

JAN 19 2018

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# A BILL FOR AN ACT

RELATING TO INTERNET WEB SITES.

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

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

4 "CHAPTER  
5 HUMAN TRAFFICKING AND CHILD EXPLOITATION PREVENTION

6 § -1 Definitions. As used in this chapter:

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

10 "Cellular telephone" means a communication device  
11 containing a unique electronic serial number that is programmed  
12 into its computer chip by its manufacturer and whose operation  
13 is dependent on the transmission of that electronic serial  
14 number along with a mobile identification number, which is  
15 assigned by the cellular telephone carrier, in the form of radio  
16 signals through cell sites and mobile switching stations.



1 "Child pornography" shall have the same meaning as in  
2 section 707-750.

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

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

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

20 "Filter" means hardware or software that restricts or  
21 blocks internet access to websites, electronic mail, chat, or



1 other internet-based communications based on category, site, or  
2 content.

3 "Human trafficking" shall include "sex trafficking" and  
4 "severe forms of trafficking in persons" as defined in section  
5 350-1.

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

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

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

19 "Prostitution" means the giving or receiving of the body  
20 for sexual activity for hire.



1 "Sexual cyberharassment" means to publish a sexually  
2 explicit image of a person that contains or conveys the personal  
3 identification information of the depicted person to an internet  
4 website without the depicted person's consent, for no legitimate  
5 purpose, with the intent of causing emotional distress to the  
6 depicted person.

7 § -2 Internet access; restrictions; devices. (a) On  
8 and after January 1, 2019, a person shall not sell a device  
9 unless it contains an active filter that blocks or restricts  
10 internet access to sites containing any of the following:

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

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

18 § -3 Deactivation of filter; requirements; fees. (a)  
19 The seller of a device shall provide for the deactivation of a  
20 filter if the owner of the device does all of the following:

- 21 (1) Requests in writing that the filter be deactivated;



1 (2) Verifies that the owner of the device is eighteen  
2 years of age or older;

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

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

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

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

14 § -4 Penalties. (a) A person that sells a device  
15 without a filter to a minor shall be guilty of a class C felony.

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

18 § -5 Deposit of fees; reporting. (a) Each quarter, all  
19 persons that receive a filter deactivation fee pursuant to  
20 section -3 shall:



1 (1) Remit all fees to the department of budget and finance  
2 in a manner prescribed by the department; and

3 (2) File a report with the department of budget and  
4 finance containing the information prescribed.

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

8 **§ -6 Manufacturer of devices; responsibilities;**

9 **reporting obscene material.** (a) A manufacturer of a device  
10 that provides internet access shall:

11 (1) Regularly send filter updates to owners of the device  
12 to ensure the quality and performance of the filter in  
13 restricting or blocking obscene material; and

14 (2) Establish reporting websites or call centers where an  
15 owner of a device made by the manufacturer may report  
16 obscene material that has breached the filter.

17 (b) A manufacturer of a device shall determine within a  
18 reasonable time if material under subsection (a)(2) is obscene.  
19 If the manufacturer determines that the material is obscene, the  
20 manufacturer shall install, within a reasonable time, a filter



1 update that incorporates the obscene material and restricts or  
2 blocks internet access to such material.

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

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

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

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

13 (3) Award reasonable attorneys' fees and costs.

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

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

20 (g) In an action under subsection (f), the court may award  
21 reasonable attorneys' fees and costs.



1           (h) A manufacturer shall not filter a commercial social  
2 networking website that has its own call center or reporting  
3 website and is proactive in removing obscene material within  
4           days after being reported."

5           SECTION 2. Section 706-650.5, Hawaii Revised Statutes, is  
6 amended by amending subsection (4) to read as follows:

7           "(4) All fees paid and interest accrued on funds collected  
8 pursuant to this section and section 706-650.5 shall be deposited  
9 into the human trafficking victim services fund."

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

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

19          SECTION 5. New statutory material is underscored.

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# S.B. NO. 2478

1 SECTION 6. This Act shall take effect on January 1, 2019.

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INTRODUCED BY: *Amik*

*Samuel D. ...*  
*[Signature]*  
*[Signature]*  
*Imaine R. ...*



# S.B. NO. 2478

**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.

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