

SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION

S.F. No. 846

(SENATE AUTHORS: LUCERO)

DATE	D-PG	OFFICIAL STATUS
01/27/2023	459	Introduction and first reading Referred to Judiciary and Public Safety

1.1A bill for an act

1.2relating to public safety; establishing the Human Trafficking and Child Exploitation

1.3Prevention Act; providing for rulemaking; requiring a report; proposing coding

1.4for new law in Minnesota Statutes, chapter 609.

1.5BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6Section 1. **LEGISLATIVE FINDINGS.**

1.7(a) The legislature finds that sex trafficking has moved from the street corner to the

1.8smartphone, which means that making websites that facilitate human trafficking and

1.9prostitution inaccessible by default on Internet-enabled devices will curb the demand for

1.10these offenses more than any other measure since the inception of the Internet. Live adult

1.11entertainment establishments contribute to a culture that tolerates the sexual objectification

1.12and exploitation of women, and contribute to the need for community-based services to

1.13respond to victims of all forms of sexual exploitation, including sexual harassment,

1.14trafficking, and sexual assault. Crime statistics show that the presence of adult entertainment

1.15establishments may result in an increase in prohibited secondary sexual activities, such as

1.16prostitution, and other crimes in the surrounding community.

1.17(b) The legislature is generally opposed to online censorship unless the content is injurious

1.18to children or promotes human trafficking.

1.19Sec. 2. **[609.285] TITLE.**

1.20Sections 609.285 to 609.2857 shall be known and may be cited as the "Human Trafficking

1.21and Child Exploitation Prevention Act."

2.1 Sec. 3. **[609.2851] DEFINITIONS.**

2.2 Subdivision 1. **Generally.** For the purposes of sections 609.285 to 609.2857, the terms
2.3 in this section have the meanings given them.

2.4 Subd. 2. **Adult entertainment establishment.** "Adult entertainment establishment" has
2.5 the meaning given in section 617.242, subdivision 1.

2.6 Subd. 3. **Cellular telephone.** "Cellular telephone" means a communication device
2.7 containing a unique electronic serial number that is programmed into its computer chip by
2.8 its manufacturer and whose operation is dependent on the transmission of that electronic
2.9 serial number, along with a mobile identification number, which is assigned by the cellular
2.10 telephone carrier, in the form of radio signals through cell sites and mobile switching stations.

2.11 Subd. 4. **Child pornography.** "Child pornography" has the meaning given in United
2.12 States Code, title 18, section 2256.

2.13 Subd. 5. **Computer.** "Computer" has the meaning given in United States Code, title 18,
2.14 section 1030.

2.15 Subd. 6. **Consumer.** "Consumer" means an individual who purchases or leases an
2.16 Internet-enabled device for personal, family, or household purposes.

2.17 Subd. 7. **Contemporary community standards.** "Contemporary community standards"
2.18 means the customary limits of candor and decency in this state at or near the time of an
2.19 alleged violation of sections 609.285 to 609.2857.

2.20 Subd. 8. **Data communications device.** "Data communications device" means an
2.21 electronic device that receives electronic information from one source and transmits or
2.22 routes it to another, including but not limited to a bridge, router, switch, or gateway.

2.23 Subd. 9. **Filter.** "Filter" means a digital blocking capability, hardware, or software that
2.24 restricts or blocks Internet access to websites, e-mail, chat, or other Internet-based
2.25 communications based on category, site, or content, and also means a digital blinder rack
2.26 that can be deactivated by a retailer upon the satisfaction of certain nominal conditions.

2.27 Subd. 10. **Human trafficking.** "Human trafficking" means sex trafficking as defined
2.28 in section 609.321, subdivision 7a, and labor trafficking as defined in section 609.281,
2.29 subdivision 5.

