

HOUSE BILL NO. 752

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

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

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

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

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

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

(2) (a) "Content provider" means any person or entity that is responsible, in whole or in part, for the active creation, production, publication, distribution, or storage of content provided through the internet or any other interactive computer service. The term includes but is not limited to a website and software application.

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

(i) hosting services to third parties, which includes server or database hosting; or

(ii) a general use browser that retrieves and displays information from an interactive computer service without regard for the substance of the information; OR

(iii) AN INTERNET SERVICES PROVIDER AS DEFINED IN 2-17-602.

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

(4) "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet and such systems operated or services offered by libraries or educational institutions.

(5) "PRIVATE PERSON" MEANS ANY PERSON OTHER THAN AN OFFICER OR EMPLOYEE OF A STATE OR LOCAL GOVERNMENT ENTITY IN THIS STATE.

(5)(6) "Reasonably accessible" means that a person may obtain access by utilizing reasonably available retail technology services, regardless of the general policies or practices of the content provider or interactive computer service.

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

(a) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(b) bestiality;

(c) masturbation;

(d) sadistic or masochistic abuse; or

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

(7)(8) "Substantial amount" means an amount equal to or greater than 5% of the total visual content created, produced, published, distributed, maintained, or otherwise managed by the content provider.

NEW SECTION. Section 2. Prohibition on access to child sexual abuse material. (1) A content provider who produces, publishes, distributes, or maintains a substantial amount of sexually explicit visual content may not produce, publish, distribute, or maintain child sexual abuse material in a manner in which the material is reasonably accessible in Montana.

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

(3) A content provider who generates 50% or more of the content provider's income from the production, publication, or distribution of sexually explicit visual content and who has generated at least

\$500,000 in income may not produce, publish, distribute, or maintain child sexual abuse material in a manner in which the material is reasonably accessible in Montana.

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

NEW SECTION. Section 3. Enforcement -- right of victim to bring action -- enforcement by department of justice -- private right of action -- statute of limitations. (1) A person who is injured by a violation of [section 2] may maintain an action to seek the remedies available under [section 4] as well as restitution.

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

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

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

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

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

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

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

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2 **NEW SECTION. Section 4. Remedies available -- apportionment of damages.** (1) A plaintiff who

3 brings an action under [section 3] may seek any of the following:

4 (a) injunctive relief;

5 (b) declaratory relief;

6 (c) compensatory damages;

7 (d) punitive damages;

8 (e) statutory damages, which are the following amounts:

9 (i) \$100,000 for a strict violation of [section 2];

10 (ii) \$1,000,000 for a violation of [section 2] that is committed negligently or recklessly; or

11 (iii) no less than \$5,000,000 for a violation of [section 2] that is committed purposely or knowingly;

12 and

13 (f) reasonable attorney fees and costs incurred in bringing the action.

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

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

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

18 (a) compensatory damages for each violation must be paid to the victim;

19 (b) the amount of punitive and statutory damages must be apportioned for each violation as

20 follows:

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

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

25 (iii) the remaining amount to the department to be deposited into a state special revenue account
26 to the credit of the department; and

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

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