

Introduced Version

WEST VIRGINIA LEGISLATURE
2017 REGULAR SESSION

Introduced

Senate Bill 447

BY SENATORS RUCKER, AZINGER, CLINE, GAUNCH, KARNES, MAYNARD, SMITH AND
SWOPE

[Introduced February 27, 2017; Referred
to the Committee on the Judiciary]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §61-8G-1, §61-8G-2, §61-8G-3, §61-8G-4, §61-8G-5 and §61-8G-6, all relating to prohibiting retailers from selling or leasing products that make content accessible on the Internet unless the product contains an active and operating digital blocking capability that renders obscene material inaccessible; providing exceptions; defining terms; establishing a fee; creating a special fund; designating how moneys from the fund may be spent; and providing for injunctive relief, civil actions and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §61-8G-1, §61-8G-2, §61-8G-3, §61-8G-4, §61-8G-5 and §61-8G-6, all to read as follows:

ARTICLE 8G. RETAILERS REQUIRED TO ENSURE CERTAIN PRODUCTS CONTAIN DIGITAL BLOCKING CAPABILITY.

§61-8G-1. Definitions.

In this article:

"Consumer" means an individual who purchases or leases for personal, family, or household purposes a product that makes content accessible on the Internet.

"Obscene" has the meaning assigned by section five-b, article twelve, chapter eight of this code.

"Retailer" means a person who is engaged in the business of selling or leasing directly to a consumer a product that makes content accessible on the Internet.

§61-8G-2. Digital blocking capability.

(a) Except as provided by subsection (d) of this section, a retailer may not sell or lease to a consumer a product that makes content accessible on the Internet unless the product contains an active and operating digital blocking capability that renders obscene material inaccessible.

(b) The digital blocking capability:

(1) Must block access to child pornography, revenge pornography, and websites known to facilitate prostitution and human trafficking;

(2) May not block access to social media websites that provide a means for the website's users to report obscene material and have in place procedures for evaluating those reports and removing obscene material; and

(3) Must be distributed by an entity that:

(A) Regularly makes available to consumers updates to the digital blocking capability's filters to ensure the filters' effectiveness in blocking access to obscene material;

(B) Maintains a website or telephone line that consumers can use to report:

(i) Obscene material that is not blocked by the digital blocking capability's filters;

(ii) Material that is not obscene that is blocked by the digital blocking capability's filters; and

(C) Has in place procedures for evaluating reports made under paragraph (B) of this subdivision and, if necessary, updating the digital blocking capability's filters in a reasonable amount of time.

(c) Except as provided by subsection (d) of this section, a retailer may not provide to a consumer methods, source code, or other operating instructions for deactivating a product's digital blocking capability.

(d) A retailer may deactivate a product's digital blocking capability if the consumer who purchased or leased the product:

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

§61-8G-3. Remission and use of fee.

(a) Each quarter, a retailer shall remit the fee collected under subdivision (4), subsection (d), section two of this article to the State Treasurer in the manner prescribed by the Treasurer.

(b) The State Treasurer shall deposit the fee to the credit of the Sexual Assault Program Fund newly created as a special fund in the State Treasury. Money deposited to that fund may be used only by:

(1) The Attorney General for grants:

(A) To faith-based groups, independent school districts, and community action organizations for programs for victims of human trafficking;

(B) To prevent sex trafficking and to provide services for victims of sex trafficking;

(2) The Department of Health and Human Resources for grants to support programs assisting victims of human trafficking;

(3) The office of the Governor for grants to support human trafficking prosecution projects; and

(4) Any state agency or organization for the purpose of conducting human trafficking enforcement programs.

§61-8G-4. Injunction.

(a) If it appears that a retailer is in violation of this article, the Attorney General or a prosecuting attorney may institute an action of injunctive relief to restrain the retailer from continuing the violation.

(b) The Attorney General or a prosecuting attorney may recover reasonable expenses incurred in obtaining injunctive relief under this section, including reasonable attorney's fees.

§61-8G-5. Civil action.

A consumer injured by a violation of this article may bring an action for recovery of damages. The damages awarded may not be less than the amount the consumer paid the retailer to purchase or lease the product with respect to which the violation occurred, plus reasonable attorney's fees.

§61-8G-6. Criminal penalties.

(a) A retailer violating this article is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$5,000 or confined in jail not more than twelve months, or both fined and confined, if the consumer is younger than eighteen years of age.

(b) A retailer violating this article is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000 or confined in jail not more than six months, or both fined and confined, if the consumer is older than eighteen years of age.

(c) With the consent of the appropriate local prosecuting attorney, the Attorney General has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section.

-

NOTE: The purpose of this bill is to prohibit retailers from selling or leasing products that make content accessible on the Internet unless the product contains an active and operating digital blocking capability that renders obscene material inaccessible. The bill provides exceptions. The bill defines terms. The bill establishes a fee. The bill creates a special fund. The bill designated how moneys from the fund may be spent. The bill provides for injunctive relief, civil actions and criminal penalties.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.