

## Florida Senate - 2017

## SB 870

By Senator Baxley

12-01035-17

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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 devices contain 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  
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, which 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  
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:

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 may not manufacture, distribute, or  
100 sell any device unless it contains an active and operating  
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 or  
120 through electronic means that the consumer is 18 years of age or  
121 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.

126 (b) A covered business may charge its own reasonable filter  
127 deactivation fee in addition to the fee charged in paragraph  
128 (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 filter  
144 deactivation fee under subsection (3) shall:

145 1. Remit all fee proceeds to the Chief Financial Officer in  
146 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  
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 of  
159 Legal Affairs Grants and Donations Trust Fund to be used by the  
160 department to provide grants to state agencies, units of local  
161 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.—

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 which 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.

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;

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  
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.