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SENATE BILL DRS45302-MQ-18A

Short Title: Human Trafficking/Child Exploitation Prev.Act. (Public)

Sponsors: Senators Alexander and Krawiec (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT RELATING TO THE HUMAN TRAFFICKING AND CHILD EXPLOITATION
3 PREVENTION ACT CONCERNING INDECENT DECEPTIVE TRADE PRACTICES TO
4 CREATE ONGOING DUTIES FOR RETAILERS OF INTERNET-ENABLED DEVICES,
5 AND TO SET A CONTINGENCY ENACTMENT DATE THAT DEPENDS ON FIVE
6 OTHER STATES PASSING SIMILAR LEGISLATION.

7 Whereas, the United States Supreme Court in *Ashcroft v. Am. Civil Liberties Union*,
8 542 U.S. 656 (2004) held that the legislative branch "may undoubtedly act to encourage the use
9 of filters... It could also take steps to promote their development by industry, and their use by
10 parents," which was the Supreme Court's way of signaling to the legislative branch to pass filter
11 legislation that requires consumers to opt-in to having access to obscene materials that are
12 harmful to minors on internet-enabled devices, since filters are the least restrictive means; and

13 Whereas, the United States Supreme Court in *Ginsberg v. New York*, 390 U.S. 629
14 (1968) held that a physical display state statute that required physical brick and mortar stores to
15 put physical obscene material behind a physical blinder rack was constitutional under first
16 amendment heightened scrutiny, which means that a digital blinder rack statute that requires
17 digital retailers to put digital obscene material behind a digital blinder rack is also constitutional
18 on the same legal basis; and

19 Whereas, because the United States Supreme Court, in *Paris Adult Theatre I v. Slaton*,
20 413 U.S. 49 (1973) made it clear that the states have a compelling interest to uphold community
21 standards of decency, a statute requiring that internet-enabled devices filter websites that
22 facilitate human trafficking or that display obscene material is rationally related to a narrowly
23 tailored compelling state interest; and

24 Whereas, sex trafficking has substantially moved from the street corner to the
25 smartphone, which means that making websites that facilitate human trafficking and prostitution
26 inaccessible by default on internet-enabled devices will do more to curb the demand for such
27 offenses more so than any other measure since the inception of the internet; and

28 Whereas, the General Assembly is generally opposed to online censorship unless the
29 content is injurious to children or promotes human trafficking—only then is the General Assembly
30 for limited censorship; Now, therefore,

31 The General Assembly of North Carolina enacts:

32 **SECTION 1.** Chapter 75 of the General Statutes is amended by adding the following
33 new Article to read:

34 "Article 9.

35 "Indecent Deceptive Trade Practices.

36 "§ 75-150. Title.



1 This Article shall be known and may be cited as the "Human Trafficking and Child
2 Exploitation Prevention Act."

3 **"§ 75-151. Purpose.**

4 This Article regulates indecent deceptive trade practices and enables existing laws to catch
5 up to modern technology or evolving unfair trade practices that harm consumers or erode
6 contemporary community standards of decency.

7 **"§ 75-152. Definitions.**

8 The following definitions apply in this Article:

- 9 (1) Cellular telephone. – A communication device containing a unique electronic
10 serial number that is programmed into its computer chip by its manufacturer
11 and whose operation is dependent on the transmission of that electronic serial
12 number along with a mobile identification number, which is assigned by the
13 cellular telephone carrier, in the form of radio signals through cell sites and
14 mobile switching stations.
- 15 (2) Child pornography. – As defined under section 2256 of Title 18, United States
16 Code, and describes an offense under G.S. 14-190.17 or G.S. 14-190.17A.
- 17 (3) Computer. – As defined in section 1030 of Title 18, United States Code.
- 18 (4) Consumer. – An individual, business, or entity that purchases or leases for
19 personal, family, or household purposes, or any other reason, an
20 internet-enabled device.
- 21 (5) Data communications device. – An electronic device that receives electronic
22 information from one source and transmits or routes it to another, including,
23 but not limited to, any bridge, router, switch, or gateway.
- 24 (6) Harmful to minors. – As defined in G.S. 14-190.13(1).
- 25 (7) Human trafficking. – As defined in G.S. 14-43.11 and describes an offense
26 under that section.
- 27 (8) Internet. – As defined in section 5362 of Title 31, United States Code.
- 28 (9) Internet-enabled device. – A cellular telephone, computer, data
29 communications device, or other product manufactured, distributed, or sold in
30 this State that provides internet access or plays a material role in distributing
31 content on the internet.
- 32 (10) Internet filter. – A digital blocking capability, hardware, or software that
33 restricts or blocks internet access to websites, electronic mail, chat, or other
34 internet-based communications based on category, site, or content. The term
35 includes a filter or a digital blinder rack that can be deactivated upon the
36 satisfaction of certain nominal conditions.
- 37 (11) Internet service provider. – A person or entity engaged in the business of
38 providing internet access, a computer, or communications facility or device
39 through which a consumer may obtain access to the internet. The term does
40 not include a common carrier if it provides only telecommunications service.
- 41 (12) Material. – As defined in G.S. 14-190.13(2).
- 42 (13) Minor. – As defined in G.S. 14-190.13(3).
- 43 (14) Nongovernment group. – A nonprofit organization exempt from federal
44 income taxation under section 501(c)(3), Internal Revenue Code of 1986,
45 having as a primary purpose ending sexual violence in this State, for programs
46 for the prevention of sexual violence, outreach programs, and technical
47 assistance to and support of youth and rape crisis centers working to prevent
48 sexual violence. The term also includes individuals or any group that is doing
49 anything to uphold community standards of decency.
- 50 (15) Obscene material. – As defined in G.S. 14-190.1. The term includes, but is not
51 limited to, internet websites that meet the following criteria:

