRAFFICKING AND CHILD EXPLOITATION PREVENTION ACT; REQUIRING PRODUCTS THAT PROVIDE ACCESS TO CONTENT ON THE INTERNET TO CONTAIN SOFTWARE THAT BLOCKS OBSCENE CONTENT; ALLOWING FOR DEACTIVATION OF BLOCKING SOFTWARE; PROVIDING REMEDIES; CREATING THE HUMAN TRAFFICKING AND CHILD EXPLOITATION PREVENTION FUND; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Human Trafficking and Child Exploitation Prevention Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Human Trafficking and Child Exploitation Prevention Act:

A. "blocking software" means software that prevents

1 a device from accessing obscene material on the internet;

2 B. "distributor" means a person who manufactures,
3 sells, offers for sale, leases or distributes a product in the
4 state that makes content accessible on the internet;

5 C. "obscene material" means content:

6 (1) that the average individual applying
7 contemporary community standards would find, when considered or
8 taken as a whole, appeals to the prurient interests;

9 (2) depicting or describing sexual conduct in
10 a patently offensive way by audio or visual representations of
11 sexual acts, normal or perverted, actual or simulated;
12 masturbation, excretory functions or exhibitions of a specified
13 anatomical area of oneself or another; or tactile stimulation
14 of the covered or uncovered genitals of oneself or another; and

15 (3) that, when considered or taken as a whole,
16 lacks serious literary, artistic, political or scientific
17 value;

18 D. "person" means an individual or a corporation,
19 business enterprise or other legal entity;

20 E. "personal identification information" means
21 information that identifies an individual, including an
22 individual's photograph, social security number, driver
23 identification number, name, email address, address or
24 telephone number;

25 F. "revenge pornography" means an image of a person

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1 engaged in a specified sexual activity or that displays a
2 specified anatomical area if the image contains or conveys the
3 personal identification information of the depicted person to
4 an internet website without the depicted person's consent; and

5 G. "specified anatomical area" means:

6 (1) less than completely and opaquely covered
7 human genitals, pubic region, buttock or female breast below a
8 point immediately above the top of the areola; or

9 (2) human male genitals in a discernibly
10 turgid state, whether covered or uncovered.

11 SECTION 3. [NEW MATERIAL] PROHIBITED BUSINESS--BLOCKING
12 OBSCENE MATERIAL AND PROHIBITED CONTENT.--

13 A. A distributor shall not manufacture, sell, offer
14 for sale, lease or distribute a product in the state that makes
15 content accessible on the internet unless the product:

16 (1) contains active and properly operating
17 blocking software that renders obscene material inaccessible;

18 (2) prohibits access to content that is
19 prohibited by the Sexual Exploitation of Children Act;

20 (3) prohibits access to revenge pornography;

21 (4) prohibits access to a website that
22 facilitates prostitution; and

23 (5) prohibits access to a website that
24 facilitates human trafficking as described in Section

25 30-52-1 NMSA 1978.

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- 1 B. A distributor shall:
- 2 (1) make reasonable and ongoing efforts to
- 3 ensure that the blocking software functions properly; and
- 4 (2) establish a reporting mechanism, such as a
- 5 website or call center, to allow a person to report unblocked
- 6 obscene material or report blocked material that is not obscene
- 7 material.

8 SECTION 4. [NEW MATERIAL] INJUNCTIVE RELIEF--
9 MISDEMEANOR.--

10 A. The attorney general or a district attorney may
11 seek injunctive relief against a distributor that allows access
12 to content or a website in violation of the Human Trafficking
13 and Child Exploitation Prevention Act.

14 B. A distributor that knowingly violates the
15 provisions of Section 3 of the Human Trafficking and Child
16 Exploitation Prevention Act is guilty of a misdemeanor and upon
17 conviction shall be punished by imprisonment of less than one
18 year, or by a fine of not more than five hundred dollars (\$500)
19 for each prohibited image, video or audio depiction or website
20 accessible in violation of the Human Trafficking and Child
21 Exploitation Prevention Act, or both.

22 SECTION 5. [NEW MATERIAL] DEACTIVATION UPON REQUEST.--A
23 distributor shall deactivate blocking software in a product if
24 the person who purchased or leased the product:

- 25 A. specifically requests that the distributor

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1 deactivate the blocking software;

2 B. presents identification that proves that the
3 person is eighteen years of age or older;

4 C. acknowledges the receipt of a written warning
5 from the distributor that deactivating the blocking software
6 will prevent the blocking of obscene material; and

7 D. pays to the distributor a twenty-dollar (\$20.00)
8 one-time deactivation fee; provided that nothing in the Human
9 Trafficking and Child Exploitation Prevention Act shall
10 prohibit a distributor from imposing an additional charge to
11 deactivate the blocking software.

12 SECTION 6. [NEW MATERIAL] UNBLOCKING CONTENT.--

13 A. If the blocking software blocks content that is
14 not obscene and the block is reported to a distributor's call
15 center or reporting website, the content shall be unblocked no
16 later than five days after the block is reported.

17 B. Any person may seek judicial relief to unblock
18 filtered content. The prevailing party in the civil action may
19 seek attorney fees and costs.

20 SECTION 7. [NEW MATERIAL] FUND CREATED--APPROPRIATION.--

21 A. The "human trafficking and child exploitation
22 prevention fund" is created in the state treasury and shall
23 consist of money collected pursuant to the Human Trafficking
24 and Child Exploitation Prevention Act, appropriations, gifts,
25 grants, donations and bequests made to the fund. Income from

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1 investment of the fund shall be credited to the fund. Money in
2 the fund shall not revert to the general fund at the end of a
3 fiscal year.

4 B. Money in the fund is appropriated to the office
5 of the attorney general for expenditure in fiscal year 2019 and
6 subsequent fiscal years to enforce the Sexual Exploitation of
7 Children Act and Chapter 30, Article 52 NMSA 1978.
8 Expenditures from the fund shall be by warrant drawn by the
9 secretary of finance and administration pursuant to vouchers
10 signed by the attorney general or the attorney general's
11 designee.

12 C. A distributor shall submit deactivation fees to
13 the state treasurer each quarter, in a manner determined by the
14 state treasurer, to be credited to the human trafficking and
15 child exploitation prevention fund.

16 SECTION 8. [NEW MATERIAL] REPORTS OF OBSCENE CONTENT OR
17 MATERIAL--CIVIL DAMAGES.--

18 A. If a distributor that is subject to the Human
19 Trafficking and Child Exploitation Prevention Act fails to
20 block obscene material or block access to a prohibited website
21 within five days after receiving a report that obscene material
22 has breached blocking software or that a prohibited website is
23 accessible through a product manufactured, sold, leased or
24 distributed by the distributor, the attorney general or any
25 person may file a civil suit.

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B. The attorney general or the person who files the civil suit may seek damages of up to five hundred dollars (\$500) for each image, video or audio depiction of obscene material, or each accessible website, that was reported but not blocked within five days. The prevailing party in the civil action may seek attorney fees and costs.

SECTION 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2018.