
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1295 Session of
2021

INTRODUCED BY SPONSORS WITHDRAWN, APRIL 27, 2021

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 27, 2021

AN ACT

1 Amending Titles 12 (Commerce and Trade) and 18 (Crimes and
2 Offenses) of the Pennsylvania Consolidated Statutes, in
3 commercial protection, providing for indecent deceptive trade
4 practices and imposing duties on the Secretary of Revenue and
5 the Attorney General; and, in prevention of human
6 trafficking, establishing the Indecent Deceptive Trade
7 Practices Fund.

8 This act may be referred to as the Human Trafficking and
9 Child Exploitation Prevention Act.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. Part IV of Title 12 of the Pennsylvania
13 Consolidated Statutes is amended by adding a chapter to read:

14 CHAPTER 55

15 INDECENT DECEPTIVE TRADE PRACTICES

16 Sec.

17 5501. Scope of chapter.

18 5502. Definitions.

19 5503. Duties of retailers.

20 5504. Filter deactivation fee.

1 5505. Warning regarding filter deactivation.

2 5506. Database or registry not required.

3 5507. Confidentiality.

4 5508. Remedies and affirmative defense.

5 5509. Unlawful practices and penalties.

6 5510. Live adult entertainment establishment admission fee.

7 5511. Applicability.

8 § 5501. Scope of chapter.

9 This chapter relates to indecent deceptive trade practices.

10 § 5502. Definitions.

11 The following words and phrases when used in this chapter
12 shall have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 "Cellular telephone." A communication device containing a
15 unique electronic serial number that is programmed into its
16 computer chip by its manufacturer and whose operation is
17 dependent on the transmission of that electronic serial number
18 along with a mobile identification number, which is assigned by
19 the cellular telephone carrier, in the form of radio signals
20 through cell sites and mobile switching stations.

21 "Child pornography." As defined in 18 U.S.C. § 2256(8)
22 (relating to definitions for chapter), which describes an
23 offense under 18 Pa.C.S. § 6312 (relating to sexual abuse of
24 children).

25 "Community." As defined in 18 Pa.C.S. § 5903(b) (relating to
26 obscene and other sexual materials and performances).

27 "Computer." As follows:

28 (1) An electronic, magnetic, optical, electrochemical or
29 other high speed data processing device performing logical,
30 arithmetic or storage functions.

1 (2) The term includes a data storage facility or
2 communications facility directly related to or operating in
3 conjunction with the device under paragraph (1).

4 (3) The term does not include an automated typewriter or
5 typesetter, a portable hand-held calculator or other similar
6 device.

7 "Consumer." An individual who purchases or leases for
8 personal, family or household purposes an Internet-enabled
9 device.

10 "Data communications device." An electronic device that
11 receives electronic information from one source and transmits or
12 routes it to another, including a bridge, router, switch or
13 gateway.

14 "Filter." As follows:

15 (1) A filter described in section 5503(a) (relating to
16 duties of retailers).

17 (2) The term includes any of the following:

18 (i) Digital blocking capability, hardware or
19 software that restricts or blocks Internet access to
20 websites, electronic mail, chat or other Internet-based
21 communications based on category, site or content.

22 (ii) A digital blinder rack that can be deactivated
23 by a retailer upon the satisfaction of certain nominal
24 conditions required by adult consumers.

25 "Human trafficking." As described in 18 Pa.C.S. § 3011
26 (relating to trafficking in individuals).

27 "Internet." As defined in 31 U.S.C. § 5362(5) (relating to
28 definitions).

29 "Internet-enabled device." A cellular telephone, computer,
30 data communications device or other product manufactured,

1 distributed or sold in this Commonwealth that provides Internet
2 access or plays a material role in distributing content on the
3 Internet.

4 "Internet service provider." As follows:

5 (1) A person engaged in the business of providing a
6 computer and communications facility through which a consumer
7 may obtain access to the Internet.

8 (2) The term does not include a common carrier if it
9 provides only telecommunications service.