- 1 a. Websites that are known to facilitate human trafficking or prostitution.
2 b. Websites that display or depict images that are harmful to minors or
3 that constitute sexual activity, sexually explicit nudity,
4 sadomasochistic abuse, sexual conduct, or revenge pornography.
5 (16) Personal identification information. – Any information that identifies a
6 person, including an individual's photograph, social security number, driver
7 identification number, name, email address, physical address, mailing
8 address, or telephone number.
9 (17) Prostitution. – As defined in G.S. 14-190.13(4) and describes an offense under
10 G.S. 14-204.
11 (18) Retailer. – Any person who regularly engages in the manufacturing, sale, or
12 offer for sale or lease of internet-enabled devices or services in this State that
13 make content accessible on the internet. The term includes internet service
14 providers and suppliers and manufacturers of internet-enabled devices that
15 materially play a role in distributing content on the internet or that make
16 content accessible and that are subject to the jurisdiction of this State.
17 (19) Revenge pornography. – The distribution of sexually explicit images or videos
18 of individuals without their permission or the disclosure of private images.
19 The term describes an offense under G.S. 14-190.5A.
20 (20) Sexual activity. – As defined in G.S. 14-190.13(5).
21 (21) Sexual conduct. – As defined in G.S. 14-190.1(c).
22 (22) Sexually explicit nudity. – As defined in G.S. 14-190.13(6).
23 (23) Social media website. – An internet website or application that enables users
24 to communicate with each other by posting information, comments, messages,
25 or images and that meets all of the following requirements:
26 a. Is open to the public.
27 b. Has more than 75 million subscribers.
28 c. From its inception has not been specifically affiliated with any one
29 religion or political party.
30 d. Provides a means for the website's users to report obscene materials
31 and has in place procedures for evaluating those reports and removing
32 obscene material.

33 **"§ 75-153. Continuing duties of retailers of internet-enabled devices.**

34 (a) A retailer that manufactures, sells, offers for sale, leases, or distributes an
35 internet-enabled device shall ensure that the product is equipped with an active and operating
36 filter prior to sale that blocks, by default, websites that meet any of the following criteria:

- 37 (1) Are known to facilitate human trafficking or prostitution.
38 (2) Display child pornography, revenge pornography, or obscene material
39 harmful to minors.

40 (b) A retailer that manufactures, sells, offers for sale, leases, or distributes an
41 internet-enabled device shall do all of the following:

- 42 (1) Make reasonable and ongoing efforts to ensure that a product's filter functions
43 properly.
44 (2) Establish a reporting mechanism, such as a website or call center, to allow a
45 consumer to report unblocked websites displaying content described in
46 subsection (a) of this section or to report blocked websites that are not
47 displaying content described in subsection (a) of this section.
48 (3) Report child pornography received through the reporting mechanism to the
49 National Center for Missing and Exploited Children's CyberTipline in
50 accordance with 18 U.S.C. § 2258A.

