**An Act To Prevent Human Trafficking and Child Exploitation**

**Be it enacted by the People of the State of Maine as follows:**

**Sec.** **1. 10 MRSA c. 1057** is enacted to read:

**CHAPTER** **1057**

**HUMAN TRAFFICKING AND CHILD EXPLOITATION PREVENTION**

**§****9571.** **Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1.** **Affirmative defense.** "Affirmative defense" means that the matter so designated must be proved by the defendant by a preponderance of the evidence.

**2.** **Cellular telephone.** "Cellular telephone" means a communication device containing a unique electronic serial number that is programmed into the device's computer chip by the manufacturer and whose operation is dependent on the transmission of the electronic serial number and a mobile identification number, assigned by the cellular telephone carrier, in the form of radio signals through a cellular network and mobile switching stations.

**3.** **Child pornography.** "Child pornography" means sexually explicit material depicting a person who has not attained 16 years of age and has the same meaning as in 18 United States Code, Section 2256(8).

**4.** **Computer.** "Computer" has the same meaning as in 18 United States Code, Section 1030(e)(1).

**5.** **Consumer.** "Consumer" means an individual, business or entity that purchases or leases for personal, family or household purposes or any other reason an Internet-enabled device.

**6.** **Data communications device.** "Data communications device" means an electronic device that receives electronic information from one source and transmits or routes it to another.

**7.** **Distribute.** "Distribute" has the same meaning as in Title 17, section 2911, subsection 1, paragraph A.

**8.** **Filter.** "Filter" means a digital blocking capability, hardware or software that restricts or blocks Internet access to a website, e-mail, chat or other Internet-based communication based on category, site or content, including a digital blind that conceals pornographic or objectionable content, and can be deactivated by a retailer upon the satisfaction of certain nominal conditions.

**9.** **Human trafficking.** "Human trafficking" means conduct constituting a criminal offense under Title 17-A, section 853.

**10.** **Internet.** "Internet" has the same meaning as in 31 United States Code, Section 5362(5).

**11.** **Internet-enabled device.** "Internet-enabled device" means a cellular telephone, computer, data communications device or other product manufactured, distributed or sold in the State that provides Internet access or plays a material role in distributing content on the Internet.

**12.** **Internet service provider.** "Internet service provider" means a person engaged in the business of providing consumer access to the Internet. "Internet service provider" does not include a common carrier if the carrier provides only telecommunications service.

**13.** **Obscene material.**  "Obscene material" has the same meaning as "obscene matter" in Title 17, section 2911, subsection 1, paragraph D and includes a digital image or website that:

A. Is known to facilitate human trafficking and prostitution; or

B. Displays or depicts an image that is harmful to a minor or that constitutes sadomasochistic abuse, sexually explicit conduct or revenge pornography.

**14.** **Personally identifiable information.** "Personally identifiable information" means any information that identifies a person, including an individual's photograph, social security number, driver's license number, name, e-mail address, address or telephone number.

**15.** **Prostitution.** "Prostitution" has the same meaning as in Title 17-A, section 851, subsection 1.

**16.** **Retailer.** "Retailer" means a person subject to the jurisdiction of this State that regularly engages in the manufacturing, sale, offer for sale, lease or distribution of an Internet-enabled device or service in the State that makes content accessible on the Internet. "Retailer" includes an Internet service provider and a supplier or manufacturer of an Internet-enabled device that distributes content on the Internet or that makes content accessible.

**17.** **Revenge pornography.** "Revenge pornography" means a sexually explicit image or video of an individual distributed without the individual's consent to blackmail, coerce, punish, silence or damage the reputation of the individual or for financial gain.

**18.** **Sadomasochistic abuse.** "Sadomasochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or a costume or the condition of being fettered, bound or otherwise physically restrained by the person who is clothed.

**19.** **Sexually explicit conduct.** "Sexually explicit conduct" means actual or simulated:

A. Sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal physical contact, whether between persons of the same or opposite sex or with an artificial genital;

B. Bestiality;

C. Masturbation;

D. Sadistic, masochistic or sadomasochistic abuse; or

E. Lascivious exhibition of the genitals or pubic area of a person.

**20.** **Social media website.** "Social media website" means an Internet website or application that enables users to communicate with each other by posting information, comments, messages or images and that:

A. Is open to the public;

B. Has more than 75,000,000 users;

C. From inception, has not been specifically affiliated with any one religion or political party; and

D. Provides a means for the website's users to report obscene material and has in place procedures for evaluating those reports and removing obscene material.

**§****9572.** **Retailer duties; deactivation of filter; privacy of consumers**

**1.** **Duties of retailers.** A retailer shall:

A. Ensure that prior to the sale, lease or distribution of an Internet-enabled device that the device is equipped with an active and operating filter that blocks by default a website that:

(1) Is known to facilitate human trafficking or prostitution; or

(2) Displays child pornography, revenge pornography or obscene material harmful to minors;

B. Make reasonable and ongoing efforts to ensure that the filter in paragraph A functions properly;

C. Establish a reporting mechanism, including a website or call center, to allow a consumer to report:

(1) An unblocked website displaying content described in paragraph A, subparagraph (2); or

(2) A blocked website that is not displaying content described in paragraph A, subparagraph (2); and

D. Report child pornography reported through the mechanism in paragraph C to a national center for missing and exploited children in accordance with 18 United States Code, Section 2258A.

