

1 HOUSE BILL NO. 752

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4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING CONTENT PROVIDERS FROM ALLOWING
6 ACCESS TO CHILD SEXUAL ABUSE MATERIAL IN MONTANA; PROVIDING A VICTIM THE RIGHT TO
7 BRING AN ACTION; PROVIDING FOR ENFORCEMENT BY THE DEPARTMENT OF JUSTICE; PROVIDING
8 FOR A PRIVATE RIGHT OF ACTION; PROVIDING A STATUTE OF LIMITATIONS; PROVIDING REMEDIES
9 AND APPORTIONMENT OF DAMAGES; AND PROVIDING DEFINITIONS; AND PROVIDING AN EFFECTIVE
10 DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 NEW SECTION. Section 1. Definitions. As used in [sections 1 through 4], unless the context clearly
15 indicates otherwise, the following definitions apply:

16 (1) "Child sexual abuse material" means ~~either:~~

17 (a) ~~child pornography as defined in 18 U.S.C. 2256; or.~~

18 (b) ~~obscene matter that depicts a minor personally engaging in, or personally simulating, sexually~~
19 ~~explicit conduct.~~

20 (2) (a) "Content provider" means any person or entity that is responsible, in whole or in part, for the
21 active creation, production, publication, distribution, or storage of content provided through the internet or any
22 other interactive computer service. The term includes but is not limited to a website and ~~software application~~
23 SOCIAL MEDIA PLATFORM AS DEFINED IN 42 U.S.C. 1862W(A)(2).

24 (b) The term does not include a portion of business activity that solely provides:

25 (i) hosting services to third parties, which includes server ~~or~~ HOSTING, database hosting,
26 APPLICATION HOSTING, E-MAIL HOSTING, CONTAINER HOSTING, DATA WAREHOUSE HOSTING, OR CLOUD COMPUTING
27 PROVIDERS; ~~or~~

28 (ii) a general use browser that retrieves and displays information from an interactive computer

1 service without regard for the substance of the information; ~~OR~~

2 (III) AN INTERNET SERVICES PROVIDER AS DEFINED IN 2-17-602;

3 (IV) OWNERSHIP, MAINTENANCE, OR OPERATION OF PHYSICAL INTERNET INFRASTRUCTURE, WHICH

4 INCLUDES BUT IS NOT LIMITED TO FIBER OPTIC LINES, ROUTERS, SATELLITES, AND CELL TOWERS; OR

5 (V) A SEARCH ENGINE.

6 (3) "Department" means the department of justice provided for in 2-15-2001.

7 (4) "HYPERLINK" MEANS THE REPRESENTATION USING NUMBERS, LETTERS, AND SYMBOLS OF AN

8 INTERNET ADDRESS IN A FORM THAT AN INTERNET BROWSER APPLICATION CAN RECOGNIZE AS AN INTERNET ADDRESS.

9 (4)(5) "Interactive computer service" means any information service, system, or access software

10 provider that provides or enables computer access by multiple users to a computer server, including specifically

11 a service or system that provides access to the internet and such systems operated or services offered by

12 libraries or educational institutions.

13 (5)(6) "PRIVATE PERSON" MEANS ANY PERSON OTHER THAN AN OFFICER OR EMPLOYEE OF A STATE OR LOCAL

14 GOVERNMENT ENTITY IN THIS STATE.

15 (5)(6)(7) "Reasonably accessible" means that a person may obtain access by utilizing

16 reasonably available retail technology services, regardless of the general policies or practices of the content

17 provider or interactive computer service.

18 (8) "SEARCH ENGINE" MEANS TECHNOLOGY AND SYSTEMS THAT USE ALGORITHMS TO SIFT THROUGH AND

19 INDEX AS THIRD-PARTY WEBSITES AND CONTENT ON THE INTERNET IN RESPONSE TO SEARCH QUERIES ENTERED BY A

20 USER.

21 (6)(7)(9) "Sexually explicit" means involving actual or simulated:

22 (a) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether

23 between persons of the same or opposite sex;

24 (b) bestiality;

25 (c) masturbation;

26 (d) sadistic or masochistic abuse; or

27 (e) lascivious exhibition of the anus, genitals, or pubic area of any person.

28 (7)(8)(10) "Substantial amount" means an amount equal to or greater than ~~5%~~ 30% of the total

1 visual content created, produced, published, distributed, maintained, or otherwise managed by the content
2 provider.

3 (11) "VICTIM" MEANS A PERSON WHO IS DEPICTED IN CHILD SEXUAL ABUSE MATERIAL AND, AT THE TIME THE
4 PERSON IS DEPICTED IN THE CHILD SEXUAL ABUSE MATERIAL, IS A MINOR.

5
6 NEW SECTION. Section 2. Prohibition on access to child sexual abuse material. (1) A content
7 provider who produces, publishes, distributes, or maintains a substantial amount of sexually explicit visual
8 content IN A MANNER IN WHICH THE VISUAL CONTENT IS REASONABLY ACCESSIBLE IN MONTANA may not produce,
9 publish, distribute, or maintain child sexual abuse material in a manner in which the material is reasonably
10 accessible in Montana.

