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# A BILL FOR AN ACT

RELATING TO DIGITAL CONTENT BLOCKERS.

**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 title 26 to be appropriately designated and to read as follows:

**"CHAPTER**

**DIGITAL BLINDER RACK CAPABILITIES IN PRODUCTS THAT MAKE CONTENT ACCESSIBLE ON THE  
INTERNET**

**§ -1 Content blocking capabilities in products that make content that displays or facilitates human trafficking, child pornography, revenge pornography, and obscenity accessible on the Internet required.** (a) It is unlawful and a violation of section 712- for any person to manufacture, sell, offer for sale, lease, or distribute a product that makes content accessible on the Internet:

- (1) Unless the product contains digital blocking capability that renders material covered by subsection (b) inaccessible by default; and
- (2) To a minor unless the digital blocking capability is active and properly operating to make material covered by subsection (b) inaccessible;

provided that this section shall not apply to the occasional sale of an internet-enabled device by a person that is not regularly engaged in the business of selling internet-enabled devices.

(b) Any person who manufactures, sells, offers for sale, leases, or distributes a product that makes content accessible on the Internet shall make reasonable and ongoing efforts to:

- (1) Ensure that the digital content blocking capability functions properly;
- (2) Establish and maintain a reporting mechanism, such as a website or call center, to allow a consumer to report unblocked pornographic material or report blocked material that is not covered by this subsection;
- (3) Ensure that all child pornography and revenge pornography is inaccessible on the product;
- (4) Prohibit the product from accessing any hub, website, or internet service that facilitates prostitution;
- (5) Render websites that are known to facilitate human trafficking inaccessible; and
- (6) Report child pornography received through the reporting mechanism established pursuant to paragraph (2) to the National Center for Missing and Exploited Children's cybertipline in accordance with title 18 United States Code section 2258A.

(c) As used in this section:

"Child pornography" has the same meaning as defined in section 707-750.

"Revenge pornography" means the nonconsensual disclosure of images or videos of individuals engaged in a sex act or in the nude.

**§ -2 Deactivation of digital blinder rack capacity.** (a) Any digital blocking capacity required under this chapter shall be deactivated after a consumer:

- (1) Requests that the capability be disabled;
- (2) Presents identification to verify that the consumer is eighteen years of age or older;
- (3) Acknowledges receiving a written warning regarding the potential dangers of deactivating the digital blocking capability; and
- (4) Pays a one-time \$20 digital access fee to be deposited into the human trafficking and child exploitation special fund.

(b) The digital access fee shall not be content-based but shall be collected to offset the State's costs of combating sex-related crimes.

(c) A person who manufactures, sells, offers for sale, leases, or distributes a product that makes content accessible on the Internet may charge a separate, reasonable opt-in fee for each product that enters the State's stream of commerce prior to deactivating the digital content capability, which it may retain.

(d) The digital blocking capability shall not block access to social media websites that provide a means for the website's users to report obscene materials and have in place procedures for evaluating those reports and removing obscene material.

**§ -3 Human trafficking and child exploitation prevention special fund.** (a) There is established in the state treasury a special fund to be known as the human trafficking and child exploitation prevention special fund.

(b) All digital access fees collected pursuant to section -2(a)(4) shall be deposited into the human trafficking and child exploitation prevention special fund.

(c) Any moneys collected by the attorney general pursuant to section -4(c) shall be deposited into the human trafficking and child exploitation prevention special fund. Additional funds may be made available to the human trafficking and child exploitation prevention special fund by the legislature, donation, contribution, gift, or any other source.

(d) Money deposited into the human trafficking and child exploitation prevention special fund shall only be used by:

(1) The office of the governor and the attorney general for grants to support human trafficking prosecution and projects that help prevent human trafficking and child exploitation; and

(2) The attorney general, office of the governor, and department of labor and industrial relations to provide grants to government and non-government entities and individuals that are working to develop, expand, or strengthen programs for victims of human trafficking and child exploitation, including grants for:

- (A) Rape-kit testing;
- (B) Physical and mental health services;
- (C) Temporary and permanent housing placement;
- (D) Employment, job placement, education, job training;
- (E) Prevention of and protection from human trafficking, domestic violence, prostitution, divorce, child abuse, and rape by training first responders and increasing public awareness;
- (F) Victims' compensation;
- (G) Shelters;
- (H) Family counseling;
- (I) Law enforcement; and
- (J) Any other purpose for which the human trafficking victim services fund established pursuant to section 706-650.5 may be used.

**§ -4 Material that is improperly blocked; failure to block material.** (a) If the digital blocking capability blocks material that is not covered by section -1(b) and the block is reported to a call center or reporting website, the material shall be unblocked within a reasonable time, but in no event later than five business days after the block is first reported.

(b) A consumer may seek judicial relief to unblock filtered content and other forms of relief allowed by law.

(c) If the digital blocking capability fails to block material described in section -1(b) and the failure is reported to a call center or reporting website, the material shall be blocked within a reasonable time, but in no event later than five business days after the failure to block is first reported. 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 material described in section -1(b) that breached the filter, the attorney general or a consumer may file a civil suit. The attorney general or a consumer may seek damages of up to \$500 for each piece of content that is reported but not subsequently blocked. The prevailing party in the civil action may seek attorney fees.

§ -5 **Affirmative defense.** It shall be an affirmative defense in civil action to a charge of violating this chapter that the dissemination of the content described in section -1(b) was limited to institutions or organizations having scientific, educational, or other similar justification for displaying material covered by section -1(b).

§ -6 **Applicability.** This chapter shall not apply to products made or sold prior to the effective date of Act , Session Laws of Hawaii 2019."

SECTION 2. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

"§712- Failure to include digital content blocking capability. (1) A person commits the offense of failure to include digital blocking capability if the person knowingly manufactures, sells, offers for sale, leases, or distributes a product that makes content accessible on the Internet:

(a) Unless the product contains digital blocking capability that makes any attempt to render content described in section -1(b) inaccessible; and

(b) To a minor unless the digital blocking capability is active and attempting to make obscene material described in section -1(b) inaccessible;

provided that this section shall not apply to the occasional sale of an internet-enabled device by a person that is not regularly engaged in the business of selling internet-enabled devices.

(2) Intentionally failing to include digital blocking capability is a misdemeanor."

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. Nothing in this Act shall be construed to detract from a seller's duty to report prohibited content under title 18 United States Code section 2258A.

SECTION 5. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2020.

INTRODUCED BY: \_\_\_\_\_

**Report Title:**

Pornography; Digital Blocking Capabilities; Special Fund

**Description:**

Requires persons who manufacture, sell, offer for sale, lease, or distribute a product that makes content accessible on the Internet to include digital blocking capability that renders human trafficking hubs, child pornography, revenge pornography, and pornographic material inaccessible. Requires these persons to establish and maintain a reporting system for content that is improperly blocked and applicable content that is not blocked. Allows consumers to disable the blocking capability if the consumer fulfills requirements, including paying a fee for deposit in the human trafficking victim services fund. Establishes the misdemeanor offense of intentionally failing to include digital blocking capability. Establishes the human trafficking and child exploitation prevention special fund to provide grants for various purposes. Effective 7/1/2020.

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