- 1 (4) Establish a procedure to avoid blocking access to websites that meet any of
2 the following criteria:
3 a. Social media websites that provide a means for the website's users to
4 report obscene materials and that have established procedures for
5 evaluating those reports and removing obscene material.
6 b. Serve primarily as a search engine.
7 c. Display complete movies that meet the qualifications for a "G," "PG,"
8 "PG-13," or "R" rating by the Classification and Ratings
9 Administration, as those qualifications existed on September 1, 2020.
10 (c) Except as provided by subsection (d) of this section, a retailer of an internet-enabled
11 device may not provide to a consumer any methods, source code, or other operating instructions
12 for deactivating a product's filter.
13 (d) A retailer of an internet-enabled device shall deactivate the filter on a consumer's
14 device if the consumer does all of the following:
15 (1) Requests that the filter capability be disabled.
16 (2) Presents personal identification information to verify that the consumer is 18
17 years of age or older.
18 (3) Acknowledges receipt of a warning regarding the potential danger of
19 deactivating the filter.
20 (e) Nothing in this act shall be construed to prevent a retailer of an internet-enabled
21 device from charging an additional reasonable fee to deactivate the filter, which the retailer may
22 retain for profit.
23 (f) The Attorney General shall prepare and make available to retailers a form that
24 includes all content that must be in the warning described in subdivision (3) of subsection (d) of
25 this section.
26 (g) Nothing in this act shall be construed to require a retailer of an internet-enabled device
27 to create a database or registry that contains the names or personal identification information of
28 adults who knowingly chose to deactivate a product's filter. A retailer of an internet-enabled
29 device shall take due care to protect the privacy rights of adult consumers under this section and
30 shall not disclose the names or personal identification information of an adult consumer who has
31 requested to deactivate a product's filter.
32 **§ 75-154. Reporting; civil actions; deceptive trade practices; affirmative defense.**
33 (a) If the filter blocks a website that is not displaying content described in G.S. 75-153(a)
34 and the block is reported to a call center or reporting mechanism pursuant to G.S. 75-153(b)(2),
35 the website shall be unblocked within a reasonable time, but in no event later than five business
36 days after the block is first reported. A consumer may seek judicial relief to unblock a website
37 that was wrongfully blocked by the filter. The prevailing party in a civil litigation may seek
38 attorneys' fees, costs, and other forms of relief.
39 (b) If a retailer of an internet-enabled device is unresponsive to a report of a website
40 displaying content described in G.S. 75-153(a) that has breached the filter, the Attorney General
41 or a consumer may file a civil suit. The Attorney General or a consumer may seek damages of
42 up to five hundred dollars (\$500.00) for each website that was reported but not subsequently
43 blocked. The prevailing party in the civil action may seek attorneys' fees, costs, and other forms
44 of relief.
45 (c) A retailer of internet-enabled devices that fails to comply with a duty described in
46 subsections (a) and (b) of this section has engaged in an unfair and deceptive practice in violation
47 of G.S. 75-1.1 and is subjected to the penalties under G.S. 75-15-2.
48 (d) It shall be an affirmative defense in a civil action to a charge of violating this section
49 that the dissemination of the content described in G.S. 75-153(a) was limited to institutions or
50 organizations having scientific, educational, or other similar justifications for displaying the
51 material.

1 **"§ 75-155. Unlawful practices; penalties.**

2 (a) It is a violation of this section for a retailer of an internet-enabled device if the retailer
3 knowingly engages in any of the following:

4 (1) Sells an internet-enabled device without an activated filter that at least makes
5 an attempt to block by default websites that display content described in
6 G.S. 75-153(a).

7 (2) Commits a violation of G.S. 75-153(c).

8 (3) Fails to comply with the requirements of G.S. 75-153(d) before deactivating
9 a product's filter.

10 (4) Discloses to a third party the name or the personal identification information
11 of adult consumers who have elected to deactivate a product's filter in
12 violation of G.S. 75-153(c) without a court order directing otherwise.

13 (b) A retailer of an internet-enabled device shall be subject to a fine in an amount not
14 exceeding one thousand dollars (\$1,000) for the first offense under subsection (a) of this section
15 and an amount not exceeding two thousand five hundred dollars (\$2,500) for each subsequent
16 offense.

17 (c) A retailer that commits an offense under this section with one prior conviction under
18 the same section is guilty of a Class 3 misdemeanor. A retailer that commits an offense under
19 subsection (a) of this section with two or more prior convictions under the same section is guilty
20 of a Class 2 misdemeanor.

21 (d) A retailer of internet-enabled devices that commits an offense under this section has
22 engaged in an unfair and deceptive practice in violation of G.S. 75-1.1 and is subjected to the
23 penalties under G.S. 75-15-2.

24 (e) Only the Attorney General or a district attorney may enforce this section.

25 **"§ 75-156. Exemptions.**

26 (a) This act shall not apply to any of the following:

27 (1) An occasional sale of an internet-enabled device by a person that is not
28 regularly engaged in the trade business of selling internet-enabled devices.

29 (2) Products produced or sold before the effective date of this act.

30 (3) Independent third-party routers that are not affiliated with an internet service
31 provider.

32 (b) This act shall not apply to a retailer of an internet-enabled device that is not subject
33 to the jurisdiction of this State."

34 **SECTION 2.** This act becomes effective on the first day of January following the
35 day on which at least five other states enact substantially similar legislation. The Secretary of
36 State shall inform the Governor, the President Pro Tempore of the Senate, and the Speaker of the
37 House of Representatives, in writing, of the date this act takes effect.