

# MAINE STATE LEGISLATURE

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# 130th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2021

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Legislative Document

No. 1719

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H.P. 1274

House of Representatives, May 19, 2021

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

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative SAMPSON of Alfred.  
Cosponsored by Senator KEIM of Oxford and  
Representatives: LYMAN of Livermore Falls, O'CONNOR of Berwick, QUINT of Hodgdon.

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

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

3 **CHAPTER 1057**

4 **HUMAN TRAFFICKING AND CHILD EXPLOITATION PREVENTION**

5 **§9571. Definitions**

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

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

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

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

19 **4. Computer.** "Computer" has the same meaning as in 18 United States Code, Section  
20 1030(e)(1).

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

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

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

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

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

36 **10. Internet.** "Internet" has the same meaning as in 31 United States Code, Section  
37 5362(5).

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

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

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

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

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

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

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

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

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

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

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

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

36           B. Bestiality;

37           C. Masturbation;

38           D. Sadistic, masochistic or sadomasochistic abuse; or

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

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

4           A. Is open to the public;

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

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

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

10 **§9572. Retailer duties; deactivation of filter; privacy of consumers**

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

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

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

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

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

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

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

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

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

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

31           A. Requests that the filter be deactivated;

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

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

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

38           **3. Privacy of consumers.** A retailer shall take due care to protect the privacy rights  
39 of an adult consumer under this section and may not disclose the name or personally  
40 identifiable information of an adult consumer who deactivates a filter under subsection 2.

1 This section does not require a retailer to create a database or registry that contains the  
2 name or personally identifiable information of an adult who knowingly chooses to  
3 deactivate an Internet-enabled device's filter.

4 **§9573. Reporting mechanism; civil action; deceptive trade practice; affirmative**  
5 **defense**

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

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

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

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

25 **§9574. Retailer prohibitions and penalties**

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

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

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

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

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

35 E. Block access to a website that:

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

39 (2) Serves primarily as a search engine; or

40 (3) Displays complete movies that meet the qualifications for a G, PG, PG-13 or  
41 R rating by the Motion Picture Association, Classification and Rating

1 Administration or successor organization, as those qualifications existed on  
2 September 1, 2020; or

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

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

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

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

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

15 **§9575. Exemptions**

16 This chapter does not apply to:

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

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

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

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

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

32 **SUMMARY**

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