


FLORIDAHOUSEOFREPRESENTATIVES

HB 337

2017

1  A bill to be entitled
2 An act relating to Internet access; providing a short
3 title; creating s. 847.0143, F.S.; providing
4 definitions; prohibiting covered businesses from
5 manufacturing, distributing, or selling certain
6 devices unless the device contains an active and
7 operating filter that blocks Internet access to
8 specified types of sexually oriented material,
9 prostitution, assignation, lewdness, and human
10 trafficking; providing for injunctive relief for
11 violations; providing requirements for a consumer to
12 have such filter deactivated; requiring a filter
13 deactivation fee and providing for the collection and
14 distribution thereof; prohibiting the distribution or
15 sale of certain devices without filters to minors and
16 adults; providing criminal penalties; providing for
17 jurisdiction to prosecute violations; providing for
18 continuing duties of covered businesses; requiring
19 covered businesses to respond to reports of obscene
20 material that has breached the filter; providing for
21 civil penalties for violations; providing for attorney
22 fees and costs; requiring covered businesses to
23 unblock nonobscene material; providing for declaratory
24 relief; exempting certain websites from filtering;
25 amending s. 16.56, F.S.; authorizing the Office of

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26 Statewide Prosecution to prosecute violations;
27 providing an effective date.

28 

29 WHEREAS, the state has a compelling interest in protecting
30 consumers from unwanted exposure to obscene material, and

31 WHEREAS, obscene material is easily retrieved using devices
32 that provide Internet access, increasing the demand for human
33 trafficking and prostitution and encouraging sexual
34 cyberharassment and child pornography, and

35 WHEREAS, the state has a compelling interest in regulating
36 wholesalers and manufacturers of such devices in the same manner
37 as brick and mortar pornography shops, and

38 WHEREAS, such devices never fully leave the instrumentality
39 and control of the manufacturer and wholesaler, elevating the
40 duty of care owed by the manufacturer and wholesaler, and

41 WHEREAS, the United States Supreme Court upheld a federal
42 law concerning Internet filtering as the least restrictive means
43 to accomplish the legislation's goals in Ashcroft v. ACLU, 542
44 U.S. 656 (2004), and

45 WHEREAS, the state has a compelling interest in preventing
46 sexual offenses, including, but not limited to, human
47 trafficking, prostitution, and child pornography, that obscene
48 material inspires and encourages, and

49 WHEREAS, requiring wholesalers and manufacturers to install
50 Internet filters will mitigate the harm caused by the

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51 ~~nonconsensual dissemination of private sexual images, known as~~
52 ~~revenge pornography and prohibited under s. 784.049, Florida~~
53 ~~Statutes, and protect consumers from unintentionally accessing~~
54 ~~child pornography and incurring criminal liability under s.~~
55 ~~847.002, Florida Statutes, and~~

56 WHEREAS, the Legislature finds that the legal basis for the
57 constitutionality of the filter deactivation fee in this act is
58 the same as the legal basis for the pole tax imposed on adult
59 entertainment establishments upheld by the Texas Supreme Court
60 in Combs v. Texas Entertainment Association, et al., 347 S.W. 3d
61 277 (Sup. Ct. Tex. 2011), and

62 WHEREAS, the funds produced by such fee will provide grants
63 for state agencies, units of local government, and
64 nongovernmental organizations that are working to prevent child
65 exploitation and human trafficking, and

66 WHEREAS, the Legislature recognizes that devices that
67 provide Internet access are effectively pornography vending
68 machines in need of regulation, NOW, THEREFORE,

69

70 Be It Enacted by the Legislature of the State of Florida:

71

72 Section 1. This act may be cited as the "Human Trafficking
73 Prevention Act (HTPA)."

74 Section 2. Section 847.0143, Florida Statutes, is created
75 to read:

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76 847.0143 Filtering Internet access to obscene material.—

77 (1) DEFINITIONS.—As used in this section, the term:

78 (a) "Child pornography" has the same meaning as in s.
79 847.001.

80 (b) "Covered business" means any business, manufacturer,
81 wholesaler, or individual in this state that manufactures,
82 distributes, or sells a device that provides Internet access.

83 (c) "Device" means any cellular telephone as defined in s.
84 817.4821, computer as defined in s. 847.001, gaming device, data
85 communication device as defined in s. 465.003, or other product
86 manufactured, distributed, or sold in this state after October
87 1, 2017, that provides Internet access.

