

2017 Regular Session

HOUSE BILL NO. 172

BY REPRESENTATIVE HORTON AND SENATOR MIZELL

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

HUMAN SERVICES: Enacts the "Human Trafficking and Child Exploitation Prevention Act" relative to requiring retailers of internet capable devices to install a digital blocking capability prior to sale or lease to a consumer

1 AN ACT

2 To enact Chapter 14 of Title 45 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 45:1701 through 1707, relative to regulation of internet capable devices; to
4 provide for a short title; to provide for definitions; to regulate the use of internet
5 capable devices; to require a procedure for installing, maintaining, and removing a
6 digital blocking capability; to provide for exceptions; to provide for a fee; to provide
7 for remittance procedures; to provide for limited use of monies; to provide for
8 injunctive relief; to provide for civil remedies; to provide for criminal penalties; to
9 provide for effectiveness; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Chapter 14 of Title 45 of the Louisiana Revised Statutes of 1950,
12 comprised of R.S. 45:1701 through 1707, is hereby enacted to read as follows:

13 CHAPTER 14. HUMAN TRAFFICKING AND CHILD EXPLOITATION

14 PREVENTION ACT

15 §1701. Short title

16 This Chapter shall be known and may be cited as the "Human Trafficking
17 and Child Exploitation Prevention Act".

1 §1702. Definitions

2 As used in this Chapter, the following terms have the meanings hereinafter
3 ascribed to them:

4 (1) "Consumer" means an individual who purchases or leases for personal,
5 family, or household purposes an internet capable device.

6 (2) "Internet capable device" means any product that is able to access content
7 on the internet.

8 (3) "Obscene material" means any digital image, photograph, or video,
9 which exploits or is devoted to or principally consists of descriptions or depictions
10 of illicit sex or sexual immorality, when a trier of fact determines that each of the
11 following applies:

12 (a) The material incites or appeals to or is designed to incite or appeal to a
13 prurient, shameful, or morbid interest.

14 (b) The material is offensive to the average adult applying contemporary
15 community standards.

16 (c) The material taken as a whole lacks serious literary, artistic, political, or
17 scientific value.

18 (4) "Retailer" means a person who is engaged in the business of selling or
19 leasing directly to a consumer an internet capable device.

20 §1703. Digital blocking capability; exception; procedure

21 A.(1) Except as provided by Subsection E of this Section, any internet
22 capable device that is sold or leased by a retailer in this state or that is sold or leased
23 and delivered by a retailer to a consumer at an address within this state shall include
24 an active and operating digital blocking capability that renders obscene material
25 inaccessible.

26 (2) The manufacturer or retailer of the internet capable device shall prioritize
27 blocking access to child pornography, revenge pornography, and any website known
28 to facilitate prostitution and human trafficking.

1 B. Either the manufacturer or the retailer of any internet capable device shall
2 do all of the following:

3 (1) Regularly make available to consumers updates to the digital blocking
4 capability to ensure its effectiveness in blocking access to obscene material.

5 (2) Maintain a website or telephone line that consumers can use to report
6 either obscene material that is not blocked by the digital blocking capability or
7 material that is not obscene but is inadvertently blocked by the digital blocking
8 capability.

9 (3) Maintain procedures for utilizing the reports collected pursuant to
10 Paragraph (2) of this Subsection and for updating the digital blocking capability in
11 a reasonable amount of time if necessary.

12 C. The digital blocking capability shall not block access to any social media
13 website that provides a means for its users to report obscene material and that has
14 procedures in place for utilizing those reports and for removing obscene material.

15 D. Except as provided by Subsection E of this Section, a retailer shall neither
16 deactivate the digital blocking capability of an internet capable device nor provide
17 to a consumer any methods, source code, or other instructions for deactivating the
18 digital blocking capability of an internet capable device.

19 E. A retailer shall deactivate the digital blocking capability of an internet
20 capable device if the consumer who purchased or leased the product does all of the
21 following:

22 (1) Requests in writing that the digital blocking capability be deactivated.

23 (2) Presents identification verifying that the consumer is at least eighteen
24 years of age.

25 (3) Acknowledges a written warning regarding the potential danger of
26 deactivating the digital blocking capability.

27 (4) Pays a one-time fee of twenty dollars.

1 §1704. Remission of fee; use of monies

2 A. A retailer shall remit quarterly all monies generated by the fee collected
3 pursuant to this Chapter to the Department of the Treasury in the manner prescribed
4 by the treasurer.

5 B.(1) The treasurer shall deposit all monies collected pursuant to Subsection
6 A of this Section in the Exploited Children's Special Fund, R.S. 15:539.2.

7 (2) All monies deposited, pursuant to this Chapter, in the Exploited
8 Children's Special Fund may be used only by one or more of the following:

9 (a) The Department of Justice for the purpose of grants made to faith-based
10 groups or other charitable organizations for the purpose of providing services to
11 victims of human trafficking or preventing sex trafficking.

12 (b) The Louisiana Department of Health for the purpose of grants made to
13 support programs assisting victims of human trafficking.

14 (c) The office of the governor for the purpose of grants made to support
15 human trafficking prosecution projects.

