

Section 1 Header

2018 SESSION

18-2705.1

04/10

HOUSE BILL            *[bill number]*

AN ACT                relative to the digital blocking of obscene content.

SPONSORS:            [sponsors]

COMMITTEE:          [committee]

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ANALYSIS

This bill requires any business organization that manufactures, distributes, or sells any product in this state that makes accessible any content on the Internet shall not sell such product, unless the product contains an active and operational digital content blocking capability that renders inaccessible any obscene material, child sexual abuse images, nonconsensual private sexual images, and content designed to facilitate or promote prostitution. The bill allows a consumer to pay a fee to remove the digital content blocking and requires all such fees to be used for victim's compensation.

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Explanation:        Matter added to current law appears in ***bold italics***.  
                          Matter removed from current law appears ~~[in brackets and struckthrough.]~~  
                          Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eighteen*

AN ACT relative to the digital blocking of obscene content.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 Legislative Findings and Intent. The general court finds that:

2 I. Easily accessible pornography on products that distribute the Internet is impacting the  
3 demand for human trafficking and producing sexual voyeurism.

4 II. The state of New Hampshire has a compelling interest to prevent manufacturers and  
5 wholesalers of products that distribute the Internet from facilitating human trafficking and  
6 exposing consumers to criminal liability under RSA 633:7.

7 III. The state of New Hampshire has a compelling interest to not necessarily make it easy  
8 for manufacturers and wholesalers to promote obscenity that objectifies women, encourages child  
9 exploitation, and increases domestic violence.

10 IV. The United States Supreme Court has established that the secondary harmful effects of  
11 pornography consumption are undeniable.

12 V. The state of New Hampshire has a compelling interest to impose a filter deactivation tax  
13 as a matter of general equity to the tax imposed on strip clubs, cigarettes, and alcohol, offsetting the  
14 secondary harmful effects and burden on the state that stems from exposure to pornography that is  
15 cultivated by products that distribute the Internet.

16 VI. Obscenity has never been in the area of protected speech and is harmful speech that  
17 can be regulated in the time, place, and manner of it.

18 VII. The state of New Hampshire has a compelling interest to not treat and regulate bricks  
19 and mortar pornography shops under a different standard than wholesalers and manufacturers of  
20 products that distribute the Internet.

21 VIII. The products that distribute the Internet and make its content accessible amount to a  
22 miniature wholesaler/retailer that is an extension of the primary wholesaler and manufacturer  
23 under vicarious liability and agency law.

24 IX. Products of manufacturers and wholesalers that distribute the Internet are subject to  
25 the existing display statute pursuant to RSA 650:2 just like newsstands that require girly  
26 magazines be hidden behind a blinder rack.

27 X. Products that are distributed through the Internet never fully leave the instrumentality  
28 and control of the manufacturer and wholesaler, elevating the duty of care owed by the  
29 manufacturer and wholesaler under state product liability laws.

30 XI. The state of New Hampshire has personal jurisdiction over the wholesalers within the  
31 state that sell products that distribute the Internet and make the content accessible.

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1           XII. Online pornography amounts to an advertisement for actual prostitution in  
2 normalizing false permission giving beliefs.

3           XIII. The link between human trafficking and easily accessible pornography online is  
4 insurmountably established.

5           XIV. Obscenity is not protected speech for purposes of the First Amendment, *Miller v.*  
6 *California*, 413 U.S. 15, 30, 34 (1973).

7           XV. The state of New Hampshire has the power to make a morally neutral judgment that  
8 public exhibition of obscene material, or commerce in such material, has a tendency to injure the  
9 community as a whole, to endanger the public safety, or in Chief Justice Warren's words, to  
10 jeopardize, states' "right. . .to maintain a decent society." *Paris Adult Theatre I v. Slaton*, 413 U.S.  
11 49, at 63, 69 (1973).

12           XVI. The United States Supreme Court found that Congress can pass filter legislation to  
13 regulate the Tech Enterprise as the least restrictive means under *Ashcroft v. ACLU*, 542 U.S. 656,  
14 673 (2004) and *Ginsberg v. New York*, 390 U.S. 629, 639–40, 88 S.Ct. 1274, 20 L.Ed.2d 195 (1968)  
15 and that such laws will survive first amendment heightened scrutiny challenge.