2.30 Subd. 11. **Internet.** "Internet" has the meaning given in United States Code, title 31,
2.31 section 5362.

3.1 Subd. 12. **Internet-enabled device.** "Internet-enabled device" means a cellular telephone,
3.2 computer, data communications device, or other product manufactured, distributed, or sold
3.3 in this state that provides Internet access or plays a material role in distributing content on
3.4 the Internet.

3.5 Subd. 13. **Internet service provider.** "Internet service provider" means a person engaged
3.6 in the business of providing a computer and communications facility through which a
3.7 consumer may obtain access to the Internet. The term does not include a common carrier
3.8 if it provides only telecommunications service.

3.9 Subd. 14. **Material.** "Material" has the meaning given in section 617.241, subdivision
3.10 1, paragraph (e).

3.11 Subd. 15. **Minor.** "Minor" means a person under the age of 18 years.

3.12 Subd. 16. **Nude.** "Nude" means:

3.13 (1) entirely unclothed; or

3.14 (2) clothed in a manner that exposes to public view, at any time, the bare female breast
3.15 below a point immediately above the top of the areola, human genitals, pubic region, or
3.16 buttocks, even if partially covered by opaque material or completely covered by translucent
3.17 material such as swimsuits, lingerie, or latex covering.

3.18 Subd. 17. **Obscene.** "Obscene" has the meaning given in section 617.241, subdivision
3.19 1, paragraph (a), and includes but is not limited to websites that:

3.20 (1) are known to facilitate human trafficking, escort services, or prostitution; and

3.21 (2) display or depict images that are harmful to minors or that constitute sadomasochistic
3.22 abuse, sexual excitement, sexual conduct, or revenge pornography.

3.23 Subd. 18. **Personal identification information.** "Personal identification information"
3.24 means any information that identifies a person, including an individual's photograph, Social
3.25 Security number, driver's license number, name, e-mail address, mailing address, or telephone
3.26 number.

3.27 Subd. 19. **Prostitution.** "Prostitution" has the meaning given in section 609.321,
3.28 subdivision 9.

3.29 Subd. 20. **Revenge pornography.** "Revenge pornography" is an offense under section
3.30 617.261 and means the distribution of sexually explicit images or videos of an individual
3.31 without the individual's permission.

4.1 Subd. 21. **Retailer.** "Retailer" means any person who regularly engages in the
4.2 manufacturing, sale, offer for sale, or lease of Internet-enabled devices or services in this
4.3 state that make content accessible on the Internet. The term includes Internet service providers
4.4 and suppliers and manufacturers of Internet-enabled devices that materially play a role in
4.5 distributing content on the Internet or that make content accessible that are subject to the
4.6 jurisdiction of this state.

4.7 Subd. 22. **Sadomasochistic abuse.** "Sadomasochistic abuse" means:

4.8 (1) flagellation or torture, real or simulated, for the purpose of real or simulated sexual
4.9 stimulation or gratification, by or upon a person; or

4.10 (2) the condition, real or simulated, of being fettered, bound, or otherwise physically
4.11 restrained for sexual stimulation or gratification of a person.

4.12 Subd. 23. **Sexual conduct.** "Sexual conduct" has the meaning given in section 617.292,
4.13 subdivision 4.

4.14 Subd. 24. **Sexual excitement.** "Sexual excitement" means the condition, real or simulated,
4.15 of human male or female genitals in a state of real or simulated overt sexual stimulation or
4.16 arousal.

4.17 Subd. 25. **Social media website.** "Social media website" means an Internet website or
4.18 application that enables users to communicate with each other by posting information,
4.19 comments, messages, or images and that meets all of the following requirements:

4.20 (1) is open to the public;

4.21 (2) has more than 75 million subscribers;

4.22 (3) from its inception, has not been specifically affiliated with any one religion or political
4.23 party; and

4.24 (4) provides a means for the website's users to report obscene materials and has in place
4.25 procedures for evaluating those reports and removing obscene material.

