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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/24/21

SPONSOR Trujillo LAST UPDATED \_\_\_\_\_ HB 73

SHORT TITLE Human Trafficking & Child Exploitation Act SB \_\_\_\_\_

ANALYST Dick-Peddie

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		
\$0.00	Indeterminate but Significant	Indeterminate but Significant	Recurring	Unknown

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>1 FTE for NMAG</b>	\$0.0	\$45.0	\$45.0	\$90.0	Recurring	General Fund
<b>1 FTE for TRD</b>	\$0.0	\$45.0	\$45.0	\$90.0	Recurring	General Fund
<b>Total</b>	\$0.0	\$90.0	\$90.0	\$180.0	Recurring	

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to: House Bill 56 Sex Offender & Human Trafficking Changes

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)  
 Law Offices of the Public Defender (LOPD)  
 Crime Victims Reparation Commission (CVRC)

#### No Response Received

Tax and Revenue Department (TRD)

## SUMMARY

### Synopsis of Bill

House Bill 73 establishes the “Human Trafficking and Child Exploitation Act,” which requires retailers to enable “filters” on all “internet enabled devices” that block websites that are (1) known to facilitate human trafficking or prostitution; and (2) display child pornography, revenge pornography or obscene material harmful to minors. The bill established reporting and enforcement obligations, and allows consumers to pay a \$20 fee to disable the filter. Sections 5, 6, and 7 of the bill create civil and criminal offenses, as well as monetary fines, should a retailer fail to enable the filter on devices. The bill also imposes a \$5.00 admission fee into adult entertainment establishments.

The bill charges the Taxation and Revenue Department (TRD) with collecting and enforcing the admission and deactivation fees, and establishes a grant fund to “help New Mexico bear the costs of upholding community standards of decency and of combatting sex-related offences” with those revenues. The New Mexico Attorney General, or their designee, is then responsible for administering the funds through grants.

The bill also recognizes non-governmental organizations working to stop human trafficking in New Mexico, and cites federal case law at length.

## FISCAL IMPLICATIONS

House Bill 73 does not contain an appropriation, but the agency response from the New Mexico Attorney General (NMAG) indicates additional staff time and resources would be needed to meet the requirements of the bill. The estimated additional operating budget impact table reflects the average cost of one administrative FTE each for TRD and NMAG to enforce, collect, and administer revenue from deactivation and entrance fees.

This bill creates a new fund, and associated grant program. HB73 specifies the types of grants the Attorney General or the Attorney General’s designee may award grantees. It should be noted, the bill does not specify parameters for grant allocation, which could result in NMAG having unilateral authority to allocate state funds nor does the bill specify that in order to expend money in the fund, the NMAG must budget the funds as part of the annual budget request process.

Though the bill establishes a one-time deactivation fee of \$20.00 per device and an entrance fee for adult entertainment establishments of \$5.00 per person, it is difficult to project how many users would purchase the deactivation fee, and therefore difficult to project how much grant money would be available in the fund created by the bill. The revenue table reflects the projected revenue as indeterminate but significant for this reason.

## SIGNIFICANT ISSUES

NMAG, LOPD, and CVRC all alluded to potential constitutional violations within HB73, most notably conflicts in the bill with the First Amendment’s guarantee of freedom of speech. NMAG states:

The extent, and resolution, of those challenges to the First Amendment would depend on what level of scrutiny is applied. The legislative findings included in Section 3 of HB-73 include a finding that “a statute requiring a filter deactivation fee regarding websites displaying obscene material . . . is constitutional for being rationally related to a narrowly tailored compelling state interest.” That finding may apply the wrong standard. Although couched in terms of prohibiting only unlawful content, HB73 may be found to burdensome protected speech, requiring strict scrutiny review, rather than the rational basis review expressed in the legislative finding.

NMAG also found that the bill’s provision blocking sites that “facilitate human trafficking” could be read to include any payment processing website that has, intentionally or unintentionally, processed funds related to sex work. This could result in common-use websites such as online banking portals to be blocked by the filter. HB73 does not create a standardized list of sites that should be blocked, which exacerbates the potential for retailers to implement filters arbitrarily and inconsistently.

Though TRD did not submit an agency response at the time of this FIR’s completion, it is unclear how the agency would ensure fee collection from all private retailers selling “internet enabled devices.”

## **TECHNICAL ISSUES**

House Bill 73 contains a “purpose statement” in the first several sections of the legislation, which does not comply with New Mexico Legislative Council drafting practices. The bill also defines at several phrases that are not found anywhere else in the legislation, and refers at length to federal case law.

This bill’s 202 number contains the “ms” designation, which stands for “minimal style.” The “ms” designation is reserved for those bills that fail to comply with the style of the New Mexico Legislative Council Service. Agency analysis from LOPD notes that “ms” bills contain language that is “confusing and could be difficult to interpret and apply in practice, resulting in extensive litigation.”

Although TRD is responsible for the fee collection and enforcement, NMAG, or the attorney general’s designee, has the sole authority to administer the grants. It is uncommon for a governmental agency (as opposed to the legislature) to have authority to allocate funds housed within a separate state agency, and this may cause technical budgetary issues.

Agency response submitted by the Crime Victims Reparation Commission (CVRC) notes that CVRC already administers funds to victims of sex trafficking, and has the mechanisms, criteria, and expertise to administer such funds, where the attorney general may not.