

JAN 18 2019

A BILL FOR AN ACT

RELATING TO DIGITAL CONTENT BLOCKERS.

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

4 "CHAPTER
5 DIGITAL BLINDER RACK CAPABILITIES IN PRODUCTS THAT MAKE CONTENT
6 ACCESSIBLE ON THE INTERNET

7 § -1 Content blocking capabilities in products that make
8 content that displays or facilitates human trafficking, child
9 pornography, revenge pornography, and obscenity accessible on
10 the Internet required. (a) It is unlawful and a violation of
11 section 712- for any person to manufacture, sell, offer for
12 sale, lease, or distribute a product that makes content
13 accessible on the Internet:

14 (1) Unless the product contains digital blocking
15 capability that renders material covered by subsection
16 (b) inaccessible by default; and



1 (2) To a minor unless the digital blocking capability is
2 active and properly operating to make material covered
3 by subsection (b) inaccessible;

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

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

11 (1) Ensure that the digital content blocking capability
12 functions properly;

13 (2) Establish and maintain a reporting mechanism, such as
14 a website or call center, to allow a consumer to
15 report unblocked pornographic material or report
16 blocked material that is not covered by this
17 subsection;

18 (3) Ensure that all child pornography and revenge
19 pornography is inaccessible on the product;

20 (4) Prohibit the product from accessing any hub, website,
21 or internet service that facilitates prostitution;



1 (5) Render websites that are known to facilitate human
2 trafficking inaccessible; and

3 (6) Report child pornography received through the
4 reporting mechanism established pursuant to paragraph
5 (2) to the National Center for Missing and Exploited
6 Children's cybertipline in accordance with title 18
7 United States Code section 2258A.

8 (c) As used in this section:

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

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

14 **§ -2 Deactivation of digital blinder rack capacity. (a)**
15 Any digital blocking capacity required under this chapter shall
16 be deactivated after a consumer:

17 (1) Requests that the capability be disabled;

18 (2) Presents identification to verify that the consumer is
19 eighteen years of age or older;



1 (3) Acknowledges receiving a written warning regarding the
2 potential dangers of deactivating the digital blocking
3 capability; and

4 (4) Pays a one-time \$20 digital access fee to be deposited
5 into the human trafficking and child exploitation
6 special fund.

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

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

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

20 § -3 Human trafficking and child exploitation prevention
21 special fund. (a) There is established in the state treasury a



1 special fund to be known as the human trafficking and child
2 exploitation prevention special fund.

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

6 (c) Any moneys collected by the attorney general pursuant
7 to section -4(c) shall be deposited into the human
8 trafficking and child exploitation prevention special fund.

9 Additional funds may be made available to the human trafficking
10 and child exploitation prevention special fund by the
11 legislature, donation, contribution, gift, or any other source.

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

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

18 (2) The attorney general, office of the governor, and
19 department of labor and industrial relations to
20 provide grants to government and non-government
21 entities and individuals that are working to develop,



1 expand, or strengthen programs for victims of human
2 trafficking and child exploitation, including grants
3 for:

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

20 § -4 Material that is improperly blocked; failure to
21 block material. (a) If the digital blocking capability blocks



1 material that is not covered by section -1(b) and the block
2 is reported to a call center or reporting website, the material
3 shall be unblocked within a reasonable time, but in no event
4 later than five business days after the block is first reported.

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

7 (c) If the digital blocking capability fails to block
8 material described in section -1(b) and the failure is
9 reported to a call center or reporting website, the material
10 shall be blocked within a reasonable time, but in no event later
11 than five business days after the failure to block is first
12 reported. If a person who manufactures, sells, offers for sale,
13 leases, or distributes a product that makes content accessible
14 on the Internet is unresponsive to a report of material
15 described in section -1(b) that breached the filter, the
16 attorney general or a consumer may file a civil suit. The
17 attorney general or a consumer may seek damages of up to \$500
18 for each piece of content that is reported but not subsequently
19 blocked. The prevailing party in the civil action may seek
20 attorney fees.



1 § -5 **Affirmative defense.** It shall be an affirmative
2 defense in civil action to a charge of violating this chapter
3 that the dissemination of the content described in section
4 -1(b) was limited to institutions or organizations having
5 scientific, educational, or other similar justification for
6 displaying material covered by section -1(b).

7 § -6 **Applicability.** This chapter shall not apply to
8 products made or sold prior to the effective date of Act
9 Session Laws of Hawaii 2019."

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

13 "§712- Failure to include digital content blocking
14 capability. (1) A person commits the offense of failure to
15 include digital blocking capability if the person knowingly
16 manufactures, sells, offers for sale, leases, or distributes a
17 product that makes content accessible on the Internet:

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



1 **(b)** To a minor unless the digital blocking capability is
 2 active and attempting to make obscene material
 3 described in section -1(b) inaccessible;
 4 provided that this section shall not apply to the occasional
 5 sale of an internet-enabled device by a person that is not
 6 regularly engaged in the business of selling internet-enabled
 7 devices.

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

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

16 SECTION 5. New statutory material is underscored.

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

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INTRODUCED BY:

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S.B. NO. **25A**

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S.B. NO. 25A

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.

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