10 "Live adult entertainment establishment." As follows:

11 (1) A nightclub, bar, restaurant or similar commercial
12 enterprise that:

13 (i) Provides for an audience of two or more
14 individuals with live nude entertainment or live nude
15 performances.

16 (ii) Authorizes on-premises consumption of alcoholic
17 beverages, regardless of whether the consumption of
18 alcoholic beverages is under a license or permit issued
19 under the act of April 12, 1951 (P.L.90, No.21), known as
20 the Liquor Code.

21 (2) The term does not include a theatre as defined under
22 section 2 of the act of June 5, 1937 (P.L.1656, No.344),
23 known as the Store and Theatre Tax Act.

24 "Minor." As defined in 18 Pa.C.S. § 5903(b).

25 "Nude." Either of the following:

26 (1) Entirely unclothed.

27 (2) Clothed in a manner that leaves uncovered or
28 visible, through less than fully opaque clothing, any portion
29 of the breasts below the top of the areola of the breasts, if
30 the person is female, or any portion of the genitals or

1 buttocks.

2 "Obscene." As follows:

3 (1) As defined in 18 Pa.C.S. § 5903(b).

4 (2) The term includes a website that:

5 (i) is known to facilitate human trafficking and
6 prostitution; or

7 (ii) displays or depicts images that are harmful to
8 minors or that constitutes sadomasochistic abuse, sexual
9 excitement, sexual conduct or revenge pornography.

10 "Personal identification information." Information that
11 identifies a person, including an individual's photograph,
12 Social Security number, driver identification number, name,
13 email address, address or telephone number.

14 "Prostitution." As described in 18 Pa.C.S. § 5902 (relating
15 to prostitution and related offenses).

16 "Retailer." As follows:

17 (1) A person that regularly engages in the
18 manufacturing, sale, offer for sale, lease or distribution of
19 Internet-enabled devices or services in this Commonwealth
20 that make content accessible on the Internet.

21 (2) The term includes an Internet service provider or
22 supplier or manufacturer of Internet-enabled devices that:

23 (i) materially play a role in distributing content
24 on the Internet or that make content accessible on the
25 Internet; and

26 (ii) are subject to the jurisdiction of this
27 Commonwealth.

28 "Revenge pornography." The distribution of sexually explicit
29 images or video of individuals without their permission, which
30 is an offense under 18 Pa.C.S. § 3131 (relating to unlawful

1 dissemination of intimate image).

2 "Sodomasochistic abuse." As defined in 18 Pa.C.S. § 5903(b).

3 "Sexual conduct." As defined in 18 Pa.C.S. § 5903(b).

4 "Sexual excitement." As defined in 18 Pa.C.S. § 5903(e)(4).

5 "Social media website." An Internet website or application
6 that enables users to communicate with each other by posting
7 information, comments, messages or images and that meets all of
8 the following requirements:

9 (1) Is open to the public.

10 (2) Has more than 75 million subscribers.

11 (3) From its inception, has not been specifically
12 affiliated with any one religion or political party.

13 (4) Provides a means for the website's users to report
14 obscene materials and has in place procedures for evaluating
15 those reports and removing obscene material.

16 § 5503. Duties of retailers.

17 (a) Filter generally.--A retailer of an Internet-enabled
18 device shall ensure that the device is equipped with an active
19 and operating filter prior to sale that blocks by default
20 Internet websites that:

21 (1) Are known to facilitate human trafficking or
22 prostitution.

23 (2) Display child pornography, revenge pornography or
24 obscene material harmful to minors.

25 (b) Specific duties.--A retailer of an Internet-enabled
26 device:

27 (1) Shall make reasonable and ongoing efforts to ensure
28 that the filter functions properly.

29 (2) Shall establish a reporting mechanism, such as a
30 website or call center, to allow a consumer to report

1 unblocked websites displaying content described in subsection
2 (a) or report blocked websites that are not displaying
3 content described in subsection (a).