4.26 Sec. 4. **[609.2852] INTERNET-ENABLED DEVICE FILTER.**

4.27 Subdivision 1. **Active filter.** (a) A retailer that manufactures, sells, offers for sale, leases,
4.28 or distributes an Internet-enabled device shall ensure that the product is equipped with an
4.29 active and operating filter prior to sale that blocks, by default, websites that:

4.30 (1) are known to facilitate human trafficking or prostitution; and

5.1 (2) display child pornography, revenge pornography, or obscene material harmful to
5.2 minors.

5.3 (b) A retailer that manufactures, sells, offers for sale, leases, or distributes an
5.4 Internet-enabled device shall:

5.5 (1) make reasonable and ongoing efforts to ensure that a product's filter functions
5.6 properly;

5.7 (2) establish a reporting mechanism, including but not limited to a website or call center,
5.8 to allow a consumer to report unblocked websites displaying content described in paragraph
5.9 (a), clause (1), or to report blocked websites that are not displaying content described in
5.10 paragraph (a), clause (1);

5.11 (3) report child pornography received through the reporting mechanism to the National
5.12 Center for Missing and Exploited Children's CyberTipline in accordance with United States
5.13 Code, title 18, section 2258A; and

5.14 (4) not block access to websites that:

5.15 (i) are social media websites that provide a means for the website's users to report obscene
5.16 materials and have in place procedures for evaluating those reports and removing obscene
5.17 material;

5.18 (ii) serve primarily as a search engine; or

5.19 (iii) display complete movies that meet the qualifications for a "G," "PG," "PG-13," or
5.20 "R" rating by the Classification and Ratings Administration, as those qualifications existed
5.21 on September 1, 2020.

5.22 Subd. 2. **Deactivated filter.** (a) Except as provided under paragraph (b), a retailer may
5.23 not provide to a consumer methods, source code, or other operating instructions for
5.24 deactivating a product's filter.

5.25 (b) A retailer of an Internet-enabled device shall deactivate a product's filter after a
5.26 consumer:

5.27 (1) requests that the capability be disabled;

5.28 (2) presents personal identification information to verify that the consumer is 18 years
5.29 of age or older;

5.30 (3) acknowledges receiving a warning regarding the potential danger of deactivating the
5.31 filter; and

6.1 (4) pays a onetime \$20 filter deactivation fee to be remitted quarterly to the commissioner
6.2 of public safety for deposit in the human trafficking and child exploitation prevention grant
6.3 account under section 609.2857.

6.4 Subd. 3. **Fees.** (a) The filter deactivation fee in subdivision 2, paragraph (b), clause (4),
6.5 is not content-based but collected and remitted to the commissioner of public safety to help
6.6 the state bear the costs of upholding community standards of decency and of combating
6.7 sex-related offenses and is to be used according to section 609.2857. The commissioner
6.8 shall prescribe the administration, payment, collection, and enforcement of the fee under
6.9 subdivision 2, paragraph (b), clause (4). The commissioner may annually adjust the onetime
6.10 fee to account for inflation.

6.11 (b) Nothing in this section shall be construed to prevent a retailer from charging a
6.12 reasonable separate fee to deactivate a product's filter, which it may retain for profit.

6.13 Subd. 4. **Deactivation warning.** The commissioner of public safety shall prepare and
6.14 make available to retailers a form that includes all content that must be in the warning
6.15 described in subdivision 2, paragraph (b), clause (3).

6.16 Subd. 5. **Data privacy; records.** Nothing in this section shall be construed to require a
6.17 retailer of an Internet-enabled device to create a database or registry that contains the names
6.18 of personal identification information of adults who knowingly choose to deactivate a
6.19 product's filter. A retailer of an Internet-enabled device shall take due care to protect the
6.20 privacy rights of adult consumers under this section and shall not disclose the names or
6.21 personal identification information of an adult consumer who decided to deactivate a
6.22 product's filter.