11 (2) A content provider may not collect revenue or make a profit from distributing child sexual abuse
12 material to ~~an individual~~ A PERSON physically located in Montana, regardless of whether the material is produced
13 or created by a third party or regardless of how the revenue is generated.

14 (3) A CONTENT PROVIDER WHO GENERATES 50% OR MORE OF THE CONTENT PROVIDER'S INCOME FROM
15 THE PRODUCTION, PUBLICATION, OR DISTRIBUTION OF SEXUALLY EXPLICIT VISUAL CONTENT AND WHO HAS GENERATED
16 AT LEAST \$500,000 IN INCOME MAY NOT PRODUCE, PUBLISH, DISTRIBUTE, OR MAINTAIN CHILD SEXUAL ABUSE MATERIAL
17 IN A MANNER IN WHICH THE MATERIAL IS REASONABLY ACCESSIBLE IN MONTANA.

18 ~~(3)~~(4) In an action filed under [section 3] alleging a violation of this section, it is a defense that a
19 content provider removes visual content that contains child sexual abuse material within ~~48~~ 96 hours of the
20 visual content being made reasonably accessible in Montana.

21 (5) IN AN ACTION FILED UNDER [SECTION 3] ALLEGING A VIOLATION OF THIS SECTION, IT IS A DEFENSE THAT
22 THE PERSON MAINTAINING AN ACTION TO SEEK REMEDIES AVAILABLE UNDER [SECTION 4] CAUSED THE ALLEGED
23 VIOLATION OF THIS SECTION TO OCCUR BY UPLOADING OR OTHERWISE CAUSING THE CHILD SEXUAL ABUSE MATERIAL TO
24 BE PRODUCED, PUBLISHED, DISTRIBUTED, OR MAINTAINED BY THE CONTENT PROVIDER.

25 (6) IT IS NOT A VIOLATION OF THIS SECTION TO PRODUCE, PUBLISH, DISTRIBUTE, OR MAINTAIN A HYPERLINK
26 TO A THIRD-PARTY WEBSITE IF THE HYPERLINK DOES NOT APPEAR WITH VISUAL CONTENT, REGARDLESS OF WHETHER
27 THE THIRD-PARTY WEBSITE CONTAINS CHILD SEXUAL ABUSE MATERIAL.

28 (7) (A) NOTHING IN [SECTIONS 1 THROUGH 4] MAY BE CONSTRUED TO PLACE LIABILITY ON A CONTENT

1 PROVIDER FOR REPORTING CHILD SEXUAL ABUSE MATERIAL TO LAW ENFORCEMENT.

2 (B) REPORTS OF CHILD SEXUAL ABUSE MATERIAL MADE TO LAW ENFORCEMENT BY A CONTENT PROVIDER
3 MAY NOT BE ADMITTED AS EVIDENCE IN OR OTHERWISE USED TO FORM THE FACTUAL BASIS OF AN ACTION BROUGHT
4 UNDER [SECTION 3].

5
6 NEW SECTION. Section 3. Enforcement -- right of victim to bring action -- enforcement by
7 department of justice -- private right of action -- statute of limitations. (1) A person VICTIM, OR THE PARENT
8 OR GUARDIAN OF A VICTIM IF THE VICTIM IS CURRENTLY UNDER 18 YEARS OF AGE, DEPICTED IN CHILD SEXUAL ABUSE
9 MATERIAL THAT IS ACCESSED ~~who is injured by a~~ IN violation of [section 2] may maintain an action to seek the
10 remedies available under [section 4] as well as restitution FOR A VIOLATION OF [SECTION 2].

11 ~~(2) — The department has the authority to enforce [section 2] and may maintain an action to seek the~~
12 ~~remedies available under [section 4]. The department shall serve a copy of the complaint on a victim who is~~
13 ~~harmed by the violation alleged in the complaint if the identity of the victim can be reasonably ascertained.~~

14 ~~(3)(2) For any violation of [section 2] not prosecuted by the victim under the authority in subsection~~
15 ~~(1) or the department under the authority in subsection (2), a private person may maintain an action to seek the~~
16 ~~remedies under [section 4]. The PRIVATE person shall serve a copy of the complaint on a victim who is harmed~~
17 ~~by the violation alleged in the complaint if the identity of the victim can be reasonably ascertained.~~

18 ~~(4)(3) An action under subsection (1) must be brought within 50 15 years of the violation.~~

19 ~~(5)(4) An action under subsection (2) or (3) must be brought within 40 10 years of the violation.~~

20 ~~(6)(5) (A) A victim's failure to bring an action under subsection (1) or intervene in an action under~~
21 ~~subsection (2) or (3) does not preclude a victim's ability to bring a tort action for an injury caused by a violation~~
22 ~~of [section 2], but damages awarded in a tort action for the violation must be reduced by the amount of~~
23 ~~damages paid to a victim under [section 4].~~

