

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 523

FISCAL
NOTE

BY SENATOR SMITH

[Introduced February 5, 2019; Referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §61-8F-1, §61-8F-2, §61-8F-3, §61-8F-4, §61-8F-5, §61-8F-6, §61-8F-7, §61-
 3 8F-8, and §61-8F-9, all relating to prohibiting retailers from selling or leasing products that
 4 make content accessible on the Internet, unless the product contains an active and
 5 operating digital blocking capability that renders websites displaying obscene material or
 6 website that facilitates human trafficking inaccessible by default; defining terms;
 7 establishing a fee; creating a special fund; designating how moneys from the fund may be
 8 spent; providing for injunctive relief and civil actions; creating a duty for organization to
 9 report; establishing an affirmative defense; establishing criminal penalties; providing
 10 exemptions; and establishing conditions upon which law would become effective.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 8F. RETAILERS REQUIRED TO ENSURE CERTAIN PRODUCTS CONTAIN
 DIGITAL BLOCKING CAPABILITY.**

§61-8F-1. Definitions.

1 In this article:

2 “Consumer” means an individual who purchases or leases for personal, family, or
 3 household purposes a product that makes content accessible on the Internet.

4 “Obscene” has the meaning assigned by §8-12-5b of this code.

5 “Retailer” means a person who is engaged in the business of selling or leasing directly to
 6 a consumer a product that makes content accessible on the Internet.

§61-8F-2. Digital blocking capability.

1 (a) Except as provided by subsection (d) of this section, a retailer may not sell or lease to
 2 a consumer a product that makes content accessible on the Internet unless the product contains
 3 an active and operating digital blocking capability that renders all websites displaying obscene
 4 material or all websites known to facilitate prostitution and human trafficking inaccessible by

5 default.

6 (b) The digital blocking capability:

7 (1) Must block access to websites displaying child pornography, revenge pornography,
8 and websites known to facilitate prostitution and human trafficking;

9 (2) May not block access to social media websites that provide a means for the website's
10 users to report obscene material and have in place procedures for evaluating those reports and
11 removing obscene material;

12 (3) Must not block websites that serve primarily as a search engine;

13 (4) Must not block websites that display complete movies that are rated R and below by
14 the Classification and Ratings Administration.

15 (5) Must be distributed by an entity that:

16 (A) Regularly makes available to consumers updates to the digital blocking capability's
17 filters to ensure the filters' effectiveness in blocking access to a website displaying obscene
18 material;

19 (B) Maintains a website or telephone line that consumers can use to report:

20 (i) A website displaying obscene material that is not blocked by the digital blocking
21 capability's filters;

22 (ii) A website that is not displaying obscene material but is blocked by the digital blocking
23 capability's filters; and

24 (C) Has in place procedures for evaluating reports made under paragraph (B) of this
25 subdivision and, if necessary, updating the digital blocking capability's filters in a reasonable
26 amount of time.

27 (c) Except as provided by subsection (d) of this section, a retailer may not provide to a
28 consumer, methods, source code, or other operating instructions for deactivating a product's
29 digital blocking capability.

30 (d) A retailer may deactivate a product's digital blocking capability if the consumer who

31 purchased or leased the product:

32 (1) Requests that the digital blocking capability be deactivated;

33 (2) Presents identification verifying that the consumer is at least 18 years of age;

34 (3) Acknowledges a warning regarding the potential danger of deactivating the digital
35 blocking capability; and

36 (4) Pays a one-time fee of \$20 to be remitted to the "Human Trafficking And Child
37 Exploitation Prevention Grant Fund."

38 (e) The digital access fee in paragraph (4) subsection (d) in this section is not content
39 based but charged and remitted to the state to offset secondary harmful effects and to help the
40 state bear the costs of upholding community standards of decency and to combat sex related
41 crimes.

42 (f) Nothing in this act shall be construed to prevent a seller from charging a reasonable
43 separate fee to deactivate the digital blocking capability for profit in addition to the requirement
44 under paragraph (4) of subsection (d) of this section, which it may retain.

§61-8F-3. Remission and use of fee.

1 (a) Each quarter, a retailer shall remit the fee collected under §61-8F-2(d)(4) of this code
2 to the State Treasurer in the manner prescribed by the Treasurer.