4 (3) Shall report child pornography received through the
5 reporting mechanism under subsection (b) to the CyberTipline
6 operated by the National Center for Missing and Exploited
7 Children in accordance with 18 U.S.C. § 2258A (relating to
8 reporting requirements of providers).

9 (4) May not block access to websites that:

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

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

15 (iii) display complete movies that meet the
16 qualifications for a "G," "PG," "PG-13" or "R" rating by
17 the Classification and Rating Administration, as those
18 qualifications existed on September 1, 2020.

19 (5) Except as provided in subsection (c), may not
20 provide to a consumer methods, source code or other operating
21 instructions for deactivating the filter of the device.

22 (c) Deactivation of filter.--A retailer of an Internet-
23 enabled device shall deactivate the filter of the device after a
24 consumer:

25 (1) Requests that the capability be disabled.

26 (2) Presents personal identification information to
27 verify that the consumer is 18 years of age or older.

28 (3) Acknowledges receiving a warning regarding the
29 potential danger of deactivating the filter.

30 (4) Pays a one-time \$20 filter deactivation fee to the

1 Department of Revenue in accordance with section 5504
2 (relating to filter deactivation fee).

3 § 5504. Filter deactivation fee.

4 (a) Duties of Secretary of Revenue.--The Secretary of
5 Revenue shall prescribe the method of administration, payment,
6 collection and enforcement of the fee imposed under section
7 5503(c) (relating to duties of retailers), in conformity with
8 the provisions of the act of April 9, 1929 (P.L.343, No.176),
9 known as The Fiscal Code. The following apply:

10 (1) The Secretary of Revenue shall forward 80% of the
11 revenue received from the fee to the fund under 18 Pa.C.S. §
12 3033 (relating to Indecent Deceptive Trade Practices Fund).

13 (2) The Secretary of Revenue shall forward 20% of the
14 revenue received from the fee to the Department of Human
15 Services for use for victims of rape in accordance with
16 provisions of section 2333 of the act of April 9, 1929
17 (P.L.177, No.175), known as The Administrative Code of 1929.

18 (b) Purpose.--The fee imposed under section 5503(c) shall
19 not be content-based and shall be for the purpose of helping the
20 Commonwealth bear the costs of upholding community standards of
21 decency and combating sex-related offenses.

22 (c) Adjustment.--The Secretary of Revenue may annually
23 adjust the fee imposed under section 5503(c) to account for
24 inflation. The following apply:

25 (1) If the fee is adjusted to account for inflation, the
26 Secretary of Revenue shall:

27 (i) Transmit a notice of the fee adjustment to the
28 Legislative Reference Bureau for publication in the
29 Pennsylvania Bulletin.

30 (ii) Post a notice of the fee adjustment on the

1 publicly accessible Internet website of the Department of
2 Revenue.

3 (2) The fee adjustment shall be effective 30 days after
4 the publication of the notice under paragraph (1)(i).

5 (d) Effect.--Nothing in this chapter shall be construed to
6 prevent a retailer from charging a reasonable fee, in addition
7 to the fee imposed under section 5503(c), to deactivate the
8 filter.

9 § 5505. Warning regarding filter deactivation.

10 The Attorney General shall prepare and make available to
11 retailers a form that includes all content that must be in the
12 warning described in section 5503(c)(3) (relating to duties of
13 retailers).

14 § 5506. Database or registry not required.

15 Nothing in this act shall be construed to require a retailer
16 of an Internet-enabled device to create a database or registry
17 that contains the names or personal identification information
18 of adult consumers who knowingly chose to deactivate the filter
19 of the device.

20 § 5507. Confidentiality.

21 A retailer of an Internet-enabled device shall take due care
22 to protect the privacy rights of adult consumers under this
23 chapter and may not disclose the name or personal identification
24 information of an adult consumer who decided to deactivate the
25 filter of the device.

26 § 5508. Remedies and affirmative defense.

