

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 460

BY SENATORS RUCKER, ARVON, AZINGER, KARNES,

MARONEY, MAYNARD, AND CLINE

[Introduced February 1, 2018; 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, and §61-8F-7,
 3 all relating to prohibiting retailers from selling or leasing products that make content
 4 accessible on the Internet, unless the product contains an active and operating digital
 5 blocking capability that renders obscene material inaccessible; providing exceptions;
 6 defining terms; establishing a fee; creating a special fund; designating how moneys from
 7 the fund may be spent; and providing for injunctive relief, civil actions, and criminal
 8 penalties.

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 obscene material inaccessible.
 4 (b) The digital blocking capability:
 5 (1) Must block access to child pornography, revenge pornography, and websites known
 6 to facilitate prostitution and human trafficking;

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

10 (3) Must be distributed by an entity that:

11 (A) Regularly makes available to consumers updates to the digital blocking capability's
12 filters to ensure the filters' effectiveness in blocking access to obscene material;

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

14 (i) Obscene material that is not blocked by the digital blocking capability's filters;

15 (ii) Material that is not obscene that is blocked by the digital blocking capability's filters;

16 and

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

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

23 (d) A retailer may deactivate a product's digital blocking capability if the consumer who
24 purchased or leased the product:

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

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

27 (3) Acknowledges a written warning regarding the potential danger of deactivating the
28 digital blocking capability; and

29 (4) Pays a one-time fee of \$20.

30 (5) Pays any deactivation fees, if any, set by retailer at its discretion.

§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 the Sexual Assault Program
4 Fund newly created as a special fund in the State Treasury. Money deposited to that fund may
5 be used only by:

6 (1) The Attorney General for grants:

7 (A) To faith-based groups, independent school districts, and community action
8 organizations for programs for victims of human trafficking; or

9 (B) To prevent sex trafficking and to provide services for victims of sex trafficking;

10 (2) The Department of Health and Human Resources for grants to support programs
11 assisting victims of human trafficking;

12 (3) The office of the Governor for grants to support human trafficking prosecution projects;

13 and

14 (4) Any state agency or organization for the purpose of conducting human trafficking
15 enforcement programs.

§61-8F-4. Injunction.

1 (a) If it appears that a retailer is in violation of this article, the Attorney General or a
2 prosecuting attorney may institute an action of injunctive relief to restrain the retailer from
3 continuing the violation.

4 (b) The Attorney General or a prosecuting attorney may recover reasonable expenses
5 incurred in obtaining injunctive relief under this section, including reasonable attorney's fees.

§61-8F-5. Civil action.

1 A consumer injured by a violation of this article may bring an action for recovery of
2 damages. The damages awarded may not be less than the amount the consumer paid the retailer
3 to purchase or lease the product with respect to which the violation occurred, plus reasonable
4 attorney's fees.

§61-8F-6. Criminal penalties.

1 (a) A retailer knowingly violating this article is guilty of a misdemeanor and, upon
2 conviction, shall be fined not more than \$5,000 or confined in jail not more than 12 months, or
3 both fined and confined, if the consumer is younger than 18 years of age.

4 (b) A retailer violating this article is guilty of a misdemeanor and, upon conviction, shall be
5 fined not more than \$1,000 or confined in jail not more than six months, or both fined and confined,
6 if the consumer is older than 18 years of age.

7 (c) With the consent of the appropriate local prosecuting attorney, the Attorney General
8 has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under
9 this section.

§61-8F-7. 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.