

1 HB43
2 215004-1
3 By Representative Sells
4 RFD: Judiciary
5 First Read: 11-JAN-22

SYNOPSIS: This bill would require manufacturers of certain Internet-enabled devices to install and automatically activate filter software onto the devices to prevent users from accessing material harmful to minors, including pornography, without a device passcode.

 This bill would become operative only upon the passage of substantially similar legislation in five or more other states.

A BILL
TO BE ENTITLED
AN ACT

 Relating to consumer protection; to require certain manufacturers of Internet-enabled devices to install filtering software to restrict access to certain material; to provide for a cause of action; to provide civil penalties; and to provide for a contingent effective date.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

7 (2) DEVICE. A tablet or a smart phone sold in this
8 state and manufactured on or after the operative date of this
9 act as provided in Section 7.

10 (3) FILTER. Software installed on a device that is
11 capable of preventing the device from accessing or displaying
12 material that is harmful to minors through the Internet or any
13 applications owned and controlled by the manufacturer and
14 installed on the device.

15 (4) HARMFUL TO MINORS. Any description or
16 representation, in whatsoever form, of nudity, sexual conduct,
17 sexual excitement, or sadomasochistic abuse when it: a. Taken
18 as a whole, appeals to the prurient interest of minors; b. is
19 patently offensive to prevailing standards in the adult
20 community as a whole with respect to what is suitable material
21 for minors; and c. taken as a whole, does not have serious
22 value for minors, which includes only serious literary,
23 artistic, political, or scientific value for minors.

24 (5) INTERNET. The global information system that is
25 logically linked together by a globally unique address space
26 based on the Internet protocol (IP), or its subsequent
27 extensions, and that is able to support communications using

1 the transmission control protocol/Internet protocol (TCP/IP)
2 suite, or its subsequent extensions, or other IP-compatible
3 protocols, and that provides, uses, or makes accessible,
4 either publicly or privately, high-level services layered on
5 communications and related infrastructure.

6 (6) MANUFACTURER. A person that is engaged in the
7 business of manufacturing a device.

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

11 (8) SMART PHONE. An electronic device that combines
12 a cell phone with a handheld computer, typically offering
13 Internet access, data storage, and text and email
14 capabilities.

15 (9) TABLET. A mobile device that is equipped with a
16 mobile operating system, touchscreen display, and rechargeable
17 battery; and that has the ability to support access to a
18 cellular network.

19 Section 3. A manufacturer shall manufacture a device
20 that, when activated in this state, shall automatically enable
21 a filter that does all of the following:

22 (1) When enabled, prevents the user from accessing
23 or downloading material that is harmful to minors on any of
24 the following:

- 25 a. Mobile data networks.
- 26 b. Applications owned and controlled by the
27 manufacturer.

1 c. Wired Internet networks.

2 d. Wireless Internet networks.

3 (2) Notifies the user of the device when the filter
4 blocks the device from downloading an application or accessing
5 a website.

6 (3) Gives a user with a passcode the opportunity to
7 unblock a filtered application or website.

8 (4) Reasonably precludes a user, other than a user
9 with a passcode, the opportunity to deactivate, modify, or
10 uninstall the filter.

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

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

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

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

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

21 (c) Notwithstanding subsection (a), this section
22 does not apply to a manufacturer that makes a good faith
23 effort to provide a device that, upon activation of the device
24 in the state, automatically enables a generally accepted and
25 commercially reasonable method of filtration in accordance
26 with this act and industry standards.

1 Section 5. (a) If a court finds that a manufacturer
2 is liable under Section 4, the court may award the plaintiff
3 actual damages.

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

7 Section 6. (a) (1) A manufacturer that is found
8 liable under Section 4 shall be liable for civil penalties not
9 to exceed ten dollars (\$10) per violation, plus filing fees
10 and attorney fees, in addition to any other penalty
11 established by law; and shall be enjoined from further
12 violations.

13 (2) The civil penalty may be assessed and recovered
14 in a civil action brought in any court of competent
15 jurisdiction.

16 (3) For purposes of assessing a penalty under this
17 subsection, a manufacturer is considered to have committed a
18 separate violation for each device to which all of the
19 following apply:

20 a. The device that is manufactured as described in
21 Section 2(2).

22 b. The device is activated in this state.

23 c. A filter is not automatically enabled upon the
24 activation of the device.

25 d. A minor encounters material harmful to minors on
26 the device.

1 (4) The total civil penalty assessed in a civil
2 action brought under this subsection by each plaintiff may not
3 exceed five hundred dollars (\$500).

4 (b) (1) A plaintiff shall prove and a court shall
5 find, by clear and convincing evidence, that a manufacturer
6 manufactured a device on or after January 1 of the year
7 following the year this bill takes effect, that was activated
8 in the state in violation of Section 3.

9 (2) The plaintiff shall prove all other elements by
10 a preponderance of the evidence.

11 (c) The court shall specify the amount of each of
12 the following for each violation:

13 (1) The civil penalty.

14 (2) The filing fees.

15 (3) The attorney fees.

16 (d) In assessing the amount of a civil penalty for a
17 violation of this act, the court shall consider all of the
18 following:

19 (1) The nature and extent of the violation.

20 (2) The number and severity of the violations.

21 (3) The economic effect of the penalty on the
22 violator.