27 (a) Remedy by consumer generally.--In accordance with
28 section 5503(b)(2) (relating to duties of retailers), if the
29 filter blocks a website that is not displaying content described
30 in section 5503(a) and the block is reported to a reporting

1 mechanism, the website shall be unblocked within a reasonable
2 time, but in no event later than five business days after the
3 block is first reported. The following apply:

4 (1) A consumer may commence a civil action to unblock a
5 website that was wrongfully blocked by the filter.

6 (2) The prevailing party in the civil action may seek
7 attorney fees, costs and other forms of relief.

8 (b) Other remedies.--In accordance with section 5503(b)(2),
9 if a person who manufactures, sells, offers for sale, leases or
10 distributes a product that makes content accessible on the
11 Internet is unresponsive to report of a website displaying
12 content described in section 5503(a) that has breached the
13 filter, the Attorney General or a consumer may commence a civil
14 action. The following apply:

15 (1) The Attorney General or consumer may seek damages of
16 up to \$500 for each website that was reported but not
17 subsequently blocked.

18 (2) The prevailing party in the civil action may seek
19 attorney fees, costs and other forms of relief.

20 (c) Unfair trade practices.--A retailer that fails to comply
21 with the duties under subsection (a) or (b) shall be deemed to
22 have engaged in unfair methods of competition and unfair or
23 deceptive acts or practices in violation of the act of December
24 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices
25 and Consumer Protection Law, and is subject to the penalties
26 under that act.

27 (d) Affirmative defense.--It shall be an affirmative defense
28 in a civil action to a charge of violating this chapter that the
29 dissemination of the content described in section 5503(a) was
30 limited to institutions or organizations having scientific,

1 educational or other similar jurisdictions for displaying the
2 material.

3 § 5509. Unlawful practices and penalties.

4 (a) Offense.--A retailer is guilty of an offense if the
5 retailer knowingly:

6 (1) Sells an Internet-enabled device without an
7 activated filter that at least makes an attempt to block by
8 default websites that display content described in section
9 5503(a) (relating to duties of retailers).

10 (2) Violates section 5503(b) (5).

11 (3) Fails to comply with the requirements of section
12 5503(c) before deactivating the filter.

13 (4) Discloses to a third party the name or personal
14 identification information of an adult consumer who has
15 elected to deactivate a filter, without a court order
16 directing otherwise.

17 (b) Penalty.--A retailer that commits an offense under
18 subsection (a) shall be fined not more than \$1,000 for a first
19 offense and not more than \$2,500 for a second or subsequent
20 offense.

21 (c) Other penalties.--

22 (1) A retailer that commits an offense under subsection
23 (a) with two prior convictions under subsection (a) is guilty
24 of a misdemeanor of the first degree and is subject to the
25 penalties specified in 18 Pa.C.S. § 5903(h) (relating to
26 obscene and other sexual materials and performances).

27 (2) A retailer that commits an offense under subsection
28 (a) shall be deemed to have engaged in unfair methods of
29 competition and unfair or deceptive acts or practices in
30 violation of the act of December 17, 1968 (P.L.1224, No.387),

1 known as the Unfair Trade Practices and Consumer Protection
2 Law, and is subject to the penalties under that act.

3 (d) Enforcement.--Only the Attorney General or an
4 appropriate district attorney may commence an action to enforce
5 this section.

6 § 5510. Live adult entertainment establishment admission fee.

7 (a) Imposition and remittance of fee.--A \$5 admission fee is
8 imposed for each entry by each customer admitted to a live adult
9 entertainment establishment. The live adult entertainment
10 establishment shall remit the admission fee to the Department of
11 Revenue.

12 (b) Duties of Secretary of Revenue.--The Secretary of
13 Revenue shall prescribe the method of administration, payment,
14 collection and enforcement of the fee imposed under subsection
15 (a), in conformity with the provisions of the act of April 9,
16 1929 (P.L.343, No.176), known as The Fiscal Code. The following
17 apply:

18 (1) The Secretary of Revenue shall forward 80% of the
19 revenue received from the fee to the fund under 18 Pa.C.S. §
20 3033 (relating to Indecent Deceptive Trade Practices Fund).

