

REFERENCE TITLE: **internet accessible devices; obscenity filtering**

State of Arizona
House of Representatives
Fifty-fourth Legislature
First Regular Session
2019

HB 2444

Introduced by
Representative Griffin

AN ACT

AMENDING TITLE 44, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 37; RELATING TO OBSCENE CONTENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 44, Arizona Revised Statutes, is amended by adding chapter 37, to read:

**CHAPTER 37
OBSCENE AND CRIMINAL CONTENT BLOCKING SOFTWARE
ARTICLE 1. GENERAL PROVISIONS**

44-7901. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "BLOCKING SOFTWARE" MEANS SOFTWARE THAT PREVENTS A DEVICE FROM ACCESSING WEBSITES THAT DISPLAY OBSCENE MATERIAL ON THE INTERNET BY DEFAULT.

2. "DISTRIBUTOR":

(a) MEANS A PERSON THAT IS IN THE BUSINESS OF MANUFACTURING, SELLING, OFFERING FOR SALE, LEASING OR DISTRIBUTING A PRODUCT IN THIS STATE THAT MAKES CONTENT ACCESSIBLE ON THE INTERNET.

(b) DOES NOT INCLUDE A PERSON THAT OCCASIONALLY MANUFACTURES, SELLS, OFFERS FOR SALE, LEASES OR DISTRIBUTES A PRODUCT IN THIS STATE THAT MAKES CONTENT ACCESSIBLE ON THE INTERNET.

3. "OBSCENE MATERIAL" MEANS CONTENT THAT:

(a) THE AVERAGE INDIVIDUAL APPLYING CONTEMPORARY COMMUNITY STANDARDS, WHEN CONSIDERED OR TAKEN AS A WHOLE, WOULD FIND APPEALS TO THE PRURIENT INTEREST.

(b) DEPICTS OR DESCRIBES SEXUAL ACTIVITY IN A PATENTLY OFFENSIVE WAY BY AUDIO OR VISUAL REPRESENTATIONS.

(c) WHEN CONSIDERED OR TAKEN AS A WHOLE, LACKS SERIOUS LITERARY, ARTISTIC, POLITICAL OR SCIENTIFIC VALUE.

4. "PERSONAL IDENTIFICATION INFORMATION" MEANS INFORMATION THAT IDENTIFIES AN INDIVIDUAL, INCLUDING AN INDIVIDUAL'S PHOTOGRAPH, SOCIAL SECURITY NUMBER, DRIVER LICENSE NUMBER, NAME, E-MAIL ADDRESS, RESIDENTIAL ADDRESS OR TELEPHONE NUMBER.

5. "REVENGE PORNOGRAPHY" MEANS AN IMAGE OF AN INDIVIDUAL WHO IS ENGAGED IN SEXUAL ACTIVITY OR THAT DISPLAYS A SPECIFIED ANATOMICAL AREA IF THE

IMAGE CONTAINS OR CONVEYS THE PERSONAL IDENTIFICATION INFORMATION OF THE DEPICTED INDIVIDUAL TO AN INTERNET WEBSITE WITHOUT THE DEPICTED INDIVIDUAL'S CONSENT.

6. "SEXUAL ACTIVITY" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-3501.

7. "SPECIFIED ANATOMICAL AREA" MEANS EITHER OF THE FOLLOWING:

(a) LESS THAN COMPLETELY AND OPAQUELY COVERED HUMAN GENITALS, PUBIC REGION, BUTTOCK OR FEMALE BREAST BELOW A POINT IMMEDIATELY ABOVE THE TOP OF THE AREOLA.

(b) HUMAN MALE GENITALS IN A DISCERNIBLY TURGID STATE, WHETHER COVERED OR UNCOVERED.

44-7902. Prohibited business practices; blocking websites that display obscene material and prohibited content; reporting; violation; classification

A. A DISTRIBUTOR MAY NOT MANUFACTURE, SELL, OFFER FOR SALE, LEASE OR DISTRIBUTE A PRODUCT IN THIS STATE THAT MAKES CONTENT ACCESSIBLE ON THE INTERNET UNLESS THE PRODUCT:

1. CONTAINS ACTIVE AND PROPERLY OPERATING BLOCKING SOFTWARE THAT RENDERS A WEBSITE THAT DISPLAYS OBSCENE MATERIAL INACCESSIBLE BY DEFAULT.

