REQUIRES TWO-THIRDS MAJORITY VOTE (§ 5)

S.B. 360

SENATE BILL NO. 360–SENATORS PICKARD, SEEVERS GANSERT, HAMMOND; HANSEN, HARDY AND SETTELMEYER

MARCH 19, 2019

JOINT SPONSORS: ASSEMBLYMEN HARDY, LEAVITT, TITUS, ROBERTS; EDWARDS, ELLISON AND KRAMER

Referred to Committee on Judiciary

SUMMARY—Enacts the Human Trafficking and Child Exploitation Prevention Act. (BDR 15-11)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.

Effect on the State: Yes.

AN ACT relating to crimes; enacting the Human Trafficking and Child Exploitation Prevention Act; prohibiting certain persons from manufacturing, selling, offering for sale, leasing or distributing a product that makes content accessible on the Internet unless certain requirements are met; providing for certain fees; establishing the Human Trafficking and Child Exploitation Prevention Grant Fund; authorizing the imposition of a fine; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 This bill enacts the Human Trafficking and Child Exploitation Prevention Act.
2 Section 4 of this bill generally prohibits a person from manufacturing, selling, offering for sale, leasing or distributing a product that makes content accessible on the Internet unless: (1) the product has a digital blocking capability that attempts to render Internet websites displaying obscene material inaccessible by default; and (2) if the product is being manufactured for or is sold, offered for sale, leased or distributed to a consumer who is less than 18 years of age, the digital blocking capability is active and properly operating. Section 4 also imposes certain duties on a person who manufactures, sells, offers for sale, leases or distributes any product that makes content accessible on the Internet.

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Section 5 of this bill requires a person who manufactures, sells, offers for sale, leases or distributes a product that makes content accessible on the Internet to deactivate the digital blocking capability of the product if certain requirements are met, including a requirement that the person collect a one-time digital access fee of
$20 from the consumer, which is required to be remitted to the State. Section 5 also
authorizes such a person to charge an additional fee to deactivate the digital
blocking capability of the product, which the person is authorized to retain.
Section 6 of this bill establishes the Human Trafficking and Child Exploitation
Prevention Grant Fund. Section 6 requires any digital access fees and any fines
collected by the State for certain violations to be deposited with the State Treasurer
each quarter for credit to the Fund. Section 6 further requires that money credited
to the Fund may be used only for certain purposes by: (1) the Attorney General; (2)
the Department of Health and Human Services; (3) the Office of the Governor; and
(4) any state agency or organization.
Section 7 of this bill authorizes the filing of a civil action by the Attorney
General or a consumer if a person who manufactures, sells, offers for sale, leases or
distributes a product that makes content accessible on the Internet is not responsive
to a report of an Internet website displaying obscene material. Section 7 authorizes
the Attorney General or consumer to seek damages in an amount not to exceed
$500 for each Internet website that was reported but was not subsequently blocked.
Section 7 requires that any such monetary award be deposited with the State
Treasurer for credit to the State General Fund.
Section 8 of this bill establishes an affirmative defense in a civil action that the
dissemination of any obscene material was limited to institutions or organizations
having scientific, educational or other similar justifications for displaying the
obscene material.
Section 9 of this bill provides that if a person who manufactures, sells, offers
for sale, leases or distributes a product that makes content accessible on the Internet
commits certain violations, the person must be punished: (1) for a first offense, by a
fine of $1,000; and (2) for a second or subsequent offense, for a misdemeanor.
Section 10 of this bill provides that the provisions of sections 2-9 of this bill do
not apply to the occasional sale of any product that makes content accessible on the
Internet by a person who is not regularly engaged in the business of selling such
products.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 201 of NRS is hereby amended by adding
thereto the provisions set forth as sections 2 to 10, inclusive, of this
act.
Sec. 2. Sections 2 to 10, inclusive, of this act may be cited as
the Human Trafficking and Child Exploitation Prevention Act.
Sec. 3. As used in sections 2 to 10, inclusive, of this act,
unless the context otherwise requires, “obscene material” means
anything that is capable of being used or adapted to arouse
interest, whether through the medium of reading, observation,
sound or in any other manner, which:
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Sec. 4. 1. Except as otherwise provided in section 10 of this act, a person shall not manufacture, sell, offer for sale, lease or distribute any product that makes content accessible on the Internet unless:
   (a) The product has a digital blocking capability that attempts to render Internet websites displaying obscene material inaccessible by default; and
   (b) If the product is being manufactured for or is sold, offered for sale, leased or distributed to a consumer who is less than 18 years of age, the digital blocking capability is active and properly operating.

2. A person who manufactures, sells, offers for sale, leases or distributes a product that makes content accessible on the Internet shall:
   (a) Make reasonable and ongoing efforts to ensure that the digital blocking capability of the product functions properly.
   (b) Establish a reporting mechanism, including, without limitation, an Internet website or call center, to allow a consumer to report any unblocked Internet website that displays obscene material or any blocked Internet website that does not display obscene material.
   (c) Except as otherwise provided in subsection 3, attempt to:
      (1) Ensure that any Internet website displaying pornography involving minors or an intimate image is inaccessible on the product by default;
      (2) Prevent the product from accessing any hub that facilitates prostitution by default; and
      (3) Render any Internet website known to facilitate human trafficking inaccessible by default.

