

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)

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

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

4 CHAPTER 37

5 OBSCENE AND CRIMINAL CONTENT BLOCKING SOFTWARE

6 ARTICLE 1. GENERAL PROVISIONS

7 44-7901. Definitions

8 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

12 2. "DISTRIBUTOR":

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

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

19 3. "OBSCENE MATERIAL" MEANS CONTENT THAT:

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

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

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

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

31 5. "REVENGE PORNOGRAPHY" MEANS AN IMAGE OF AN INDIVIDUAL WHO IS
32 ENGAGED IN SEXUAL ACTIVITY OR THAT DISPLAYS A SPECIFIED ANATOMICAL AREA IF
33 THE IMAGE CONTAINS OR CONVEYS THE PERSONAL IDENTIFICATION INFORMATION OF
34 THE DEPICTED INDIVIDUAL TO AN INTERNET WEBSITE WITHOUT THE DEPICTED
35 INDIVIDUAL'S CONSENT.

36 6. "SEXUAL ACTIVITY" HAS THE SAME MEANING PRESCRIBED IN SECTION
37 13-3501.

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

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

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

1 44-7902. Prohibited business practices; blocking websites
2 that display obscene material and prohibited
3 content; reporting; violation; classification

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

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

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

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

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

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

17 B. A DISTRIBUTOR SHALL:

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

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

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

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

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

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

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

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

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

39 44-7903. Injunctive relief

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

1 44-7904. Blocking software deactivation; requirements; fee;
2 violation; classification; John McCain human
3 trafficking and child exploitation prevention fund

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

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

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

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

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

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

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

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

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

37 2. PROVIDE PHYSICAL AND MENTAL HEALTH SERVICES.

38 3. PROVIDE TEMPORARY AND PERMANENT HOUSING PLACEMENTS.

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

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

43 6. ASSIST SCHOOL DISTRICTS.

44 7. COMPENSATE CRIME VICTIMS.

45 8. FUND SHELTERS AND DREAM CENTERS.

1 9. PAY FOR FAMILY COUNSELING AND REHABILITATION.

2 10. ASSIST LAW ENFORCEMENT.

3 44-7905. Unblocking content that is not obscene; civil action

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

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

11 44-7906. Failure to act; civil action; damages; affirmative
12 defense

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

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

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

31 Sec. 2. Applicability

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

36 Sec. 3. Short title

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

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

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