By Senator Baxley

A bill to be entitled

An act relating to Internet access; providing a short
title; creating s. 847.0143, F.S.; providing
definitions; prohibiting covered businesses from
manufacturing, distributing, or selling certain
devices unless the devices contain an active and
operating filter that blocks Internet access to
specified types of sexually oriented material,
prostitution, assignation, lewdness, and human
trafficking; providing for injunctive relief for
violations; providing requirements for a consumer to
have such filter deactivated; requiring a filter
deactivation fee and providing for the collection and
distribution thereof; prohibiting the distribution or
sale of certain devices without filters to minors and
adults; providing criminal penalties; providing for
jurisdiction to prosecute violations; providing for
continuing duties of covered businesses; requiring
covered businesses to respond to reports of obscene
material that has breached the filter; providing for
civil penalties for violations; providing for attorney
fees and costs; requiring covered businesses to
unblock nonobscene material; providing for declaratory
relief; exempting certain websites from filtering;
amending s. 16.56, F.S.; authorizing the Office of
Statewide Prosecution to prosecute violations;
providing an effective date.

WHEREAS, the state has a compelling interest in protecting
consumers from unwanted exposure to obscene material, and
WHEREAS, obscene material is easily retrieved using devices
that provide Internet access, increasing the demand for human
trafficking and prostitution and encouraging sexual
cyberharassment and child pornography, and
WHEREAS, the state has a compelling interest in regulating
wholesalers and manufacturers of such devices in the same manner
as brick-and-mortar pornography shops, and
WHEREAS, such devices never fully leave the instrumentality
and control of the manufacturer and wholesaler, elevating the
duty of care owed by the manufacturer and wholesaler, and
WHEREAS, the United States Supreme Court upheld a federal
law concerning Internet filtering as the least restrictive means
to accomplish the legislation’s goals in Ashcroft v. ACLU, 542
U.S. 656 (2004), and
WHEREAS, the state has a compelling interest in preventing
sexual offenses, including, but not limited to, human
trafficking, prostitution, and child pornography, which obscene
material inspires and encourages, and
WHEREAS, requiring wholesalers and manufacturers to install
Internet filters will mitigate the harm caused by the
nonconsensual dissemination of private sexual images, known as
revenge pornography and prohibited under s. 784.049, Florida
Statutes, and protect consumers from unintentionally accessing
child pornography and incurring criminal liability under s.
847.002, Florida Statutes, and
WHEREAS, the Legislature finds that the legal basis for the
constitutionality of the filter deactivation fee in this act is
the same as the legal basis for the pole tax imposed on adult
entertainment establishments upheld by the Texas Supreme Court
in Combs v. Texas Entertainment Association, et al., 347 S.W. 3d
277 (Sup. Ct. Tex. 2011), and
WHEREAS, the Legislature recognizes that devices that
provide Internet access are effectively pornography vending
machines in need of regulation, NOW, THEREFORE,
Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the “Human Trafficking
Prevention Act (HTPA).”
Section 2. Section 847.0143, Florida Statutes, is created
to read:
847.0143 Filtering Internet access to obscene material.—
(1) DEFINITIONS.—As used in this section, the term:
(a) “Child pornography” has the same meaning as in s.
847.001.
(b) “Covered business” means any business, manufacturer,
wholesaler, or individual in this state that manufactures,
distributes, or sells a device that provides Internet access.
(c) “Device” means any cellular telephone as defined in s.
817.4821, computer as defined in s. 847.001, gaming device, data
communication device as defined in s. 465.003, or other product
manufactured, distributed, or sold in this state after October
1, 2017, that provides Internet access.
(d) “Filter” means any hardware or software that restricts
or blocks Internet access to websites, electronic mail, chat, or
other Internet-based communications based on category, site, or
content.
(e) “Human trafficking” has the same meaning as in s.
787.06.
(f) “Obscene” has the same meaning as in s. 847.001.
(g) “Sexually cyberharass” has the same meaning as in s.
784.049(2)(c).
(2) SEXUALLY ORIENTED MATERIAL, PROSTITUTION, AND HUMAN
TRAFFICKING FILTERING.—
(a) A covered business may not manufacture, distribute, or
sell any device unless it contains an active and operating
filter that blocks or restricts Internet access to:
1. Obscene material as prohibited under ss. 847.012 and 
847.0125.
2. Child pornography as prohibited under s. 847.002.
3. Images used to sexually cyberharass as prohibited under 
s. 784.049.
4. Prostitution, assignation, or lewdness, or appointments 
for prostitution, assignation, or lewdness, as prohibited under 
s. 796.07.
5. Human trafficking as prohibited under s. 787.06.
   (b) The state attorney or the Attorney General may seek 
injunctive relief against a covered business that violates this 
subsection.

