

SECOND REGULAR SESSION

SENATE BILL NO. 792

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EIGEL.

Pre-filed December 16, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

3940S.01I

AN ACT

To amend chapter 589, RSMo, by adding thereto nine new sections relating to the protection of children, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 589, RSMo, is amended by adding thereto nine new sections, to be known as sections 589.1000, 589.1002, 589.1004, 589.1006, 589.1008, 589.1010, 589.1012, 589.1014, and 589.1015, to read as follows:

589.1000. Sections 589.1000 to 589.1015 shall be known and may 2 be cited as the "Protect Children from Pornography Act".

589.1002. As used in sections 589.1000 to 589.1015, the following 2 terms shall mean:

(1) "Adult entertainment establishment", a business in which, as 3 the major activity, customers congregate primarily for the purpose of 4 viewing or associating with employees who display anatomical areas 5 designed to provide sexual stimulation or sexual gratification: human 6 genitals, the immediate pubic region, or pubic hair; buttocks to the 7 extent of exposing the immediate anal area; female breasts to points 8 below the nipples, even if covered with opaque clothing; all of the 9 above anatomical areas when covered only by transparent or 10 above anatomical areas when covered only by transparent or 11 diaphanous clothing;

(2) "Algorithm", a set of instructions designed to perform a 12 specific task;

(3) "Blocking software", software that prevents a device from 14 accessing obscene material on the internet;

(4) "Child pornography", content that is prohibited under 16 U.S.C. Section 2251;

(5) "Court of competent jurisdiction", the state or federal court

19 in proximity to where the breach and injury occurred;

20 (6) "Distributor", a person who manufactures, sells, offers for
21 sale, leases, or distributes a product in this state that makes content
22 accessible on the internet also referred to as an internet enabled
23 device;

24 (7) "Hate speech", a catch all phrase based on arbitrary standards
25 concerning content that offends the delicate sensibilities of individuals
26 who are employed by the social
27 media website;

28 (8) "Internet", the international computer networks of both
29 federal and nonfederal interoperable packet switched data networks;

30 (9) "Obscene material", content:

31 (a) That the average individual applying contemporary
32 community standards would find, when considered or taken as a whole,
33 appeals to the prurient interests;

34 (b) Depicting or describing sexual conduct in a patently
35 offensive way by audio or visual representations of sexual acts, normal
36 or perverted, actual or simulated; masturbation, excretory functions or
37 exhibitions of a specified anatomical area of oneself or another; or
38 tactile stimulation of the covered or uncovered genitals of oneself or
39 another; and

40 (c) That, when considered or taken as a whole, lacks serious
41 literary, artistic, political, or scientific value;

42 (10) "Person", an individual or a corporation, business enterprise,
43 or other legal entity;

44 (11) "Personal identification information", information that
45 identifies an individual, including an individual's photograph, Social
46 Security number, driver identification number, name, email address,
47 home address, or telephone number;

48 (12) "Political speech", speech relating to the state government,
49 the body politic, public administration or law of the civil aspects of
50 government or the military. Political speech includes not just speech
51 by the government or candidates for office, but also any discussion of
52 social issues;

53 (13) "Religious speech", a set of unproven answers, truth claims,
54 faith-based assumptions and naked assertions that attempt to explain
55 the greater questions like how things were created, what humans

56 should do or not do, and what happens after
57 death;

58 (14) "Revenge pornography", an image of a person engaged in a
59 specified sexual activity or that displays a specified anatomical area if
60 the image contains or conveys the personal identification information
61 of the depicted person to an internet website without the depicted
62 person's consent and describes offense under section 573.110;

63 (15) "Specified anatomical area":

64 (a) Less than completely and opaquely covered human genitals,
65 pubic region, buttock, or female breast below a point immediately
66 above the top of the areola; or

67 (b) Human male genitals in a discernibly turgid state, whether
68 covered or uncovered.