21 (2) The Secretary of Revenue shall forward 20% of the
22 revenue received from the fee to the Department of Human
23 Services for use for victims of rape in accordance with the
24 provisions of section 2333 of the act of April 9, 1929
25 (P.L.177, No.175), known as The Administrative Code of 1929.

26 (c) Purpose.--The fee imposed under subsection (a) shall not
27 be content-based and shall be for the purpose of offsetting
28 secondary harmful effects and helping the Commonwealth bear the
29 costs of upholding community standards of decency and combating
30 sex-related offenses.

1 (d) Other taxes and fees.--The admission fee under
2 subsection (a) is in addition to any other taxes or fees imposed
3 on the live adult entertainment establishment.

4 (e) A live adult entertainment establishment shall record
5 daily, in a manner prescribed by the Secretary of Revenue, the
6 number of customers admitted to the live adult entertainment
7 establishment. The following apply:

8 (1) The live adult entertainment establishment shall
9 maintain the records for the period required by the Secretary
10 of Revenue and make the records available for inspection and
11 audit on request by the Secretary of Revenue.

12 (2) The live adult entertainment establishment shall
13 file any report with the Department of Revenue in the manner
14 and containing the information required by the Secretary of
15 Revenue.

16 (3) The records and reports under this subsection shall
17 not contain the names or personal identification information
18 of any of the customers.

19 (f) Discretion of establishment.--This section does not
20 require a live adult entertainment establishment to impose a tax
21 on a customer of the live adult entertainment establishment. The
22 live adult entertainment establishment may determine the manner
23 in which the live adult entertainment establishment derives the
24 money required to pay the tax imposed under this section.

25 § 5511. Applicability.

26 This chapter does not apply to:

27 (1) An occasional sale of an Internet-enabled device by
28 a person that is not regularly engaged in the business of
29 selling Internet-enabled devices.

30 (2) Devices produced or sold before the effective date

1 of this section.

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

4 (4) A retailer that is not subject to the jurisdiction
5 of this Commonwealth.

6 Section 2. Title 18 is amended by adding a section to read:
7 § 3033. Indecent Deceptive Trade Practices Fund.

8 (a) Establishment.--The Indecent Deceptive Trade Practices
9 Fund is established as a special nonlapsing fund in the State
10 Treasury.

11 (b) Purpose.--The fund shall enable the commission to
12 provide grants to:

13 (1) Carry out the purposes specified in section 3031
14 (relating to grants).

15 (2) Promote the development throughout this Commonwealth
16 of locally based and supported nonprofit programs for the
17 survivors of human trafficking and sex-related offenses and
18 to better enable the quality of services provided.

19 (3) Empower government groups and nongovernment groups
20 working to uphold community standards of decency, protect
21 children and strengthen families.

22 (4) Develop, expand, prevent or offset the costs of sex-
23 related offenses, especially human trafficking or child
24 exploitation.

25 (5) A State agency, unit of local government,
26 nongovernment group or other person:

27 (i) For services to help women with substance abuse
28 disorders.

29 (ii) For counselors and victim advocates who are
30 trained to assist victims of domestic violence and sexual

1 abuse.

2 (iii) For shelters for women, particularly those who
3 have been exposed to prostitution or sex trafficking.

4 (iv) For research-based organizations and
5 universities.

6 (v) For faith-based organizations assisting victims
7 of human trafficking or other sex offenses.

8 (vi) For child advocacy centers.

9 (vii) For organizations that provide legal advocacy
10 to abused, neglected or at-risk children.

11 (viii) For family therapists and counselors.

12 (ix) For scholarships for students who demonstrate
13 outstanding moral character, leadership or judgment.

14 (x) To prevent or improve services for victims of
15 sexual assault.

16 (xi) To support technology in rape crisis centers.

17 (xii) To conduct human trafficking enforcement
18 programs or uphold community standards of decency.

19 (xiii) For groups providing pro bono legal services
20 to victims of sex-related offenses.