16 (d) Any state agency or organization for the purpose of maintaining human
17 trafficking prevention and enforcement programs.

18 §1705. Injunctive relief; expenses; attorney fees

19 A. Either the attorney general or the appropriate district attorney may
20 institute an action of injunctive relief to enjoin any retailer who is in violation of the
21 provisions of this Chapter.

22 B. The attorney general or the appropriate district attorney who institutes the
23 action for injunctive relief may recover reasonable expenses and attorney fees for
24 enforcement of the provisions of this Chapter.

25 §1706. Civil remedy; damages

26 A. A consumer injured by any violation of this Chapter may bring an action
27 for recovery of damages.

1 B. The damages awarded shall not be less than the amount the consumer
 2 paid the retailer to purchase or lease the internet capable device with respect to which
 3 the violation occurred plus reasonable expenses and attorney fees.

4 §1707. Penalties

5 The following penalties shall apply to any retailer who violates the provisions
 6 of this Chapter:

7 (1) If the consumer is under the age of eighteen years, the offender shall
 8 either be fined not more than four thousand dollars, imprisoned for up to six months,
 9 or both.

10 (2) If the consumer is eighteen years of age or older, the offender shall be
 11 fined not more than five hundred dollars.

12 Section 2. This Act shall become effective January 1, 2018.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 172 Original

2017 Regular Session

Horton

Abstract: Creates the "Human Trafficking and Child Exploitation Prevention Act" and requires retailers of internet capable devices to install a digital blocking capability prior to sale or lease to a consumer.

Proposed law enacts the "Human Trafficking and Child Exploitation Prevention Act".

Proposed law provides for definitions.

Proposed law requires that any internet capable device that is sold or leased by a retailer in this state or that is sold or leased and delivered by a retailer to a consumer at an address within this state include an active and operating digital blocking capability that renders obscene material inaccessible except as provided by proposed law.

Proposed law requires that the manufacturer or retailer of the internet capable device prioritize blocking access to child pornography, revenge pornography, and any website known to facilitate prostitution and human trafficking.

Proposed law requires that either the manufacturer or the retailer of any internet capable device do all of the following:

- (1) Regularly make available to consumers updates to the digital blocking capability to ensure its effectiveness in blocking access to obscene material.

- (2) Maintain a website or telephone line that consumers can use to report either obscene material that is not blocked by the digital blocking capability or material that is not obscene but is inadvertently blocked by the digital blocking capability.
- (3) Maintain procedures for utilizing the reports collected pursuant to proposed law and for updating the digital blocking capability in a reasonable amount of time if necessary.

Proposed law restricts the digital blocking capability by disallowing either the manufacturer or the retailer to block access to any social media website that provides a means for its users to report obscene material and that has procedures in place for utilizing those reports and for removing obscene material.

Proposed law restricts a retailer from deactivating the digital blocking capability of an internet capable device and providing to a consumer any methods, source code, or other instructions for deactivating the digital blocking capability of an internet capable device except as allowed by proposed law.

Proposed law requires a retailer to deactivate the digital blocking capability of an internet capable device if the consumer who purchased or leased the product does all of the following:

- (1) Requests in writing that the digital capability be deactivated.
- (2) Presents identification verifying that the consumer is at least 18 years of age.
- (3) Acknowledges a written warning regarding the potential danger of deactivating the digital blocking capability.
- (4) Pays a one-time fee of \$20.

Proposed law requires retailers to remit quarterly all monies generated by the fee collected pursuant to proposed law to the Dept. of the Treasury in the manner prescribed by the treasurer.

Proposed law requires the treasurer to deposit all monies collected pursuant to proposed law in the Exploited Children's Special Fund (R.S. 15:539.2).

Proposed law provides that all monies deposited, pursuant to proposed law, may be used only by one or more of the following:

- (1) The Dept. of Justice for the purpose of grants made to faith-based groups or other charitable organizations for the purpose of providing services to victims of human trafficking or preventing sex trafficking.
- (2) The La. Dept. of Health for the purpose of grants made to support programs assisting victims of human trafficking.
- (3) The office of the governor for the purpose of grants made to support human trafficking prosecution projects.
- (4) Any state agency or organization for the purpose of maintaining human trafficking prevention and enforcement programs.

Proposed law authorizes either the attorney general or the appropriate district attorney to institute an action of injunctive relief to enjoin any retailer who is in violation of the provisions of proposed law.

Proposed law provides that the attorney general or the appropriate district attorney who institutes the action for injunctive relief may recover reasonable expenses and attorney fees for enforcement of the provisions of proposed law.

Proposed law provides that any consumer injured by a violation of proposed law may bring an action for recovery of damages.

Proposed law provides that the damages awarded shall not be less than the amount the consumer paid the retailer to purchase or lease the internet capable device with respect to which the violation occurred plus reasonable expenses and attorney fees.

Proposed law provides for the following penalties:

- (1) If the consumer is under the age of 18 years, the offender shall either be fined not more than \$4,000, imprisoned for up to six months, or both.
- (2) If the consumer is 18 years of age or older, the offender shall be fined not more than \$500.

Effective January 1, 2018.

(Adds R.S. 45:1701-1707)