589.1004. 1. A distributor shall not manufacture, sell, offer for
2 sale, lease, trade, or distribute a product in this state that makes
3 content accessible on the internet unless the internet enabled device
4 contains active and properly operating blocking software that renders
5 inaccessible by default websites that:

6 (1) Are known to facilitate human trafficking, which is an offense
7 under sections 566.206, 566.209, 566.210, or 566.211;

8 (2) Are known to advance prostitution, which is an offense under
9 section 567.020;

10 (3) Display child pornography, which is an offense under 18
11 U.S.C. Section 2251;

12 (4) Display revenge pornography, which is an offense under
13 section 573.110;

14 (5) Display obscene material.

15 2. A distributor shall:

16 (1) Make reasonable and ongoing efforts to ensure that the
17 blocking software functions properly;

18 (2) Establish a reporting mechanism, such as a website or call
19 center, to allow a consumer to report unblocked websites that are
20 displaying content described in subsection 1 of this section or to report
21 blocked websites that are not displaying material described in
22 subsection 1 of this section;

23 (3) Report child pornography received through the reporting
24 mechanism to the National Center For Missing and Exploited Children's

25 cybertipline in accordance with 18 U.S.C. Section 2258A;

26 (4) Not block access to social media websites that provide a
27 means for the website's users to report obscene materials and have in
28 place procedures for evaluating those reports and removing obscene
29 material;

30 (5) Not block access to websites that serve primarily as a search
31 engine; and

32 (6) Not block access to websites that displays complete movies
33 that are rated R and below by the Classification and Ratings
34 Administration.

589.1006. 1. The attorney general or a prosecuting attorney may
2 seek injunctive relief from a distributor that allows access to content
3 or a website in violation of sections 589.1000 to 589.1014.

4 2. A distributor shall be punishable by a monetary penalty of not
5 more than ten thousand dollars for a first offense and not more than
6 thirty thousand dollars for any subsequent offense, if the distributor
7 knowingly:

8 (1) Sells a product that makes content accessible on the internet
9 without digital blocking capability that fails to make any attempt to
10 render inaccessible the content described in subsection 1 of section
11 589.1004;

12 (2) Provides the mechanism or source code to deactivate the
13 digital blocking capability as to a minor or as to an adult without
14 complying with subsection 1 of section 589.1008.

15 3. A distributor who commits more than two separate offenses
16 under this section is guilty of a misdemeanor and upon conviction shall
17 be punished by imprisonment of less than one year, or by a fine of not
18 more than five hundred dollars.

19 4. Sections 589.1000 to 589.1014 shall not apply to:

20 (1) An occasional sale of an internet enabled device by a person
21 that is not regularly engaged in the trade business of selling internet
22 enabled devices;

23 (2) Products produced or sold before enactment of this act; or

24 (3) Independent third party routers, not associated with an
25 internet service provider.

589.1008. 1. A distributor shall deactivate blocking software in
2 a product if the person who purchased or leased the product:

3 (1) Specifically requests that the distributor deactivate the
4 blocking software;

5 (2) Presents identification that proves that the person is
6 eighteen years of age or older;

7 (3) Acknowledges the receipt of a warning from the distributor
8 that deactivating the blocking software will prevent the blocking of
9 obscene material; and

10 (4) Pays to the distributor a twenty-dollar one-time deactivation
11 fee to be remitted to the state treasurer and deposited in the human
12 trafficking and child exploitation grant fund established under
13 subsection 1 of section 589.1012.

14 2. The deactivation fee in subdivision (4) of subsection 1 of this
15 section is not content based but imposed and remitted to the state to
16 offset secondary harmful effects and to help the state uphold
17 community standards of decency and to combat sex related crimes and
18 is to be used as set forth in subsection 2 of section 589.1012.

19 3. Nothing in sections 589.1000 to 589.1014 shall prohibit a
20 distributor from imposing an additional reasonable charge to
21 deactivate the blocking software which it may retain for profit.

589.1010. 1. If the blocking software blocks a website that is not
2 displaying content that is described in subsection 1 of section 589.1004
3 and the block is reported to a distributor's call center or reporting
4 mechanism, the website shall be unblocked no later than five days after
5 the block is reported.