3 (b) The State Treasurer shall deposit the fee to the credit of a newly created as a special
4 fund in the State Treasury entitled the "Human Trafficking And Child Exploitation Prevention
5 Grants Fund." Money deposited to that fund may be used only by:

6 (1) The Attorney General shall provide grants to government and nongovernment entities
7 and individuals that are working to uphold community standards of decency, to strengthen families
8 and to develop, expand, or strengthen programs for victims of human child exploitation. This
9 includes providing grants for:

10 (i) Rape-kit testing;

11 (ii) Physical and mental health services;

- 12 (iii) Temporary and permanent housing placement;
- 13 (iv) Employment, placement, education, training;
- 14 (v) Prevention of and protection from human trafficking, domestic violence, prostitution,
- 15 divorce child abuse, and rape by training first responders and by increasing public awareness;
- 16 (vi) Independent school districts;
- 17 (vii) Victims compensation;
- 18 (viii) Shelters and dream centers;
- 19 (ix) Family counseling;
- 20 (x) Law enforcement;
- 21 (xi) Musical, writing, design, cinematic, or pictorial creative art projects that promote
- 22 decency;

23 (2) The Department of Health and Human Resources for grants to support programs
 24 assisting victims of human trafficking and other sex crimes and to uphold community standards
 25 of decency;

26 (3) The office of the Governor for grants to support human trafficking prosecution projects
 27 and to uphold community standards of decency; and

28 (4) Any state agency or organization for the purpose of conducting human trafficking
 29 enforcement programs and to uphold community standards of decency.

§61-8F-4. Injunction and civil action.

30 (a) If the digital blocking capability blocks a website that is not displaying obscene material
 31 and the block is reported to a call center or reporting mechanism, the website must be unblocked
 32 within a reasonable time, but in no event later than five business days after the block is first
 33 reported.

34 (b) A consumer may seek judicial relief to unblock a filtered website that is not subject to
 35 this chapter. The prevailing party in civil litigation seek attorney fees, costs, and other forms of
 36 relief.

37 (c) If a retailer who manufactures, sells, offers for sale, leases, or distributes a product that
38 makes content accessible on the Internet is unresponsive to a report of a website displaying
39 obscene material that has breached the filter, the Attorney General or a consumer may file a civil
40 suit. The Attorney General or a consumer may seek damages of up to \$500 for each website that
41 was reported but not subsequently blocked. The prevailing party in the civil action may seek
42 attorneys' fees, costs, and other forms of relief. Any award recovered by the Attorney General will
43 be deposited into the Human Trafficking And Child Exploitation Grants Fund created under §61-
44 8F-3(b) of this code.

§61-8F-5. Affirmative Defense.

1 It shall be an affirmative defense in civil action to a charge of violating this chapter that the
2 dissemination of the content described in §61-8F-1 and §61-8F-2 of this code was limited to
3 institutions or organizations having scientific, educational, or other similar justifications for
4 displaying the material covered by §61-8F-1 and §61-8F-2 of this code.

§61-8F-6. Duty To Report Child Pornography To The National Center For Missing And
Exploited Children's Cyber Tip Line.

1 A business organization that manufactures, distributes, or sells any product that makes
2 accessible any content on the Internet that receives child pornography through the consumer
3 reporting Internet site or call center shall report the content to the National Center For Missing
4 and Exploited Children's Cyber Tip Line in accordance with 18 U.S.C. § 2258A.

§61-8F-7. Penalties.

1 (a) A retailer that sells or leases to a consumer a product that makes content accessible
2 on the Internet that knowingly fails to install and activate blocking software that makes an attempt
3 to block websites displaying obscenity, child pornography revenge pornography or websites that
4 are known to facilitate human trafficking and prostitution is guilty of a misdemeanor and, upon
5 conviction, shall be fined not more than \$1,000 or confined in jail not more than six months.

6 (b) With the consent of the appropriate local prosecuting attorney, the Attorney General

7 has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under
8 this section.

9 (c) Fines collected under this section shall be deposited in the “Human Trafficking and
10 Child Exploitation Prevention Grant Fund” established under §61-8F-3(b) of this code.

§61-8F-8. Exemptions.

1 (a) This act shall not apply to an occasional sale of an Internet enabled device by a person
2 that is not regularly engaged in the trade business of selling Internet enabled devices.

3 (b) This act does not retroactively apply to products made or sold before enactment.

4 (c) This act only applies to retailers that are within this state’s jurisdiction.

§61-8F-9. Effective date.

1 This article takes effect for and on behalf of the State of West Virginia only from and after
2 the passage, approval, ratification, and adoption, by five other states. Within 10 days of the date
3 that the five states adopt this legislation, the Attorney General shall advise the Governor, the
4 Speaker of the House of Delegates, and the President of the Senate of the effective date of this
5 article.

NOTE: The purpose of this bill is to prohibit retailers from selling or leasing products that make content accessible on the Internet, unless the product contains an active and operating digital blocking capability that renders obscene material inaccessible.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.