88 (d) "Filter" means any hardware or software that restricts
89 or blocks Internet access to websites, electronic mail, chat, or
90 other Internet-based communications based on category, site, or
91 content.

92 (e) "Human trafficking" has the same meaning as in s.
93 787.06.

94 (f) "Obscene" has the same meaning as in s. 847.001.

95 (g) "Sexually cyberharass" has the same meaning as in s.
96 784.049(2)(c).

97 (2) SEXUALLY ORIENTED MATERIAL, PROSTITUTION, AND HUMAN
98 TRAFFICKING FILTERING.—

99 (a) A covered business shall not manufacture, distribute,
100 or sell any device unless it contains an active and operating

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101 filter that blocks or restricts Internet access to:

102 1. Obscene material as prohibited under ss. 847.012 and
103 847.0125.

104 2. Child pornography as prohibited under s. 847.002.

105  3. Images used to sexually cyberharass as prohibited under
106 s. 784.049.

107 4. Prostitution, assignation, or lewdness, or appointments
108 for prostitution, assignation, or lewdness, as prohibited under
109 s. 796.07.

110 5. Human trafficking as prohibited under s. 787.06.

111 (b) The state attorney or the Attorney General may seek
112 injunctive relief against a covered business that violates this
113 subsection.

114 (3) FILTER DEACTIVATION; FEE.—

115 (a) A covered business shall deactivate the filter if a
116 consumer:

117 1. Specifically and in writing requests that the filter be
118 deactivated.

119 2. Verifies in a face-to-face encounter either in person
120 or through other electronic means that the consumer is 18 years
121 of age or older.

122 3. Has acknowledged receiving a written warning regarding
123 the potential danger of deactivating the filter.

124 4. Remits a \$20 one-time filter deactivation fee to the
125 covered business, which it shall collect on behalf of the state.

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126 (b) A covered business may charge its own reasonable
127 filter deactivation fee in addition to the fee charged in
128 paragraph (a).

129 (c) A covered business may not share the methods, source
130 code, or other operating instructions of the filter unless the
131 conditions in this subsection are met.

132  (4) VIOLATIONS.-

133 (a) A covered business that distributes or sells a device

134 without a filter to a minor commits a felony of the third

135 degree, punishable as provided in s. 775.082, s. 775.083, or s.

136 775.084.

137 (b) A covered business that distributes or sells a device

138 without a filter to an adult commits a misdemeanor of the first

139 degree, punishable as provided in s. 775.082 or s. 775.083,

140 unless the covered business complies with the requirements in

141 paragraph (3) (a).

142 (5) FILTER DEACTIVATION FEE PROCEEDS.-

143 (a) Each quarter, a covered business that receives a

144 filter deactivation fee under subsection (3) shall:

145 1. Remit all fee proceeds to the Chief Financial Officer

146 in the manner prescribed by the Chief Financial Officer.

147 2. File a report with the Chief Financial Officer in the

148 manner and containing the information prescribed by the Chief

149 Financial Officer.

150 (b) The Chief Financial Officer shall deposit the funds

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151 remitted under this subsection as follows:

152 1. Sixty percent shall be deposited into the Crimes

153 Compensation Trust Fund under s. 960.21 to be used for costs

154 associated with relocation assistance for victims of human

155 trafficking set forth under s. 960.196 and costs associated with

156 the Statewide Council on Human Trafficking as set forth under s.

157 16.617.

158 2. Twenty percent shall be deposited into the Department

159 of Legal Affairs Grants and Donations Trust Fund to be used by
160 the department to provide grants to state agencies, units of
161 local government, and nongovernmental organizations to:
162 a. Develop, expand, or strengthen programs for victims of
163 human trafficking and child exploitation. Such programs may
164 include:
165 (I) Health services, including mental health services.
166 (II) Temporary and permanent housing placement.
167 (III) Legal and immigration services.
168 (IV) Employment placement, education, and training.
169 b. Ensure prevention of human trafficking, including
170 increasing public awareness.
171 c. Ensure protection of victims of human trafficking,
172 including training of first responders.
173 3. The remaining funds shall be deposited in the General
174 Revenue Fund.
175 (6) CONTINUING DUTIES.—

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176 (a) A covered business shall send out filter updates
177 regularly to ensure the quality and performance of the filter in
178 restricting or blocking obscene material.

179 (b) A covered business shall establish reporting websites
180 or call centers where consumers may report obscene material that
181 has breached the filter.