**2.** **Deactivation of filter.** A retailer shall deactivate a filter in subsection 1, paragraph A if a consumer:

A. Requests that the filter be deactivated;

B. Presents personally identifiable information to verify that the consumer is 18 years of age or older; and

C. Acknowledges receiving a warning regarding the potential danger of deactivating the filter. The Attorney General shall prepare and make available the warning under this paragraph.

A retailer may charge and retain a reasonable fee to deactivate the filter.

**3.** **Privacy of consumers.** A retailer shall take due care to protect the privacy rights of an adult consumer under this section and may not disclose the name or personally identifiable information of an adult consumer who deactivates a filter under subsection 2. This section does not require a retailer to create a database or registry that contains the name or personally identifiable information of an adult who knowingly chooses to deactivate an Internet-enabled device's filter.

**§****9573.** **Reporting mechanism; civil action; deceptive trade practice; affirmative** **defense**

**1.** **Reporting mechanism for filter blocking content on website.** If a report is made of a filter blocking a website under section 9572, subsection 1, paragraph C, subparagraph (2), the retailer shall unblock or cause to be unblocked the website within a reasonable time and no later than 5 business days after the block is first reported. If the website is not unblocked within the time limits of this subsection, a consumer may seek judicial relief through a civil action to unblock the website and, if the consumer prevails, may seek attorney's fees, costs and other forms of relief.

**2.** **Reporting mechanism for website displaying content.** If a retailer is unresponsive to a report of an unblocked website made under section 9572, subsection 1, paragraph C, subparagraph (1), the Attorney General or a consumer may seek judicial relief through a civil action to block the website and, if the Attorney General or the consumer prevails, is entitled to damages of up to $500 for each website that was reported but not subsequently blocked and may seek attorney's fees, costs and other forms of relief.

**3.** **Affirmative defense.**  It is an affirmative defense in a civil action brought under this section that the dissemination of the content described in section 9572, subsection 1, paragraph A was limited to institutions or organizations having scientific, educational or other similar justifications for displaying the material.

**4.** **Unfair trade practice.** A retailer that violates this section commits a violation of the Maine Unfair Trade Practices Act.

**§****9574.** **Retailer prohibitions and penalties**

**1.** **Retailer prohibitions.** A retailer may not:

A. Sell an Internet-enabled device without a filter under section 9572, subsection 1;

B. Provide the mechanism or source code to deactivate a filter under section 9572, subsection 2;

C. Fail to comply with the requirements of section 9572, subsection 2 before deactivating a filter;

D. Disclose to a 3rd party in violation of section 9572, subsection 3 without a court order directing otherwise the name or the personally identifiable information of an adult consumer who has elected to deactivate an Internet-enabled device's filter;

E. Block access to a website that:

(1) Is a social media website that provides a means for the website's users to report obscene material and has in place a procedure for evaluating the reports and removing obscene material;

(2) Serves primarily as a search engine; or

(3) Displays complete movies that meet the qualifications for a G, PG, PG-13 or R rating by the Motion Picture Association, Classification and Rating Administration or successor organization, as those qualifications existed on September 1, 2020; or

F. Except as provided by section 9572, subsection 2, provide to a consumer methods, source code or other operating instructions for deactivating an Internet-enabled device's filter.

**2.** **Civil violation.** A retailer that violates subsection 1, paragraph A commits a civil violation for which no more than $1,000 may be adjudged for a first offense and no more than $2,500 may be adjudged for a 2nd or subsequent offense.

**3.** **Class E crime.** A retailer that violates subsection 1, paragraph A after having previously violated subsection 1, paragraph A 2 or more times is guilty of a Class E crime.

**4.** **Unfair trade practice.** A retailer that violates subsection 1, paragraph A commits a violation of the Maine Unfair Trade Practices Act.

**5.** **Enforcement.** The Attorney General or a district attorney with jurisdiction over the matter may enforce this section.

**§****9575.** **Exemptions**

This chapter does not apply to:

**1.** **Person who is not retailer.** An occasional sale of an Internet-enabled device by a person that is not regularly engaged in the trade or business of selling Internet-enabled devices;

**2.** **Prior product.** A product produced or sold before the enactment of this section;

**3.** **Independent 3rd-party provider.** An independent 3rd-party provider that is not affiliated with an Internet service provider; or

**4.** **Person not subject to state jurisdiction.** A person that is not subject to the jurisdiction of the State who regularly engages in the manufacturing, sale, offer for sale, lease or distribution of an Internet-enabled device or service that makes content accessible on the Internet.

**Sec.** **2. Contingent effective date.** This Act does not take effect until the passage, approval, ratification and enactment of similar legislation by 4 other states. Within 10 days of the date that the 4 states enact legislation similar to this Act, the Attorney General shall advise the Governor, the President of the Senate, the Speaker of the House of Representatives and the Revisor of Statutes of the effective date of this Act.

**SUMMARY**

This bill requires retailers, manufacturers, suppliers and Internet service providers subject to the jurisdiction of the State that regularly engage in the manufacturing, sale, offer for sale, lease or distribution of an Internet-enabled device or service in the State that makes content accessible on the Internet to equip all such devices with filters to block any website that promotes prostitution or displays child pornography, revenge pornography or obscene material harmful to minors. The bill provides a reporting mechanism for reporting a website displaying obscene material or a blocked website that does not display obscene material, with penalties on retailers for not adequately responding to reports filed.