21 (6) Meet the evolving needs of this Commonwealth
22 regarding the matters described in paragraphs (1), (2), (3),
23 (4) and (5).

24 (c) Sources of money.--Money available to the fund shall
25 include:

26 (1) Money generated through the fee under 12 Pa.C.S. §
27 5504(a)(1) (relating to filter deactivation fee).

28 (2) Money generated through the fee under 12 Pa.C.S. §
29 5510(b)(1) (relating to live adult entertainment
30 establishment admission fee).

1 (3) Appropriations, executive authorizations and
2 transfers from the General Fund, special funds, Federal funds
3 and other sources of revenue, including gifts, donations and
4 bequests, made available to the fund.

5 (d) Administration.--

6 (1) The commission shall administer the fund, unless the
7 Attorney General has legitimate grounds to appoint a
8 different administrator.

9 (2) Money deposited into the fund may be used only by
10 the commission or the Attorney General's designee, if so
11 appointed, for grants for the purposes specified in
12 subsection (b), subject to the availability of money in the
13 fund.

14 (3) No administrative action shall prevent the deposit
15 of money into the fund in the fiscal year in which the money
16 is received.

17 (4) The fund may only be used for funding authorized
18 under this section.

19 (5) Money in the fund may not be transferred or diverted
20 to any other purpose by administrative action.

21 (6) Notwithstanding any other provision of law, any
22 balance in the fund remaining unspent at the end of a fiscal
23 year, including any interest accruing on investments and
24 deposits of the fund, shall be credited to the fund and shall
25 be carried forward into the subsequent fiscal year.

26 (7) All money deposited into the fund and the interest
27 the money accrues is appropriated to the commission on a
28 continuing basis for grants under this section.

29 (8) Administrative expenses regarding the operation of
30 the fund shall not exceed 10% of the money in the fund during

1 a fiscal year.

2 (e) Reports.--The commission or the Attorney General's
3 designee, if so appointed, shall annually evaluate activities
4 conducted under this section each year. The following apply:

5 (1) On or before February 15 of each year, the
6 commission or the Attorney General's designee, if so
7 appointed, shall submit an annual report containing the
8 evaluation.

9 (2) The report under this subsection shall be
10 transmitted to the Secretary of the Senate and the Chief
11 Clerk of the House of Representatives, who shall notify the
12 General Assembly that the report is available.

13 (3) The report under this subsection must include:

14 (i) The amount of fees received under 12 Pa.C.S. §
15 5504(a)(1).

16 (ii) The amount of fees received under 12 Pa.C.S. §
17 5510(b)(1).

18 (iii) The manner in which the money in the fund was
19 distributed through grants.

20 (iv) The manner in which each grant recipient used
21 the grant money.

22 (v) The amount and nature of administrative expenses
23 regarding the fund.

24 (f) Rules.--The commission or the Attorney General's
25 designee, if so appointed, may by rule:

26 (1) Determine eligibility requirements for any grant
27 awarded under this section.

28 (2) Require a grant recipient to offer minimum services
29 for a period of time before receiving a grant and to continue
30 to offer minimum services during the grant period.

1 (3) Require a grant recipient to submit financial and
2 programmatic reports.

3 (g) Definitions.--As used in this section, the following
4 words and phrases shall have the meanings given to them in this
5 subsection unless the context clearly indicates otherwise:

6 "Fund." The Indecent Deceptive Trade Practices Fund
7 established under this section.

8 "Nongovernment group." As follows:

9 (1) A nonprofit organization that is exempt from Federal
10 income taxation under section 501(c)(3) of the Internal
11 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et
12 seq.) and whose primary purpose is to end human trafficking
13 and sexual violence in this Commonwealth through the
14 development and support of programs or services for the
15 prevention of human trafficking and sexual violence, outreach
16 programs and technical assistance to youth and rape crisis
17 centers working to prevent human trafficking and sexual
18 violence.

19 (2) The term includes an individual and a group that is
20 providing a program or service to uphold community standards
21 of decency.

22 Section 3. This act shall take effect in 180 days.