16           XVII. The state of New Hampshire has a compelling interest to shift the burden off of those  
17 who want to avoid being exposed to obscene speech and on to those who want to assume the risks  
18 that come from accessing obscene content by encouraging clean speech and discouraging harmful  
19 speech.

20           XVIII. The state of New Hampshire has a compelling interest to compare the products sold  
21 by manufacturers and wholesalers that distribute the web to pornographic vending machines that  
22 are subject to strict liability in the same way that cigarette vending machines are.

23           XIX. The state of New Hampshire has a compelling interest to make "prevention," not  
24 "prosecution," the first response to sex crimes to include human trafficking, prostitution, domestic  
25 violence, child pornography, and revenge pornography that obscenity inspires and encourages that  
26 is obtainable through products that distribute the Internet and that make content on the web  
27 accessible.

28           XX. The state of New Hampshire has a compelling interest to make wholesalers and  
29 manufacturers of products that distribute the Internet warn adult consumers of the harm of  
30 accessing obscene content, if they express an interest in opting out of the filter.

31           XXI. The state of New Hampshire has a compelling interest to make wholesalers and  
32 manufacturers of products that distribute the Internet maintain the quality of the digital blinder  
33 racks to protect children and consumers from unwanted exposure.

34           XXII. The state of New Hampshire has a compelling interest to make websites that are  
35 known prostitution and human trafficking hubs harder to access in order to reduce the burden  
36 imposed on law enforcement and the justice system and the victims of human trafficking.

37           XXIII. The state of New Hampshire has a compelling interest to make manufacturers and  
38 wholesalers of products that distribute the Internet to comply with their publicly acknowledged

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1 “moral responsibility” to keep pornography off of their products by default.

2 XXIV. The state of New Hampshire has a compelling interest to prevent wholesalers and  
3 manufacturers of products that distribute the Internet from engaging in false advertising in  
4 marketing filterless products, as if they were “family friendly,” when they are not.

5 XXV. The state of New Hampshire has a compelling interest to make the objective “easy  
6 choice” the “right choice” to protect emotional, mental, relational, reproductive, sexual, and spiritual  
7 health of consumers that accords with the truth about our nature and the way things are.

8 XXVI. The state of New Hampshire has a compelling interest to make wholesalers and  
9 manufacturers of products that distribute the Internet give consumers the fundamental right to  
10 regulate their own mental health.

11 XXVII. The state of New Hampshire has a compelling interest to not only declare that  
12 “pornography is a public health crisis” but to impose common sense filter solution that accords with  
13 the first amendment that serves to push obscenity back underground from whence it came before  
14 the manufacturers and wholesalers of products that distribute the Internet brought it above ground  
15 due to their collective disregard of the obscenity codes.

16 XXVIII. Making wholesalers and manufacturers install filters will mitigate the harm  
17 caused by the nonconsensual dissemination of private sexual images (revenge pornography) under  
18 RSA 644:9.

19 XXIX. Making manufacturers and wholesalers that distribute the Internet or make content  
20 on the Internet accessible install filters will protect consumers from stumbling across child  
21 pornography and incurring criminal liability RSA 649-A:3.

22 XXX. Making the manufacturers and wholesalers of products that distribute through the  
23 Internet or that make its content accessible set up a reporting website or call center will better  
24 enable them to report improper material to law enforcement in step with their existing duty under  
25 18 U.S.C. section 2258A and RSA 649-B:5.

26 XXXI. Making the manufacturers and wholesalers create a call center or reporting website  
27 will allow consumers to report content that is being filtered that is not obscene.

28 XXXII. Making manufacturers and wholesalers of products that distribute the Internet or  
29 that make content on the Internet sell their products with filters will better prevent them from  
30 distributing false and misleading domain names in violation of 18 U.S.C. section 2252B.

31 XXXIII. The Constitutionality of the \$20 filter deactivation tax is the same as the legal  
32 basis for the \$5 poll tax imposed on adult entertainment establishments upheld by the Texas  
33 Supreme Court in *Combs v. Texas Entertainment Association, et al.*, 347 S.W.3d 277 (Sup. Ct. Tex.  
34 2011) .

35 XXXIV. The \$20 filter deactivation funds will first go to completely finance the state’s  
36 victims' compensation fund set forth under RSA 21-M:8-h.