24 (B) AN ACTION BROUGHT UNDER SUBSECTION (2) DOES NOT PRECLUDE A SUBSEQUENT CLAIM BROUGHT
25 BY A VICTIM UNDER SUBSECTION (1) FOR RESTITUTION, COMPENSATORY DAMAGES, OR 50% OF THE COMBINED PUNITIVE
26 AND STATUTORY DAMAGES IF:

27 (I) THE VICTIM DOES NOT INTERVENE IN THE ACTION BROUGHT UNDER SUBSECTION (2); AND

28 (II) NO RELIEF IS AWARDED TO THE VICTIM UNDER [SECTION 4] IN THE ACTION BROUGHT UNDER

1 SUBSECTION (2).

2 ~~(7)(6)~~ A person who meets an exception to the definition of content provider under [section 1(2)(b)]
3 and also engages in activity covered under the same definition may be found to be in violation of this section
4 only to the extent that the person engages in an activity prohibited under this section as a content provider.

5 ~~(8)(7)~~ For the purposes of this section, each single piece of visual content containing child sexual
6 abuse material constitutes a violation, regardless of whether the visual content is a copy or duplicate.

7
8 NEW SECTION. Section 4. Remedies available -- apportionment of damages. (1) A plaintiff who
9 brings an action under [section 3] may seek any of the following:

- 10 (a) injunctive relief;
11 (b) declaratory relief;
12 (c) compensatory damages;
13 (d) punitive damages;
14 (e) statutory damages, which are the following amounts:
15 (i) \$100,000 for a strict violation of [section 2];
16 (ii) \$1,000,000 for a violation of [section 2] that is committed negligently or recklessly; or
17 (iii) ~~no less than~~ \$5,000,000 for a violation of [section 2] that is committed purposely or knowingly;
18 and
19 (f) reasonable attorney fees and costs incurred in bringing the action.

20 (2) In addition to the remedies provided in subsection (1), a victim may seek restitution.

21 (3) For each unique violation under [section 2], a plaintiff's recovery of statutory damages is limited
22 to one subsection under subsection (1)(e)(i) through (1)(e)(iii).

23 (4) In an action in which the remedies under subsection (1) are ordered:

- 24 (a) compensatory damages for each violation must be paid to the victim; AND
25 (b) the amount of punitive and statutory damages must be apportioned for each violation as
26 follows:

27 (i) IN AN ACTION BROUGHT BY A PRIVATE PLAINTIFF IN WHICH A VICTIM IS REASONABLY IDENTIFIED BY THE
28 COURT, REGARDLESS OF THE VICTIM'S INVOLVEMENT AS A PLAINTIFF:

1 (A) ~~50%~~ 50% to a victim, or equally divided among multiple victims, if reasonably identified by the court
2 regardless of the victim's involvement as a plaintiff;

3 (ii)(B) ~~30% 35%~~ 30% to a private plaintiff or, if there is no private plaintiff, to a victim, or equally divided
4 among multiple victims, if reasonably identified by the court regardless of the victim's involvement as a plaintiff;

5 AND

6 (iii)(C) ~~the remaining amount 15%~~ the remaining amount 15% to the department to be deposited into a state special revenue
7 account to the credit of the department; and

8 (II) IN AN ACTION BROUGHT BY A VICTIM IN WHICH THERE IS NOT A NONVICTIM PLAINTIFF:

9 (A) 80% TO A VICTIM, OR EQUALLY DIVIDED AMONG MULTIPLE VICTIMS; AND

10 (B) 20% TO THE DEPARTMENT TO BE DEPOSITED INTO A STATE SPECIAL REVENUE ACCOUNT TO THE

11 CREDIT OF THE DEPARTMENT; OR

12 (III) IN AN ACTION BROUGHT BY A PRIVATE PLAINTIFF IN WHICH NO VICTIM IS REASONABLY IDENTIFIED BY

13 THE COURT:

14 (A) 60% TO A PRIVATE PLAINTIFF; AND

15 (B) 40% TO THE DEPARTMENT TO BE DEPOSITED INTO A STATE SPECIAL REVENUE ACCOUNT TO THE

16 CREDIT OF THE DEPARTMENT.

17 (5) IF DAMAGES ARE AWARDED IN AN ACTION DESCRIBED IN SUBSECTION (4)(B)(III), THE COMBINED
18 AMOUNT OF PUNITIVE AND STATUTORY DAMAGES MUST BE REDUCED BY 50% AND THE REMAINING AMOUNT MUST BE
19 APPORTIONED AS DESCRIBED IN SUBSECTION (4)(B)(III).

20 (c) ~~attorney fees and costs shall be paid to the party who incurred the fees and costs.~~

21
22 NEW SECTION. Section 5. Codification instruction. [Sections 1 through 4] are intended to be
23 codified as a new part of a new chapter of Title 30, and the provisions of Title 30 apply to [sections 1 through 4].

24
25 NEW SECTION. Section 6. Severability. If a part of [this act] is invalid, all valid parts that are
26 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
27 the part remains in effect in all valid applications that are severable from the invalid applications.

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