182 (c)1. A covered business shall determine within a
183 reasonable time if the reported material is obscene. If the
184 covered business determines that the material is obscene, it
185 shall within a reasonable time install a filter update that

186 incorporates the obscene material and restricts or blocks
187 Internet access to such material to ensure continued compliance
188 with s. 847.012 and s. 847.0125.

189 2. If the covered business is not responsive to the
190 reporting of obscene material that has breached the filter, the
191 consumer or the Attorney General may bring a civil action
192 against the covered business.

193 3. The consumer or the Attorney General may seek a \$500
194 civil penalty for each item of obscene material that was
195 reported but not subsequently filtered by the covered business.

196 4. If a consumer prevails in the civil action, the covered
197 business shall reimburse the consumer the purchase price of the
198 device.

199 5. A prevailing private plaintiff in an action under this
200 paragraph may be awarded reasonable attorney fees and costs.

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201 (7) UNBLOCKING NONOBSCENE MATERIAL.—

202 (a) If the filter blocks nonobscene material and such
203 blockage is reported to the covered business's call center or
204 reporting website, the covered business must unblock such
205 material within a reasonable time after receiving the report.

206 (b) Declaratory relief may be sought to unblock the
207 nonobscene material.

208 (c) A prevailing party in an action under this subsection
209 may be awarded reasonable attorney fees and costs.

210 (8) WEBSITES EXEMPT FROM FILTERING.—A covered business
211 shall not filter a commercial social networking website, as
212 defined in s. 943.0437(1), that has its own call center or

213 reporting website and is proactive in removing obscene material
214 once reported.

215 Section 3. Paragraph (a) of subsection (1) of section
216 16.56, Florida Statutes, is amended to read:

217 16.56 Office of Statewide Prosecution.—

218 (1) There is created in the Department of Legal Affairs an
219 Office of Statewide Prosecution. The office shall be a separate
220 "budget entity" as that term is defined in chapter 216. The
221 office may:

222 (a) Investigate and prosecute the offenses of:

223 1. Bribery, burglary, criminal usury, extortion, gambling,
224 kidnapping, larceny, murder, prostitution, perjury, robbery,
225 carjacking, and home-invasion robbery;

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226 2. Any crime involving narcotic or other dangerous drugs;

227 3. Any violation of the Florida RICO (Racketeer Influenced
228 and Corrupt Organization) Act, including any offense listed in
229 the definition of racketeering activity in s. 895.02(8)(a),
230 providing such listed offense is investigated in connection with
231 a violation of s. 895.03 and is charged in a separate count of
232 an information or indictment containing a count charging a
233 violation of s. 895.03, the prosecution of which listed offense
234 may continue independently if the prosecution of the violation
235 of s. 895.03 is terminated for any reason;

236 4. Any violation of the Florida Anti-Fencing Act;

237 5. Any violation of the Florida Antitrust Act of 1980, as
238 amended;

239 6. Any crime involving, or resulting in, fraud or deceit

240 upon any person;

241 7. Any violation of s. 847.0135, relating to computer

242 pornography and child exploitation prevention, ~~or~~ any offense

243 related to a violation of s. 847.0135, any violation of s.

244 847.0143, relating to filtering Internet access to obscene

245 material, or any violation of chapter 827 where the crime is

246 facilitated by or connected to the use of the Internet or any

247 device capable of electronic data storage or transmission;

248 8. Any violation of chapter 815;

249 9. Any criminal violation of part I of chapter 499;

250 10. Any violation of the Florida Motor Fuel Tax Relief Act

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251 of 2004;

252 11. Any criminal violation of s. 409.920 or s. 409.9201;

253 12. Any crime involving voter registration, voting, or

254 candidate or issue petition activities;

255 13. Any criminal violation of the Florida Money Laundering

256 Act;

257 14. Any criminal violation of the Florida Securities and

258 Investor Protection Act; or

259 15. Any violation of chapter 787, as well as any and all

260 offenses related to a violation of chapter 787;

261


262 or any attempt, solicitation, or conspiracy to commit any of the

263 crimes specifically enumerated above. The office shall have such

264 power only when any such offense is occurring, or has occurred,

265 in two or more judicial circuits as part of a related

266 transaction, or when any such offense is connected with an

267  organized criminal conspiracy affecting two or more judicial
268 circuits. Informations or indictments charging such offenses
269 shall contain general allegations stating the judicial circuits
270 and counties in which crimes are alleged to have occurred or the
271 judicial circuits and counties in which crimes affecting such
272 circuits or counties are alleged to have been connected with an
273 organized criminal conspiracy.

274 Section 4. This act shall take effect October 1, 2017.

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