Sec. 5. 1. A person who manufactures, sells, offers for sale, leases or distributes a product that makes content accessible on the Internet shall deactivate the digital blocking capability of the product if:

\[\text{defined deviant group.}\]

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(a) The consumer requests that the digital blocking capability be deactivated;
(b) The person requests that the consumer present identification to verify that the consumer is 18 years of age or older and the consumer presents such identification;
(c) The person provides to the consumer a warning regarding the potential dangers of deactivating the digital blocking capability and the consumer acknowledges receiving such a warning; and
(d) The person collects from the consumer a one-time digital access fee of $20, to be remitted to the State in accordance with section 6 of this act.

2. The digital access fee required by paragraph (d) of subsection 1 is not content-based but is charged to a consumer and remitted to the State for the purpose of helping the State bear the costs of upholding community standards of decency and combat sexual offenses.

3. In addition to the digital access fee required by paragraph (d) of subsection 1, a person may charge a reasonable fee to deactivate the digital blocking capability of a product and may retain such a fee.

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Sec. 6. 1. There is hereby established in the State Treasury a special fund to be known as the Human Trafficking and Child Exploitation Prevention Grant Fund.

2. Any digital access fees collected by a person pursuant to paragraph (d) of subsection 1 of section 5 of this act and any fines collected by the State pursuant to paragraph (a) of subsection 2 of section 9 of this act must be deposited with the State Treasurer each quarter for credit to the Fund.

3. Money credited to the Fund may be used only by:
   (a) The Attorney General, for grants to governmental and nongovernmental entities and persons who are working to uphold community standards of decency, strengthen families and develop, expand or strengthen programs for victims of human trafficking or child exploitation. Such grants may include, without limitation, grants for the sole benefit of victims of human trafficking or child exploitation, including, without limitation, grants for:
       (1) Testing sexual assault forensic evidence kits.
       (2) Providing physical and mental health services.
       (3) Providing temporary or permanent housing placement.
       (4) Providing employment placement, education and training.
       (5) Training first responders and increasing public awareness for the purpose of preventing human trafficking, domestic violence, prostitution, divorce, child abuse and rape and protecting victims thereof.
       (6) Providing compensation for victims.
       (7) Funding independent school districts.
       (8) Funding shelters and dream centers.
       (9) Providing family counseling.
       (10) Assisting law enforcement agencies in relation to human trafficking and child exploitation.
   (b) The Department of Health and Human Services for grants...
to support programs assisting victims of human trafficking.
(c) The Office of the Governor for grants to support:
(1) The prosecution of human trafficking.
(2) Projects to uphold community standards of decency.
(3) State security.
(d) Any state agency or organization for the purpose of conducting human trafficking enforcement programs.
4. As used in this section:
(a) “Human trafficking” has the meaning ascribed to it in NRS 49.25425.

(b) “Sexual assault forensic evidence kit” has the meaning ascribed to it in NRS 200.364.

Sec. 7. 1. If the digital blocking capability of a product blocks an Internet website that does not display obscene material and the block is reported through a reporting mechanism established pursuant to paragraph (b) of subsection 2 of section 4 of this act, the Internet website must be unblocked within a reasonable time, but not later than 5 business days after the block is first reported.
2. A consumer may seek judicial relief to unblock filtered content. The prevailing party may seek attorney’s fees, costs and other forms of relief.
3. If a person who manufactures, sells, offers for sale, leases or distributes a product that makes content accessible on the Internet is unresponsive to a report of an Internet website displaying obscene material that has breached the filter, the Attorney General or a consumer may file a civil action against the person. The Attorney General or a consumer may seek damages in an amount not to exceed $500 for each Internet website that was reported but was not subsequently blocked. The prevailing party in the civil action may seek attorney’s fees, costs and other forms of relief. Any monetary award recovered by the Attorney General or consumer, other than attorney’s fees and costs, must be deposited with the State Treasurer for credit to the State General Fund.

Sec. 8. It is an affirmative defense in a civil action regarding a violation of sections 2 to 10, inclusive, of this act that the dissemination of any obscene material was limited to institutions or organizations having scientific, educational or other similar justifications for displaying the obscene material.

Sec. 9. 1. A person who manufactures, sells, offers for sale, leases or distributes a product that makes content accessible on the Internet shall be punished as provided in subsection 2 if the person knowingly:
(a) Provides the source code or mechanism to deactivate the digital blocking capability of a product to a consumer who is less than 18 years of age or to a nonconsenting adult;
(b) Violates subsection 1 of section 4 of this act; or
(c) Fails to comply with the requirements of subsection 1 of section 5 of this act before deactivating the digital blocking capability of a product.
2. A person who violates the provisions of subsection 1 shall be punished:
(a) For a first offense, by a fine of $1,000.
(b) For a second or subsequent offense, for a misdemeanor.
Sec. 10. The provisions of sections 2 to 9, inclusive, of this act do not apply to the occasional sale of any product that makes content accessible on the Internet by a person who is not regularly engaged in the business of selling such products.

Sec. 11. Except as otherwise provided in section 10 of this act, the amendatory provisions of this act apply to any products that make content accessible on the Internet that are manufactured, sold, offered for sale, leased or distributed on or after October 1, 2019.