6.23 Sec. 5. **[609.2853] CIVIL ACTION.**

6.24 (a) Pursuant to section 609.2852, subdivision 1, paragraph (b), clause (2), if the filter
6.25 blocks a website that is not displaying content described in section 609.2852, subdivision
6.26 1, paragraph (a), and the block is reported to a call center or reporting mechanism, the
6.27 website shall be unblocked no later than five business days after the block is first reported.
6.28 A consumer may seek judicial relief to unblock a website that was wrongfully blocked by
6.29 the filter. The prevailing party in a civil litigation may seek attorney fees, costs, and other
6.30 forms of relief.

6.31 (b) Pursuant to section 609.2852, subdivision 1, paragraph (b), clause (2), if a retailer
6.32 of an Internet-enabled device is unresponsive to a report of a website displaying content
6.33 described in section 609.2852, subdivision 1, that has breached the filter, the attorney general

or a consumer may file a civil suit. The attorney general or a consumer may seek damages of up to \$500 for each website that was reported but not subsequently blocked. The prevailing party in the civil action may seek attorney fees, costs, and other forms of relief.

(c) A retailer that does not comply with the duties described in paragraphs (a) and (b) has engaged in an unfair, deceptive, or unconscionable act in violation of section 325F.69 and is subject to the remedies in section 325F.70.

(d) It shall be an affirmative defense in a civil action to a charge of violating this section that the dissemination of the content described in section 609.2852, subdivision 1, paragraph (a), was limited to institutions or organizations having scientific, educational, or other similar justifications for displaying the material.

Sec. 6. **[609.2854] CRIME.**

(a) A retailer of an Internet-enabled device is guilty of an offense if the retailer knowingly:

(1) sells an internet-enabled device without activated blocking capability that at least makes an attempt to block, by default, websites that display content described in section 609.2852, subdivision 1, paragraph (a);

(2) violates section 609.2852, subdivision 2, paragraph (a);

(3) fails to comply with the requirements of section 609.2852, subdivision 2, paragraph (b), before deactivating the filter; or

(4) discloses to a third party the name or the personal identification information of an adult consumer who has elected to deactivate a product's filter in violation of section 609.2852, subdivision 5, without a court order directing otherwise.

(b) A retailer shall be fined not more than \$1,000 for a first offense and not more than \$2,500 for any subsequent offense.

(c) A retailer that commits an offense under paragraph (a) and has two prior convictions under paragraph (a) is guilty of a misdemeanor and may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than \$40,000, or both.

(d) A retailer that commits an offense under paragraph (a) has engaged in an unfair, deceptive, or unconscionable act in violation of section 325F.70 and is subject to the penalties for violating that section.

(e) Only the attorney general or a county attorney shall enforce this section.

8.1 Sec. 7. **[609.2855] SALE OF DEVICE.**

8.2 (a) Sections 609.2851 to 609.2857 shall not apply to:

8.3 (1) an occasional sale of an Internet-enabled device by a person who is not regularly
8.4 engaged in the trade business of selling Internet-enabled devices;

8.5 (2) products produced or sold before the effective date of this act; and

8.6 (3) independent third-party routers that are not affiliated with an Internet service provider.

8.7 (b) Sections 609.2851 to 609.2857 do not apply to a retailer of an Internet-enabled device
8.8 that is not subject to the jurisdiction of this state.

8.9 Sec. 8. **[609.2856] ADULT ENTERTAINMENT ESTABLISHMENT.**

8.10 (a) A \$5 admission fee is imposed for each entry by each customer admitted to an adult
8.11 entertainment establishment to be remitted quarterly to the commissioner of public safety
8.12 for deposit in the human trafficking and child exploitation prevention grant account under
8.13 section 609.2857. The commissioner shall prescribe the method of administration, payment,
8.14 collection, and enforcement of the fee imposed by this section.

