

HB298 ENGROSSED



1 SHXZ77-2

2 By Representatives Sells, Mooney, Whorton, Paschal, Fincher,
3 Harrison, Gidley, Butler, Lamb, Bedsole, Stadthagen, Kirkland,
4 Hammett, Bolton, Hurst, Givens, Fidler, Underwood, Lee, Cole,
5 Whitt, Rigsby, Marques, Smith, Oliver, Pettus, Standridge,
6 McClammy, Hollis, Brown, Carns, Reynolds, Sorrells, Estes,
7 Moore (P), Shaver, Rehm, Ingram, Hulsey, Ellis, Lomax, Woods,
8 Lipscomb, Crawford, Shedd, Robertson, Wood (D), Baker, Stubbs,
9 Easterbrook, Stringer, Paramore, Collins, DuBose, Hassell,
10 Travis, Drummond, Plump, Lawrence

11 RFD: Commerce and Small Business

12 First Read: 12-Apr-23

13 2023 Regular Session



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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 7.

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

(4) **HARMFUL TO MINORS.** Any description or representation, in whatsoever form, of nudity, sexual conduct,



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29 sexual excitement, or sadomasochistic abuse when it: a. Taken
30 as a whole, appeals to the prurient interest of minors; b. is
31 patently offensive to prevailing standards in the adult
32 community as a whole with respect to what is suitable material
33 for minors; and c. taken as a whole, does not have serious
34 value for minors, which includes only serious literary,
35 artistic, political, or scientific value for minors.

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

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

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

49 b. Has a commercial designated registered agent as
50 provided under Section 10A-1-5.31, Code of Alabama 1975.

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

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



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

61 (10) TABLET. A mobile device that is equipped with a
62 mobile operating system, touchscreen display, and rechargeable
63 battery; and that has the ability to support access to a
64 cellular network.

65 Section 3. Beginning January 1 2024, a manufacturer
66 shall manufacture a device that, when activated in this state,
67 shall automatically enable a filter that does all of the
68 following:

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

- 71 a. Mobile data networks.
- 72 b. Internet browsers or search engines.
- 73 c. Wired Internet networks.
- 74 d. Wireless Internet networks.

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

77 (3) Gives a user with a password the opportunity to
78 unblock a filtered website.

79 (4) Reasonably precludes a user, other than a user with
80 a password, the opportunity to deactivate, modify, or
81 uninstall the filter.

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

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



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

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

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

92 (c) Notwithstanding subsection (a), this section does
93 not apply to a manufacturer that makes a good faith effort to
94 provide a device that, upon activation of the device in this
95 state, automatically enables a generally accepted and
96 commercially reasonable method of filtration in accordance
97 with this act and industry standards.

98 (d) Nothing in this act shall be construed to create a
99 cause of action against the retailer of a device.

100 Section 5. If a court finds that a manufacturer is
101 liable under Section 4, the court may award the plaintiff
102 actual damages.

103
104 Section 6. (a) When the Attorney General has reason to
105 believe that a person has violated or is violating this act,
106 the Attorney General, acting in the public interest, may bring
107 an action in the name of the state against the person to do
108 any of the following:

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

112 (2) To recover from the alleged violator a civil



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113 penalty not to exceed five thousand dollars (\$5,000) per
114 violation and not to exceed a total of fifty thousand dollars
115 (\$50,000) in aggregate, as determined by the court.

116 (3) To recover from the alleged violator the Attorney
117 General's reasonable expenses, investigative costs, and
118 attorney's fees.

119 (4) To obtain other appropriate relief as provided
120 under this act.

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

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

127 (d) For purposes of assessing a penalty under this
128 section, a manufacturer is considered to have committed a
129 separate violation for each device manufactured on or after
130 January 1 of the year following the effective date of this
131 act.

132 Section 7. (a) Any parent or legal guardian of a minor
133 who accesses pornographic content that is harmful to minors,
134 which content is accessible as a result of a violation of this
135 act, may bring a private cause of action in any court of
136 competent jurisdiction against a manufacturer who manufactured
137 a device in violation of this act.

138 (b) A prevailing plaintiff may recover all of the
139 following:

140 (1) Actual damages; or, in the discretion of the court,



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141 when actual damages are difficult to ascertain due to the
142 nature of the injury, liquidated damages in the amount of
143 fifty thousand dollars (\$50,000) for each violation.

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

147 (3) Nominal damages.

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

150 (c) Nothing in this act shall authorize the bringing of
151 a class action lawsuit.

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



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House of Representatives

158 Read for the first time and referred12-Apr-23
159 to the House of Representatives
160 committee on Commerce and Small
161 Business
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163 Read for the second time and placed27-Apr-23
164 on the calendar:
165 0 amendments
166
167 Read for the third time and passed16-May-23
168 as amended
169 Yeas 70
170 Nays 8
171 Abstains 24

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John Treadwell
Clerk