(3) FILTER DEACTIVATION; FEE.—
   (a) A covered business shall deactivate the filter if a 
consumer:
      1. Specifically and in writing requests that the filter be 
deactivated.
      2. Verifies in a face-to-face encounter either in person or 
     through electronic means that the consumer is 18 years of age or 
     older.
      3. Has acknowledged receiving a written warning regarding 
the potential danger of deactivating the filter.
      4. Remits a $20 one-time filter deactivation fee to the 
covered business, which it shall collect on behalf of the state.
     (b) A covered business may charge its own reasonable filter 
deactivation fee in addition to the fee charged in paragraph 
(a).
     (c) A covered business may not share the methods, source 
code, or other operating instructions of the filter unless the 
conditions in this subsection are met.

(4) VIOLATIONS.—
   (a) A covered business that distributes or sells a device 
without a filter to a minor commits a felony of the third 
degree, punishable as provided in s. 775.082, s. 775.083, or s. 
775.084.
   (b) A covered business that distributes or sells a device 
without a filter to an adult commits a misdemeanor of the first 
degree, punishable as provided in s. 775.082 or s. 775.083, 
unless the covered business complies with the requirements in 
paragraph (3)(a).

(5) FILTER DEACTIVATION FEE PROCEEDS.—
   (a) Each quarter, a covered business that receives a filter 
deactivation fee under subsection (3) shall:
      1. Remit all fee proceeds to the Chief Financial Officer in 
the manner prescribed by the Chief Financial Officer.
      2. File a report with the Chief Financial Officer in the 
manner and containing the information prescribed by the Chief 
Financial Officer.
   (b) The Chief Financial Officer shall deposit the funds 
remitted under this subsection as follows:
      1. Sixty percent shall be deposited into the Crimes 
Compensation Trust Fund under s. 960.21 to be used for costs 
associated with relocation assistance for victims of human 
trafficking set forth under s. 960.196 and costs associated with
the Statewide Council on Human Trafficking as set forth under s. 16.617.

2. Twenty percent shall be deposited into the Department of Legal Affairs Grants and Donations Trust Fund to be used by the department to provide grants to state agencies, units of local government, and nongovernmental organizations to:

a. Develop, expand, or strengthen programs for victims of human trafficking and child exploitation. Such programs may include:
   (I) Health services, including mental health services.
   (II) Temporary and permanent housing placement.
   (III) Legal and immigration services.
   (IV) Employment placement, education, and training.

b. Ensure prevention of human trafficking, including increasing public awareness.

c. Ensure protection of victims of human trafficking, including training of first responders.

3. The remaining funds shall be deposited in the General Revenue Fund.

(6) CONTINUING DUTIES.—

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

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

(c) 1. A covered business shall determine within a reasonable time if the reported material is obscene. If the covered business determines that the material is obscene, it shall within a reasonable time install a filter update that incorporates the obscene material and restricts or blocks Internet access to such material to ensure continued compliance with s. 847.012 and s. 847.0125.

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

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

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

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

(7) UNBLOCKING NONOBSCENE MATERIAL.—

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

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

(c) A prevailing party in an action under this subsection may be awarded reasonable attorney fees and costs.
(8) WEBSITES EXEMPT FROM FILTERING.—A covered business shall not filter a commercial social networking website, as defined in s. 943.0437(1), that has its own call center or reporting website and is proactive in removing obscene material once reported.

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

16.56 Office of Statewide Prosecution.—

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

(a) Investigate and prosecute the offenses of:

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

2. Any crime involving narcotic or other dangerous drugs;

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

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

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

6. Any crime involving, or resulting in, fraud or deceit upon any person;

7. Any violation of s. 847.0135, relating to computer pornography and child exploitation prevention, or any offense related to a violation of s. 847.0135, any violation of s. 847.0143, relating to filtering Internet access to obscene material, or any violation of chapter 827 where the crime is facilitated by or connected to the use of the Internet or any device capable of electronic data storage or transmission;

8. Any violation of chapter 815;

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

10. Any violation of the Florida Motor Fuel Tax Relief Act of 2004;

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

12. Any crime involving voter registration, voting, or candidate or issue petition activities;

13. Any criminal violation of the Florida Money Laundering Act;

14. Any criminal violation of the Florida Securities and Investor Protection Act; or

15. Any violation of chapter 787, as well as any and all offenses related to a violation of chapter 787; or

any attempt, solicitation, or conspiracy to commit any of the crimes specifically enumerated above. The office shall have such
power only when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. Informations or indictments charging such offenses shall contain general allegations stating the judicial circuits and counties in which crimes are alleged to have occurred or the judicial circuits and counties in which crimes affecting such circuits or counties are alleged to have been connected with an organized criminal conspiracy.

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