A BILL FOR AN ACT

RELATING TO INTERNET WEB SITES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

HUMAN TRAFFICKING AND CHILD EXPLOITATION PREVENTION

§ -1 Definitions. As used in this chapter:

"Assignment" means the making of an appointment or engagement for prostitution, or any act in furtherance of such appointment or engagement.

"Cellular telephone" means a communication device containing a unique electronic serial number that is programmed into its computer chip by its manufacturer and whose operation is dependent on the transmission of that electronic serial number along with a mobile identification number, which is assigned by the cellular telephone carrier, in the form of radio signals through cell sites and mobile switching stations.
"Child pornography" shall have the same meaning as in section 707-750.

"Computer" means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions and includes any data storage facility or communications facility directly related to or operating in conjunction with such device. The term includes any online services, internet service, or local bulletin board; any electronic storage device, including a floppy disk or other magnetic storage device; or any compact disc that has read-only memory and the capacity to store audio, video, or written materials.

"Data communications device" means an electronic device that receives electronic information from one source and transmits or routes it to another, including but not limited to any such bridge, router, switch, or gateway.

"Device" means a cellular telephone, computer, data communications device, or other product manufactured, distributed, or sold in the State that provides internet access.

"Filter" means 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.

"Human trafficking" shall include "sex trafficking" and "severe forms of trafficking in persons" as defined in section 350-1.

"Obscene material" means material to which all of the following apply:

1. The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
2. Depicts or describes, in a patently offensive way, sexual conduct or excretory functions;
3. Taken as a whole, lacks serious literary, artistic, political, or scientific value; and
4. Facilitates or promotes prostitution, assignation, human trafficking, or sexual cyberharassment.

The term does not include material that depicts a mother who is breastfeeding her baby.

"Prostitution" means the giving or receiving of the body for sexual activity for hire.
"Sexual cyberharassment" means to publish a sexually explicit image of a person that contains or conveys the personal identification information of the depicted person to an internet website without the depicted person's consent, for no legitimate purpose, with the intent of causing emotional distress to the depicted person.

§ -2 Internet access; restrictions; devices. (a) On and after January 1, 2019, a person shall not sell a device unless it contains an active filter that blocks or restricts internet access to sites containing any of the following:

(1) Obscene material;
(2) Child pornography;
(3) Images used for sexual cyberharassment; and
(4) Solicitation or offers for prostitution, assignation, or human trafficking.

(b) The attorney general may seek injunctive relief against any person that violates this section.

§ -3 Deactivation of filter; requirements; fees. (a) The seller of a device shall provide for the deactivation of a filter if the owner of the device does all of the following:

(1) Requests in writing that the filter be deactivated;
(2) Verifies that the owner of the device is eighteen years of age or older;

(3) Acknowledges receiving a written warning regarding the potential danger of deactivating the filter; and

(4) Pays a $20 one-time filter deactivation fee to the seller, which the seller shall collect on behalf of the State.

(b) The seller of a device may charge its own reasonable filter deactivation fee in addition to the fee charged in subsection (a).

(c) The seller of a device shall not share the methods, source code, or other operating instructions of the filter unless the conditions in this section are met.

§ -4 Penalties. (a) A person that sells a device without a filter to a minor shall be guilty of a class C felony.

(b) A person that sells a device without a filter to an adult shall be guilty of a misdemeanor.

§ -5 Deposit of fees; reporting. (a) Each quarter, all persons that receive a filter deactivation fee pursuant to section -3 shall:
(1) Remit all fees to the department of budget and finance in a manner prescribed by the department; and
(2) File a report with the department of budget and finance containing the information prescribed.

(b) The department of budget and finance shall deposit the funds remitted under this section into the human trafficking victim services fund pursuant to section 706-650.5.

§ 6 Manufacturer of devices; responsibilities; reporting obscene material. (a) A manufacturer of a device that provides internet access shall:

(1) Regularly send filter updates to owners of the device to ensure the quality and performance of the filter in restricting or blocking obscene material; and
(2) Establish reporting websites or call centers where an owner of a device made by the manufacturer may report obscene material that has breached the filter.

(b) A manufacturer of a device shall determine within a reasonable time if material under subsection (a)(2) is obscene. If the manufacturer determines that the material is obscene, the manufacturer shall install, within a reasonable time, a filter
update that incorporates the obscene material and restricts or
blocks internet access to such material.

(c) If the manufacturer of the device does not respond to
a report under subsection (a)(2), the owner of the device or the
attorney general may bring a civil action against the
manufacturer.

(d) In an action under subsection (c), the court may:

(1) Impose a $500 civil penalty for each item of obscene
material that was reported but not subsequently
filtered by the manufacturer;

(2) Require the manufacturer to reimburse the owner of the
device the purchase price of the device; and

(3) Award reasonable attorneys' fees and costs.

(e) If the filter blocks material that is not obscene and
the blockage is reported to the manufacturer's reporting website
or call center, the manufacturer shall unblock the material
within a reasonable time after receiving the report.

(f) Injunctive relief may be sought to unblock material
that is not obscene.

(g) In an action under subsection (f), the court may award
reasonable attorneys' fees and costs.
(h) A manufacturer shall not filter a commercial social
networking website that has its own call center or reporting
website and is proactive in removing obscene material within
days after being reported."

SECTION 2. Section 706-650.5, Hawaii Revised Statutes, is
amended by amending subsection (4) to read as follows:
"(4) All fees paid and interest accrued on funds collected
pursuant to this section and section—5 shall be deposited
into the human trafficking victim services fund."

SECTION 3. This Act does not affect rights and duties that
matured, penalties that were incurred, and proceedings that were
begun before its effective date.

SECTION 4. If any provision of this Act, or the
application thereof to any person or circumstance, is held
invalid, the invalidity does not affect other provisions or
applications of the Act that can be given effect without the
invalid provision or application, and to this end the provisions
of this Act are severable.

SECTION 5. New statutory material is underscored.
SECTION 6. This Act shall take effect on January 1, 2019.

INTRODUCED BY:
Report Title:
Internet Access Devices; Filter; Obscene Material

Description:
Beginning January 1, 2019, prohibits a person from selling a device with internet access that does not filter certain obscene materials. Provides requirements, including a fee, for a consumer to have a filter deactivated on a device. Deposits fees into the human trafficking victim services fund. Requires manufacturers of a device to update filters and establish a reporting website or call center.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.