AN ACT

RELATING TO OBSCENITY; ENACTING THE HUMAN TRAFFICKING AND CHILD
EXPLOITATION PREVENTION ACT; REQUIRING PRODUCTS THAT PROVIDE
ACCESS TO CONTENT ON THE INTERNET TO CONTAIN SOFTWARE THAT
BLOCKS OBSCENE CONTENT; ALLOWING FOR DEACTIVATION OF BLOCKING
SOFTWARE; PROVIDING REMEDIES; CREATING THE HUMAN TRAFFICKING
AND CHILD EXPLOITATION PREVENTION FUND; MAKING AN
APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Human Trafficking and Child Exploitation
Prevention Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Human Trafficking and Child Exploitation Prevention Act:

A. "blocking software" means software that prevents
a device from accessing obscene material on the internet;

B. "distributor" means a person who manufactures, sells, offers for sale, leases or distributes a product in the state that makes content accessible on the internet;

C. "obscene material" means content:
   (1) that the average individual applying contemporary community standards would find, when considered or taken as a whole, appeals to the prurient interests;
   (2) depicting or describing sexual conduct in a patently offensive way by audio or visual representations of sexual acts, normal or perverted, actual or simulated; masturbation, excretory functions or exhibitions of a specified anatomical area of oneself or another; or tactile stimulation of the covered or uncovered genitals of oneself or another; and
   (3) that, when considered or taken as a whole, lacks serious literary, artistic, political or scientific value;

D. "person" means an individual or a corporation, business enterprise or other legal entity;

E. "personal identification information" means information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, email address, address or telephone number;

F. "revenge pornography" means an image of a person
engaged in a specified sexual activity or that displays a
specified anatomical area if the image contains or conveys the
personal identification information of the depicted person to
an internet website without the depicted person's consent; and

G. "specified anatomical area" means:

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

   (2) human male genitals in a discernibly
turgid state, whether covered or uncovered.

SECTION 3. [NEW MATERIAL] PROHIBITED BUSINESS--BLOCKING
OBSCENE MATERIAL AND PROHIBITED CONTENT.--

A. A distributor shall not manufacture, sell, offer
for sale, lease or distribute a product in the state that makes
content accessible on the internet unless the product:

   (1) contains active and properly operating
blocking software that renders obscene material inaccessible;

   (2) prohibits access to content that is
prohibited by the Sexual Exploitation of Children Act;

   (3) prohibits access to revenge pornography;

   (4) prohibits access to a website that
facilitates prostitution; and

   (5) prohibits access to a website that
facilitates human trafficking as described in Section
30-52-1 NMSA 1978.
B. A distributor shall:

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

(2) establish a reporting mechanism, such as a website or call center, to allow a person to report unblocked obscene material or report blocked material that is not obscene material.

SECTION 4. [NEW MATERIAL] INJUNCTIVE RELIEF--MISDEMEANOR.--

A. The attorney general or a district attorney may seek injunctive relief against a distributor that allows access to content or a website in violation of the Human Trafficking and Child Exploitation Prevention Act.

B. A distributor that knowingly violates the provisions of Section 3 of the Human Trafficking and Child Exploitation Prevention Act is guilty of a misdemeanor and upon conviction shall be punished by imprisonment of less than one year, or by a fine of not more than five hundred dollars ($500) for each prohibited image, video or audio depiction or website accessible in violation of the Human Trafficking and Child Exploitation Prevention Act, or both.

SECTION 5. [NEW MATERIAL] DEACTIVATION UPON REQUEST.--A distributor shall deactivate blocking software in a product if the person who purchased or leased the product:

A. specifically requests that the distributor
deactivate the blocking software;

B. presents identification that proves that the person is eighteen years of age or older;

C. acknowledges the receipt of a written warning from the distributor that deactivating the blocking software will prevent the blocking of obscene material; and

D. pays to the distributor a twenty-dollar ($20.00) one-time deactivation fee; provided that nothing in the Human Trafficking and Child Exploitation Prevention Act shall prohibit a distributor from imposing an additional charge to deactivate the blocking software.

SECTION 6. [NEW MATERIAL] UNBLOCKING CONTENT.--

A. If the blocking software blocks content that is not obscene and the block is reported to a distributor's call center or reporting website, the content shall be unblocked no later than five days after the block is reported.

B. Any person may seek judicial relief to unblock filtered content. The prevailing party in the civil action may seek attorney fees and costs.

SECTION 7. [NEW MATERIAL] FUND CREATED--APPROPRIATION.--

A. The "human trafficking and child exploitation prevention fund" is created in the state treasury and shall consist of money collected pursuant to the Human Trafficking and Child Exploitation Prevention Act, appropriations, gifts, grants, donations and bequests made to the fund. Income from
investment of the fund shall be credited to the fund. Money in the fund shall not revert to the general fund at the end of a fiscal year.

B. Money in the fund is appropriated to the office of the attorney general for expenditure in fiscal year 2019 and subsequent fiscal years to enforce the Sexual Exploitation of Children Act and Chapter 30, Article 52 NMSA 1978. Expenditures from the fund shall be by warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the attorney general or the attorney general's designee.

C. A distributor shall submit deactivation fees to the state treasurer each quarter, in a manner determined by the state treasurer, to be credited to the human trafficking and child exploitation prevention fund.

SECTION 8. [NEW MATERIAL] REPORTS OF OBSCENE CONTENT OR MATERIAL--CIVIL DAMAGES.--

A. If a distributor that is subject to the Human Trafficking and Child Exploitation Prevention Act fails to block obscene material or block access to a prohibited website within five days after receiving a report that obscene material has breached blocking software or that a prohibited website is accessible through a product manufactured, sold, leased or distributed by the distributor, the attorney general or any person may file a civil suit.
B. The attorney general or the person who files the civil suit may seek damages of up to five hundred dollars ($500) for each image, video or audio depiction of obscene material, or each accessible website, that was reported but not blocked within five days. The prevailing party in the civil action may seek attorney fees and costs.

SECTION 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2018.