

HB298 INTRODUCED



1 SHXZ77-1

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11 RFD: Commerce and Small Business

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SYNOPSIS:

This bill would require manufacturers of certain Internet-enabled devices to automatically activate existing filters on the devices to prevent users from accessing material harmful to minors, including pornography, without a device passcode, and would provide civil penalties for a violation.

A BILL
TO BE ENTITLED
AN ACT

Relating to consumer protection; to require certain manufacturers of Internet-enabled devices to activate existing filters to restrict access to certain material; to provide for a cause of action; to provide civil penalties.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the Protection of Minors from Unfiltered Devices Act.

Section 2. As used in this act, the following terms have the following meanings:

(1) ACTIVATE. The process of powering on a device and associating the device with a new user account.

(2) DEVICE. A tablet or a smart phone manufactured on or after the operative date of this act as provided in Section



HB298 INTRODUCED

29 7.

30 (3) FILTER. Software installed on a device that is
31 capable of preventing the device from accessing or displaying
32 material that is harmful to minors through browsers or search
33 engines.

34 (4) HARMFUL TO MINORS. Any description or
35 representation, in whatsoever form, of nudity, sexual conduct,
36 sexual excitement, or sadomasochistic abuse when it: a. Taken
37 as a whole, appeals to the prurient interest of minors; b. is
38 patently offensive to prevailing standards in the adult
39 community as a whole with respect to what is suitable material
40 for minors; and c. taken as a whole, does not have serious
41 value for minors, which includes only serious literary,
42 artistic, political, or scientific value for minors.

43 (5) INTERNET. The global information system that is
44 logically linked together by a globally unique address space
45 based on the Internet protocol (IP), or its subsequent
46 extensions, and that is able to support communications using
47 the transmission control protocol/Internet protocol (TCP/IP)
48 suite, or its subsequent extensions, or other IP-compatible
49 protocols, and that provides, uses, or makes accessible,
50 either publicly or privately, high-level services layered on
51 communications and related infrastructure.

52 (6) MANUFACTURER. A person or entity to which both of
53 the following apply:

54 a. Is engaged in the business of manufacturing a device
55 or holds the patents for the device it manufactures.

56 b. Has a commercial designated registered agent as



HB298 INTRODUCED

57 provided under Section 10A-1-5.31, Code of Alabama 1975.

58 (7) MINOR. An individual under the age of 19 years who
59 is not emancipated, married, or a member of the armed forces
60 of the United States.

61 (8) PASSWORD. A string of characters or other secure
62 method used to enable, deactivate, modify, or uninstall a
63 filter on a device.

64 (9) SMART PHONE. An electronic device that combines a
65 cell phone with a handheld computer, typically offering
66 Internet access through a browser or search engine, data
67 storage, and text and email capabilities.

68 (10) TABLET. A mobile device that is equipped with a
69 mobile operating system, touchscreen display, and rechargeable
70 battery; and that has the ability to support access to a
71 cellular network.

72 Section 3. Beginning January 1 2024, a manufacturer
73 shall manufacture a device that, when activated in this state,
74 shall automatically enable a filter that does all of the
75 following:

76 (1) When enabled, prevents the user from accessing
77 material that is harmful to minors on any of the following:

- 78 a. Mobile data networks.
- 79 b. Internet browsers or search engines.
- 80 c. Wired Internet networks.
- 81 d. Wireless Internet networks.

82 (2) Notifies the user of the device when the filter
83 blocks the device from accessing a website.

84 (3) Gives a user with a password the opportunity to



HB298 INTRODUCED

85 unblock a filtered website.

86 (4) Reasonably precludes a user, other than a user with
87 a password, the opportunity to deactivate, modify, or
88 uninstall the filter.

89 Section 4. (a) A manufacturer of a device is liable to
90 a minor in this state if all of the following occur:

91 (1) The device is activated in this state.

92 (2) The device does not, upon activation in this state,
93 enable a filter that complies with the requirements described
94 in Section 3.

95 (3) The minor accesses material that is harmful to
96 minors on the device.

97 (b) Nothing in this act affects any private right of
98 action existing under other law, including contract.

99 (c) Notwithstanding subsection (a), this section does
100 not apply to a manufacturer that makes a good faith effort to
101 provide a device that, upon activation of the device in this
102 state, automatically enables a generally accepted and
103 commercially reasonable method of filtration in accordance
104 with this act and industry standards.

105 Section 5. (a) If a court finds that a manufacturer is
106 liable under Section 4, the court may award the plaintiff
107 actual damages.

108 (b) A class action may be brought under this act in
109 accordance with Rule 23 of the Alabama Rules of Civil
110 Procedure.

111 Section 6. (a) When the Attorney General has reason to
112 believe that a person has violated or is violating this act,



HB298 INTRODUCED

113 the Attorney General, acting in the public interest, may bring
114 an action in the name of the state against the person to do
115 any of the following:

116 (1) To enjoin any action that constitutes a violation
117 of this act by issuance of a temporary restraining order or
118 preliminary or permanent injunction.

119 (2) To recover from the alleged violator a civil
120 penalty not to exceed five thousand dollars (\$5,000) per
121 violation and not to exceed a total of fifty thousand dollars
122 (\$50,000) in aggregate, as determined by the court.

123 (3) To recover from the alleged violator the Attorney
124 General's reasonable expenses, investigative costs, and
125 attorney's fees.

126 (4) To obtain other appropriate relief as provided
127 under this act.

128 (b) The Attorney General may issue a subpoena to any
129 person and conduct hearings in aid of any investigation or
130 inquiry conducted under this act.

131 (c) The Attorney General may seek the revocation of any
132 license or certificate authorizing a manufacturer to engage in
133 business in this state.

134 (d) For purposes of assessing a penalty under this
135 section, a manufacturer is considered to have committed a
136 separate violation for each device manufactured on or after
137 January 1 of the year following the effective date of this
138 act.

139 Section 7. (a) Any parent or legal guardian of a minor
140 who accesses pornographic content that is harmful to minors,



HB298 INTRODUCED

141 which content is accessible as a result of a violation of this
142 act, may bring a private cause of action in any court of
143 competent jurisdiction against a manufacturer who manufactured
144 a device in violation of this act.

145 (b) A prevailing plaintiff may recover all of the
146 following:

147 (1) Actual damages; or, in the discretion of the court,
148 when actual damages are difficult to ascertain due to the
149 nature of the injury, liquidated damages in the amount of
150 fifty thousand dollars (\$50,000) for each violation.

151 (2) When the violation is found by clear and convincing
152 evidence to be knowing and willful, punitive damages in an
153 amount determined by the court.

154 (3) Nominal damages.

155 (4) Court costs, attorney's fees, and other relief as
156 the court deems appropriate.

157 (c) Nothing in this act shall preclude the bringing of
158 a class action lawsuit against a manufacturer where its
159 conduct in violation of Section 3 is knowing and willful.

160 Section 8. This act shall become effective on the first
161 day of the third month following its passage and approval by
162 the Governor, or its otherwise becoming law.