37 XXXV. The \$20 filter deactivation funds will provide a grants for government and non-  
38 government groups that are working against indecency, sexual assault, human trafficking, domestic

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1 violence, divorce, etc.

2 XXXVI. Sex related claims under the victims' compensation fund have been on the rise in  
3 recent years.

4 XXXVII. The victims' compensation fund will not fund itself.

5 XXXVIII. Pornography is creating a public health crisis.

6 XXXIX. Pornography perpetuates a sexually toxic environment.

7 XL. Efforts to prevent pornography exposure and addiction, to educate individuals and  
8 families concerning its harmful effects, and to develop recovery programs must be addressed  
9 systemically in ways that hold providers accountable.

10 XLI. Pornography is contributing to the hypersexualization of teens, and even prepubescent  
11 children, in our society.

12 XLII. Due to advances in technology and the universal availability of the Internet, young  
13 children are exposed to what used to be referred to as hard core pornography, but is now considered  
14 mainstream, pornography at an alarming rate.

15 XLIII. The average age of exposure to pornography is now 11 to 12 years of age.

16 XLIV. This early exposure is leading to low self-esteem and body image disorders, an  
17 increase in problematic sexual activity at younger ages, and an increased desire among adolescents  
18 to engage in risky sexual behavior.

19 XLV. Exposure to pornography often serves as childrens' and youths' sex education and  
20 informs their sexual templates.

21 XLVI. Because pornography treats women as objects and commodities for the viewer's use,  
22 it teaches girls they are to be used and teaches boys to be users.

23 XLVII. Pornography normalizes violence and abuse of women and children.

24 XLVIII. Pornography treats women and children as objects and often depicts rape and  
25 abuse as if they are harmless.

26 XLIX. Pornography equates violence towards women and children with sex and pain with  
27 pleasure, which increases the demand for sex trafficking, prostitution, child sexual abuse images,  
28 and child pornography.

29 L. Potential detrimental effects on pornography's users can impact brain development and  
30 functioning, contribute to emotional and medical illnesses, shape deviant sexual arousal, and lead to  
31 difficulty in forming or maintaining positive intimate relationships, as well as promoting  
32 problematic or harmful sexual behaviors and addiction.

33 LI. Recent neurological research indicates that pornography is potentially biologically  
34 addictive, which means the user requires more novelty, often in the form of more shocking material,  
35 in order to be satisfied.

36 LII. This biological addiction leads to increasing themes of risky sexual behaviors, extreme  
37 degradation, violence, and child sexual abuse images and child pornography.

38 LIII. Pornography use is linked to lessening desire in young men to marry, dissatisfaction



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1 (b) Renders child sexual abuse images, as defined in RSA 649-A:2, inaccessible.

2 (c) Renders nonconsensual private sexual images as defined in RSA 644:9-a,  
3 inaccessible.

4 (d) Renders inaccessible any content designed to facilitate or promote prostitution as  
5 defined in RSA 645:2.

6 (e) Renders any content designed to facilitate or promote trafficking in persons, as  
7 defined in RSA 633:7, inaccessible.

8 II. The attorney general or a county attorney may seek injunctive relief against a business  
9 organization that manufactures, distributes, or sells any product in this state that makes accessible  
10 any content on the Internet prohibited under this section.

11 III. In this subdivision, "business organization" means any enterprise, whether corporation,  
12 partnership, limited liability company, proprietorship, association, business trust, real estate trust,  
13 individual, or other form of organization; organized for gain or profit, carrying on any business  
14 activity within the state.

15 650:8 Deactivation of Digital Content Blocking Capability.

16 I. No business organization that manufactures, distributes, or sells any product in this state  
17 that makes accessible any content on the Internet shall share the methods, source code, or other  
18 operating instructions of the digital content blocking capability unless the conditions described in  
19 this section are met.

20 II. A business organization shall deactivate the digital content blocking capability if a  
21 person 18 years of age or older:

22 (a) Verifies in a face-to-face encounter either in person or through means that verify the  
23 person is 18 years of age or older;

24 (b) Has acknowledged receiving a written warning regarding the potential danger of  
25 deactivating the digital content blocking capability; and

26 (c) Pays a one-time \$20 digital content access fee to the business organization.