2. PROHIBITS ACCESS TO CONTENT THAT IS PROHIBITED BY TITLE 13, CHAPTER 35.1.

3. PROHIBITS ACCESS TO A WEBSITE THAT DISPLAYS REVENGE PORNOGRAPHY BY DEFAULT.

4. PROHIBITS ACCESS TO A WEBSITE THAT FACILITATES PROSTITUTION BY DEFAULT.

5. PROHIBITS ACCESS TO A WEBSITE THAT FACILITATES A VIOLATION OF SECTION 13-1307 OR 13-1308 BY DEFAULT.

B. A DISTRIBUTOR SHALL:

1. MAKE REASONABLE AND ONGOING EFFORTS TO ENSURE THAT THE BLOCKING SOFTWARE FUNCTIONS PROPERLY.

2. ESTABLISH A REPORTING MECHANISM, SUCH AS A WEBSITE OR CALL CENTER, TO ALLOW A PERSON TO REPORT AN UNBLOCKED WEBSITE THAT DISPLAYS OBSCENE MATERIAL OR A WRONGFULLY BLOCKED WEBSITE THAT IS NOT DISPLAYING OBSCENE MATERIAL.

C. A DISTRIBUTOR IS NOT REQUIRED TO BLOCK A WEBSITE THAT:

1. IS PRIMARILY CONSIDERED A SOCIAL MEDIA AND INTERACTIVE WEBSITE.

2. HAS A REPORTING MECHANISM THAT IS SIMILAR TO THE REQUIREMENTS INCLUDED IN SUBSECTION B, PARAGRAPH 2 OF THIS SECTION.

3. REMAINS REASONABLY PROACTIVE IN REMOVING OBSCENE CONTENT WHEN REPORTED TO THE WEBSITE.

4. DISPLAYS FULL LENGTH MOVIES THAT ARE RATED "R" AND BELOW BY THE CLASSIFICATION AND RATINGS ADMINISTRATION.

D. A DISTRIBUTOR THAT RECEIVES CHILD PORNOGRAPHY THROUGH THE DISTRIBUTOR'S REPORTING MECHANISM SHALL REPORT THE CONTENT TO THE CYBERTIPLINE OF THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN, OR ANY SUCCESSOR TO THE CYBERTIPLINE OPERATED BY THE CENTER, IN ACCORDANCE WITH 18 UNITED STATES CODE SECTION 2258A.

E. A DISTRIBUTOR THAT KNOWINGLY VIOLATES THIS SECTION IS GUILTY OF A CLASS 1 MISDEMEANOR.

44-7903. Injunctive relief

THE ATTORNEY GENERAL OR A COUNTY ATTORNEY MAY SEEK INJUNCTIVE RELIEF AGAINST A DISTRIBUTOR THAT ALLOWS ACCESS TO CONTENT OR A WEBSITE IN VIOLATION OF THIS ARTICLE.

44-7904. Blocking software deactivation; requirements; fee; violation; classification; John McCain human trafficking and child exploitation prevention fund

A. A DISTRIBUTOR SHALL DEACTIVATE BLOCKING SOFTWARE IN A PRODUCT IF THE INDIVIDUAL WHO PURCHASED OR LEASED THE PRODUCT DOES ALL OF THE FOLLOWING:

1. SPECIFICALLY REQUESTS THAT THE DISTRIBUTOR DEACTIVATE THE BLOCKING SOFTWARE.

2. PRESENTS IDENTIFICATION THAT PROVES THAT THE INDIVIDUAL IS EIGHTEEN YEARS OF AGE OR OLDER.

3. ACKNOWLEDGES THE RECEIPT OF A WARNING FROM THE DISTRIBUTOR THAT DEACTIVATING THE BLOCKING SOFTWARE WILL PREVENT THE BLOCKING OF OBSCENE MATERIAL.

4. PAYS A ONETIME DEACTIVATION FEE OF AT LEAST \$20 TO THE ARIZONA COMMERCE AUTHORITY. A DISTRIBUTOR MAY IMPOSE AND RETAIN AN ADDITIONAL CHARGE TO DEACTIVATE THE BLOCKING SOFTWARE.

B. THE CHIEF EXECUTIVE OFFICER OF THE ARIZONA COMMERCE AUTHORITY MAY ANNUALLY ADJUST THE FEE PRESCRIBED IN SUBSECTION A, PARAGRAPH 4 OF THIS SECTION TO ACCOUNT FOR INFLATION.

C. A PERSON MAY NOT SHARE THE METHOD, SOURCE CODE OR OTHER OPERATING INSTRUCTIONS FOR DEACTIVATING A FILTER. A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A CLASS 1 MISDEMEANOR.

D. THE JOHN MCCAIN HUMAN TRAFFICKING AND CHILD EXPLOITATION PREVENTION FUND IS ESTABLISHED. THE CHIEF EXECUTIVE OFFICER OF THE ARIZONA COMMERCE AUTHORITY SHALL ADMINISTER THE FUND. THE CHIEF EXECUTIVE OFFICER SHALL DEPOSIT THE FEES COLLECTED PURSUANT TO SUBSECTION A, PARAGRAPH 4 OF THIS SECTION IN THE FUND. MONIES IN THE FUND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS AND ARE SUBJECT TO LEGISLATIVE APPROPRIATION. THE CHIEF EXECUTIVE OFFICER, IN CONJUNCTION WITH THE DIRECTOR OF THE DEPARTMENT OF PUBLIC SAFETY, SHALL PROVIDE GRANTS TO GOVERNMENT AGENCIES AND PRIVATE ENTITIES THAT WORK TO UPHOLD COMMUNITY STANDARDS OF DECENCY FOR THE PURPOSE OF STRENGTHENING FAMILIES AND DEVELOPING, EXPANDING OR STRENGTHENING PROGRAMS FOR VICTIMS OF SEX OFFENSES, INCLUDING GRANTS TO:

1. BUILD A BORDER WALL BETWEEN MEXICO AND THIS STATE OR FUND BORDER SECURITY.

2. PROVIDE PHYSICAL AND MENTAL HEALTH SERVICES.

3. PROVIDE TEMPORARY AND PERMANENT HOUSING PLACEMENTS.

4. ASSIST VICTIMS IN EMPLOYMENT PLACEMENT, EDUCATION AND EMPLOYMENT TRAINING.

5. PREVENT AND PROTECT VICTIMS OF HUMAN TRAFFICKING, DOMESTIC VIOLENCE, PROSTITUTION, DIVORCE, CHILD ABUSE AND SEXUAL ASSAULT.

6. ASSIST SCHOOL DISTRICTS.

7. COMPENSATE CRIME VICTIMS.

8. FUND SHELTERS AND DREAM CENTERS.

9. PAY FOR FAMILY COUNSELING AND REHABILITATION.

10. ASSIST LAW ENFORCEMENT.

44-7905. Unblocking content that is not obscene; civil action

A. IF BLOCKING SOFTWARE BLOCKS A WEBSITE THAT IS NOT DISPLAYING OBSCENE MATERIAL AND THE BLOCK IS REPORTED TO A DISTRIBUTOR'S CALL CENTER OR REPORTING MECHANISM, THE DISTRIBUTOR MUST UNBLOCK THE WEBSITE WITHIN A REASONABLE AMOUNT OF TIME AFTER THE BLOCK IS REPORTED.

B. A PERSON MAY FILE A CIVIL ACTION SEEKING JUDICIAL RELIEF TO UNBLOCK FILTERED WEBSITE. THE COURT MAY AWARD THE PREVAILING PARTY ATTORNEY FEES, COSTS AND OTHER FORMS OF RELIEF.

44-7906. Failure to act; civil action; damages; affirmative defense

A. IF A DISTRIBUTOR FAILS TO BLOCK A WEBSITE DISPLAYING OBSCENE MATERIAL OR BLOCK ACCESS TO A PROHIBITED WEBSITE WITHIN A REASONABLE AMOUNT OF TIME AFTER RECEIVING A REPORT THAT OBSCENE MATERIAL OR A PROHIBITED WEBSITE IS ACCESSIBLE THROUGH A PRODUCT THAT IS MANUFACTURED, SOLD, LEASED OR DISTRIBUTED BY THE DISTRIBUTOR, THE ATTORNEY GENERAL OR ANY PERSON MAY FILE A CIVIL ACTION.

B. THE ATTORNEY GENERAL OR THE PERSON THAT FILES THE CIVIL ACTION MAY SEEK DAMAGES OF UP TO \$500 FOR EACH WEBSITE DISPLAYING OBSCENE MATERIAL, OR FOR EACH ACCESSIBLE WEBSITE, THAT WAS REPORTED BUT NOT BLOCKED WITHIN A REASONABLE AMOUNT OF TIME AND THE COST OF THE PRODUCT. THE COURT MAY AWARD THE PREVAILING PARTY ATTORNEY FEES, COSTS AND OTHER FORMS OF RELIEF.

C. IN A CIVIL ACTION THAT ALLEGES A VIOLATION OF THIS ARTICLE FOR A PRODUCT THAT WAS ABLE TO ACCESS A WEBSITE DISPLAYING OBSCENE MATERIAL, IT IS AN AFFIRMATIVE DEFENSE THAT THE CONTENT OR WEBSITE THAT CONTAINED THE OBSCENE MATERIAL WAS LIMITED TO AN INSTITUTION OR ORGANIZATION THAT HAS SCIENTIFIC, EDUCATIONAL OR OTHER SIMILAR JUSTIFICATION FOR DISPLAYING THE CONTENT.

Sec. 2. Applicability

This act applies to a distributor that manufactures, sells, offers for sale, leases or distributes a product in this state that makes content accessible on the internet beginning on and after the effective date of this act.

Sec. 3. Short title

This act may be cited as the "Human Trafficking and Child Exploitation Prevention Act".

Sec. 4. Requirements for enactment; two-thirds vote

Pursuant to article IX, section 22, Constitution of Arizona, this act is effective only on the affirmative vote of at least two-thirds of the members of each house of the legislature and is effective immediately on the signature of the governor or, if the governor vetoes this act, on the subsequent affirmative vote of at least three-fourths of the members of each house of the legislature.