6 2. Any person may seek judicial relief to unblock a website that
7 is not displaying content described in subsection 1 of section
8 589.1004. The prevailing party in the civil action may seek attorney's
9 fees, costs, and other forms of relief.

589.1012. 1. There is hereby created in the state treasury the
2 "Human Trafficking and Child Exploitation Grant Fund", which shall
3 consist of moneys collected under subdivision (4) of subsection 1 of
4 section 589.1008 and subsection 1 of section 589.1015, and any other
5 appropriations, gifts, grants, donations, and requests. The state
6 treasurer shall be custodian of the fund. In accordance with sections
7 30.170 and 30.180, the state treasurer may approve disbursements.

8 2. The fund shall be a dedicated fund and, upon appropriation,
9 moneys in the fund shall be used solely for grants to government and

10 non-government entities and individuals that are working to uphold
11 community standards of decency, to strengthen families and to develop,
12 expand, or advance programs for victims of human child
13 exploitation. This includes providing grants for:

- 14 (1) Rape-kit testing;
- 15 (2) Physical and mental health services;
- 16 (3) Temporary and permanent housing placement;
- 17 (4) Employment, placement, education, and training;
- 18 (5) Prevention of and protection from human trafficking,
19 domestic violence, prostitution, divorce child abuse, and rape victims
20 by training first responders and by increasing public awareness;
- 21 (6) School districts;
- 22 (7) Victims' compensation;
- 23 (8) Shelters and dream centers;
- 24 (9) Family counseling and therapy;
- 25 (10) Law enforcement;
- 26 (11) Musical, writing, design, cinematic, and pictorial creative
27 art projects that intend to promote decency;
- 28 (12) Scholarship to students that display outstanding moral
29 character in their community; and
- 30 (13) Abstinence Programs.

31 3. Notwithstanding the provisions of section 33.080 to the
32 contrary, any moneys remaining in the fund at the end of the biennium
33 shall not revert to the credit of the general revenue fund.

34 4. The state treasurer shall invest moneys in the fund in the
35 same manner as other funds are invested. Any interest and moneys
36 earned on such investments shall be credited to the fund.

589.1014. 1. If a distributor that is subject to sections 589.1000
2 to 589.1014 fails to block obscene material or block access to a
3 prohibited website within five days after receiving a report that
4 obscene material has breached blocking software or that a prohibited
5 website is accessible through a product manufactured, sold, leased,
6 traded, or distributed by the distributor, the attorney general or any
7 person may file a civil suit.

8 2. The attorney general or the person who files the civil suit may
9 seek damages of up to thirty thousand dollars for each website that was
10 reported but not blocked within five days. The prevailing party in the

11 civil action may seek attorney fees and costs.

12 3. It shall be an affirmative defense in a civil action to a charge
13 of violating sections 589.1000 to 589.1015 that the dissemination of the
14 content described in section 589.1002 was limited to institutions or
15 organizations having scientific, educational, or other similar
16 justifications for displaying the material covered by sections 589.1002
17 to 589.1015.

589.1015. 1. A five-dollar admission fee is imposed for each entry
2 by each customer admitted to an adult entertainment establishment to
3 be remitted to the state treasurer and deposited into the human
4 trafficking and child exploitation grant fund established under
5 subsection 1 of section 589.1012.

6 2. The admission fee of subsection 1 of this section is in addition
7 to all other taxes imposed on the business.

8 3. The admission fee is not content based but imposed and
9 remitted to the state to offset secondary harmful effects and to help the
10 state uphold community standards of decency and to combat sex
11 related crimes and is to be used as set forth in subsection 2 of section
12 589.1012.

13 4. Each adult entertainment establishment shall record daily in
14 the manner required by the state treasurer the number of customers
15 admitted to the business. The business shall maintain the records for
16 the period required by the state treasurer and make the records
17 available for inspection and audit on request by the state treasurer. No
18 personal information of the customers is to be in the report.

19 5. The provisions of this section do not require an adult
20 entertainment establishment to impose a tax on a customer of the
21 business. A business has discretion to determine the manner in which
22 the business derives the money required to pay the tax imposed under
23 this section.