27 III. A business organization shall collect all digital content access fees paid under  
28 subparagraph II(c) and remit the same to the state treasurer in the manner prescribed by the  
29 treasurer. A business organization may impose a separate digital content access fee. Each business  
30 organization shall submit a quarterly report to the treasurer containing the amount of funds  
31 collected pursuant to subparagraph II(c).

32 650:9 Sale of Products Without Digital Content Blocking Capabilities.

33 I. A business organization that manufactures, distributes, or sells any product in this state  
34 to a person under 18 years of age, or to a person 18 years of age or older without his or her consent,  
35 that makes accessible any content on the Internet without an activated digital content blocking  
36 capability as required in RSA 650:7, or that provides the means to disable the digital content  
37 blocking capability in any manner except as provided in RSA 650:8, II, shall be guilty of a class B  
38 felony.

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1           II. A business organization that manufactures, distributes, or sells any product in this state  
2 that makes accessible any content on the Internet to a person 18 years of age or older without an  
3 activated digital content blocking capability, shall be guilty of a class A misdemeanor, unless the  
4 business organization can demonstrate that such person has complied with the deactivation  
5 procedure set forth in RSA 650:8, II.

6           III. The attorney general and the county attorney shall have concurrent jurisdiction for any  
7 violation of this section.

8           650:10 Digital Content Access Fee. The state treasurer shall credit all digital content access  
9 fees received pursuant to RSA 650:8, II(c) to the victims' assistance fund for victims' assistance  
10 claims pursuant to RSA 21-M:8-h.

11          650:11 Affirmative Defenses.

12           I. It is an affirmative defense to prosecution under this subdivision that the dissemination  
13 of content prohibited in RSA 650:7 was restricted to institutions or organizations having scientific,  
14 educational, governmental, or other similar justification for possessing obscene material.

15           II. There shall be no criminal liability for a business organization that manufactures,  
16 distributes, or sells any product in this state that makes accessible any content on the Internet that  
17 was not prohibited by state law before the effective date of this section.

18          650:12 Maintenance of Digital Content Blocking Capabilities; Reporting of Content.

19           I. A business organization that manufactures, distributes, or sells any product in this state  
20 that makes accessible on any content on the Internet shall distribute regular updates to digital  
21 content blocking software to ensure the quality and performance of the filters in blocking content  
22 prohibited under this subdivision.

23           II. Each business organization that manufactures, distributes, or sells any product in this  
24 state that makes accessible any content on the Internet shall establish a consumer reporting  
25 Internet site or call center where consumers can report content prohibited under RSA 650:7 that  
26 has breached the business organization's digital content blocking capabilities.

27           III. A business organization shall determine if the reported content is prohibited under RSA  
28 650:7. If the reported content is prohibited, the business organization shall, within 5 days of the  
29 report, send out an update to the digital content blocking software to block the reported content

30           IV. If a business organization fails to respond within the time provided to the reporting of  
31 prohibited content that has breached the digital content blocking software, then the complaining  
32 consumer, attorney general, or county attorney may bring a civil suit against the business  
33 organization in a court of competent jurisdiction.

34           V. The injured consumer or the attorney general may seek \$500 for every piece of content  
35 that was reported but was not blocked by the business organization's digital content blocking  
36 software.

37           VI. If the consumer prevails in the civil action, the business organization shall reimburse  
38 the consumer the for purchase price of the device. The court may award attorneys fees and court



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1 costs to the prevailing party.

2 VII. A business organization that manufactures, distributes, or sells any product that  
3 makes accessible any content on the Internet shall report criminal content to law enforcement  
4 under 18 U.S.C. section 2258A.

5 650:13 Blocking of Permissible Content.

6 I. If a business organization's digital content blocking software inadvertently blocks content  
7 that is reported pursuant to RSA 650:12, but is not prohibited pursuant to RSA 650:7, the business  
8 organization shall, within 5 days of reporting, unblock the content.

9 II. Declaratory relief in a court of competent jurisdiction may be sought to unblock content  
10 that is not prohibited under RSA 650:7. The prevailing party may seek attorneys fees and court  
11 costs.

12 III. No business organization shall block content of any website that has a reporting  
13 procedure for blocking and removing obscene content once reported.

14 3 Effective Date. This act shall take effect January 1, 2019.