8.15 (b) The admission fee is not content-based but imposed and remitted to the state to offset
8.16 secondary harmful effects and to help the state uphold community standards of decency
8.17 and to combat sex-related crimes and is to be used as described under section 609.2857,
8.18 subdivision 4.

8.19 (c) The admission fee is in addition to all other taxes imposed on the business that offers
8.20 adult entertainment.

8.21 (d) An adult entertainment establishment shall record daily in the manner required by
8.22 the commissioner of public safety the number of customers admitted to the business. The
8.23 business shall maintain the records for the time period required by the commissioner and
8.24 make the records available only for inspection and audit on request by the commissioner.
8.25 The records shall not contain the names or personal information of any of the customers.

8.26 (e) This section does not require an adult entertainment establishment to impose a tax
8.27 on a customer of the business. The business has the discretion to determine the manner in
8.28 which the business derives the money required to pay the tax imposed under this section.

9.1 Sec. 9. **[609.2857] HUMAN TRAFFICKING AND CHILD EXPLOITATION GRANT**
9.2 **ACCOUNT.**

9.3 Subdivision 1. **Creation.** (a) The human trafficking and child exploitation grant account
9.4 is established in the special revenue fund. The account shall be administered by the
9.5 commissioner of public safety.

9.6 (b) The commissioner or the commissioner's designee shall credit to the account interest
9.7 and earnings from account investments.

9.8 (c) Money in the human trafficking and child exploitation account shall be expended
9.9 only upon appropriation and only in a manner to carry out the purposes in sections 609.2851
9.10 to 609.2857. Money in the account at the close of the fiscal year shall remain in the account
9.11 and shall not revert to the general fund.

9.12 (d) "Nongovernment group" means a nonprofit organization exempt from federal income
9.13 taxation under section 501(c)(3) of the Internal Revenue Code of 1986 having as a primary
9.14 purpose ending sexual violence in this state, for programs for the prevention of sexual
9.15 violence, outreach programs, and technical assistance to and support of youth and rape crisis
9.16 centers working to prevent sexual violence. Nongovernment group also includes individuals
9.17 and any group that is doing anything to uphold community standards of decency.

9.18 Subd. 2. **Purpose.** The purpose of the account is:

9.19 (1) to promote the development throughout the state of locally based and supported
9.20 nonprofit programs for the survivors of sexual-related offenses and to support the quality
9.21 of services provided;

9.22 (2) to empower any government and nongovernment groups working to uphold
9.23 community standards of decency, protect children, strengthen families, or to develop, expand,
9.24 or prevent or offset the costs of sex-related offenses, especially human trafficking and child
9.25 exploitation; and

9.26 (3) not to promote a culture of perpetual victimhood but to maximize human flourishing
9.27 and to protect the public's safety, health, and welfare.

9.28 This subdivision shall be interpreted broadly to best meet the evolving needs of the state.

9.29 Subd. 3. **Contents of account.** The account shall consist of:

9.30 (1) deactivation fees collected by the commissioner from retailers of Internet-enabled
9.31 devices under section 609.2852, subdivision 2, paragraph (b), clause (4);

- 10.1 (2) admission fees collected by the commissioner from adult entertainment establishments
10.2 under section 609.2856; and
- 10.3 (3) any other appropriations, gifts, grants, donations, and bequests.
- 10.4 **Subd. 4. Use of account.** (a) Money deposited in the account may be used only by:
- 10.5 (1) the commissioner of public safety for grants to government and nongovernment
10.6 entities and individuals that are working to uphold community standards of decency, to
10.7 protect children, to strengthen families, or to develop, expand, or strengthen programs for
10.8 victims of human trafficking or child exploitation, including providing grants for:
- 10.9 (i) any costs associated with the trafficking study established under section 299A.785
10.10 and the costs of trafficking victim assistance established under 299A.795;
- 10.11 (ii) the needs of the director of child sex trafficking prevention established by the
10.12 commissioner of health under section 145.4716;
- 10.13 (iii) programs established under sections 145.4716 to 145.4718; 609.3241, paragraph
10.14 (c), clause (3); and 609.5315, subdivision 5c, clause (3);
- 10.15 (iv) human trafficking task forces, coalitions, and other similarly situated organizations;
- 10.16 (v) victim compensation and the expenses of Safe Harbor established under section
10.17 145.4716;
- 10.18 (vi) services to help women with substance abuse problems;
- 10.19 (vii) counselors and victim advocates who are trained to assist victims of domestic
10.20 violence and sexual abuse;
- 10.21 (viii) shelters for women, particularly those who have been exposed to prostitution or
10.22 sex trafficking;
- 10.23 (ix) research-based organizations studying human trafficking;
- 10.24 (x) faith-based organizations working to uphold community standards of decency and
10.25 assisting victims of human trafficking or other sex offenses;
- 10.26 (xi) child advocacy centers;
- 10.27 (xii) organizations that provide legal advocacy to abused, neglected, and at-risk children;
- 10.28 (xiii) physical and mental health services;
- 10.29 (xiv) temporary and permanent housing placement;
- 10.30 (xv) employment, placement, education, and training;

- 11.1 (xvi) independent school districts;
- 11.2 (xvii) family counseling and therapy;
- 11.3 (xviii) law enforcement;
- 11.4 (xix) musical, writing, design, cinematic, or pictorial creative art projects that promote
- 11.5 decency;
- 11.6 (xx) regional nonprofit providers of civil legal services to provide legal assistance for
- 11.7 sexual assault victims;
- 11.8 (xxi) grants to support technology in rape crisis centers;
- 11.9 (xxii) sexual violence awareness and prevention campaigns; and
- 11.10 (xxiii) scholarships for students demonstrating outstanding character or leadership skills;
- 11.11 and
- 11.12 (2) any other state agency or organization for the purpose of conducting human trafficking
- 11.13 enforcement programs or to uphold community standards of decency.
- 11.14 (b) The commissioner of public safety shall not spend more than ten percent of the
- 11.15 available funds on the administration of the grant program.
- 11.16 (c) Any balance in the account remaining unexpended at the end of a fiscal year shall
- 11.17 not revert to the general fund but shall be carried forward into the subsequent fiscal year.
- 11.18 Subd. 5. **Annual report.** The commissioner of public safety or the commissioner's
- 11.19 designee shall evaluate activities conducted under this section each year and, on or before
- 11.20 February 15, submit an annual report containing the evaluation to the legislative committees
- 11.21 with jurisdiction over human trafficking and child exploitation. The report must include:
- 11.22 (1) the amount of filter deactivation fees received under section 609.2852, subdivision
- 11.23 2, paragraph (b), clause (4);
- 11.24 (2) the amount of admission fees received under section 609.2856, paragraph (a);
- 11.25 (3) the manner in which the funds in the account maintained under subdivision 4 were
- 11.26 distributed; and
- 11.27 (4) the manner in which each entity receiving a grant under subdivision 4 used the grant
- 11.28 money.
- 11.29 Subd. 6. **Rulemaking authority.** The commissioner of public safety may adopt rules
- 11.30 under chapter 14 to:

- 12.1 (1) determine eligibility requirements for any grant awarded under this section;
- 12.2 (2) require a grant recipient to offer minimum services for a period of time before
- 12.3 receiving a grant and to continue to offer minimum services during the grant period; and
- 12.4 (3) require a grant recipient to submit financial and programmatic reports.

12.5 Sec. 10. **EFFECTIVE DATE.**

- 12.6 This act is effective only from and after the passage, approval, ratification, and adoption
- 12.7 by four other states of similar legislation. Within ten days of the date that the four states
- 12.8 adopt legislation similar to this act, the secretary of state shall notify the governor, the
- 12.9 speaker of the house, the president of the senate, and the revisor of statutes of the effective
- 12.10 date of this act.