23 (4) The good faith measures the violator took to
24 comply with this act.

25 (5) The timing of the measures the violator took to
26 comply with this act.

27 (6) The willfulness of the violator's misconduct.

1 (7) The deterrent effect that the imposition of the
2 penalty would have on both the violator and the regulated
3 community as a whole.

4 (8) Any other factor that the court determines
5 justice requires.

6 (e) Actions pursuant to this part may be brought by
7 the Office of the Attorney General or by a private individual
8 in accordance with subsection (f).

9 (f) After satisfying the requirements of subsections
10 (g), (h), and (i), a private individual may bring an action in
11 the public interest to establish liability against a
12 manufacturer under Section 4 if all of the following apply:

13 (1) The individual has served to the alleged
14 violator and the Office of the Attorney General a notice of an
15 alleged violation of subdivision (3) of Section 3.

16 (2) The Office of the Attorney General has not
17 provided a letter to the noticing party as required under
18 subdivision (h) (2) that indicates either of the following:

19 a. An action is currently being pursued or will be
20 pursued by the Office of the Attorney General regarding the
21 violation.

22 b. The Office of the Attorney General believes that
23 there is no merit to the action.

24 (3) The alleged violator has not responded to the
25 notice of alleged violation or returned the proof of
26 compliance form provided in subsection (k).

1 (g) (1) The attorney for the noticing party, or the
2 noticing party if the noticing party is not represented by an
3 attorney, shall execute the notice of an alleged violation.

4 (2) The notice of an alleged violation shall state
5 that the individual executing the notice believes that there
6 is a violation and shall provide factual information
7 sufficient to establish the basis for the alleged violation.

8 (h) (1) The Attorney General shall review the notice
9 of an alleged violation and may confer with the noticing
10 party.

11 (2) Within 45 days after the day on which the
12 Attorney General received the notice of an alleged violation,
13 the Attorney General shall provide a letter to the noticing
14 party and the alleged violator that states whether or not the
15 Attorney General finds merit in the action.

16 (i) (1) An individual who serves a notice of an
17 alleged violation described in subsection (g) shall complete
18 and provide to the alleged violator at the time the notice of
19 the alleged violation is served, a notice of special
20 compliance procedure and proof of compliance form pursuant to
21 subsection (k).

22 (2) The individual may file an action against the
23 alleged violator, or recover from the alleged violator, if all
24 of the following occur:

25 a. The notice of alleged violation alleges that the
26 alleged violator failed to manufacture a device that, when

1 activated in the state, automatically enabled a filter as
2 required under Section 3.

3 b. A minor encountered material harmful to minors on
4 the device without the option to enable a filter.

5 c. Within 60 days after the day on which the alleged
6 violator receives the notice of the alleged violation, the
7 alleged violator has not done all of the following:

8 1. Corrected the alleged violation and all similar
9 violations known to the alleged violator.

10 2. Agreed to pay a penalty for the alleged violation
11 in the amount of ten dollars (\$10) per violation, up to five
12 hundred dollars (\$500), regardless of the number of separate
13 violations alleged in the notice.

14 3. Notified, in writing, the noticing party and the
15 Office of the Attorney General that the violation has been
16 corrected.

17 (j) (1) The written notice required in subparagraph
18 (i) (2) c. 3. shall be the notice of special compliance procedure
19 and proof of compliance form specified in subsection (k).

20 (2) The alleged violator shall deliver the civil
21 penalty to the noticing party within 60 days after the day on
22 which the alleged violator received the notice of the alleged
23 violation.

24 (k) The notice required to be provided to an alleged
25 violator pursuant to subsection (i) shall be presented as
26 follows:

27 "Date:

1 Name of Noticing Party or Attorney for Noticing
2 Party:

3 Address:

4 Phone Number:

5 SPECIAL COMPLIANCE PROCEDURE

6 PROOF OF COMPLIANCE

7 You are receiving this form because the Noticing
8 Party listed above has alleged that you are in violation of
9 Section 3.

10 The Noticing Party may bring legal proceedings
11 against you for the alleged violation checked below if any of
12 the following apply:

13 (1) You have not actually taken the corrective steps
14 that you have certified in this form.

15 (2) The Noticing Party has not received this form at
16 the address shown above, accurately completed by you,
17 postmarked within 50 days after you receive this notice.

18 (3) The Noticing Party does not receive the required
19 ten dollar (\$10) penalty payment for each violation alleged,
20 with a total payment not to exceed five hundred dollars (\$500)
21 regardless of the number of separate violations alleged in the
22 notice, from you at the address shown above postmarked within
23 60 days of your receiving this notice.

24 PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR
25 ATTORNEY FOR THE NOTICING PARTY

26 This notice of alleged violation is for failure to
27 provide an activated filter to protect minors against exposure

1 to materials considered harmful to minors. [provide complete
2 description of violation(s), including when and where observed
3 and the serial number(s) of the device(s) involved].

4 Date:

5 Name of Noticing Party or Attorney for Noticing
6 Party:

7 Address:

8 Phone Number:

9 PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR
10 AUTHORIZED REPRESENTATIVE

11 Certification of Compliance

12 Accurate completion of this form will demonstrate
13 you are now in compliance with Section 3, for the alleged
14 violation listed above. You must complete and submit the form
15 below to the Noticing Party at the address shown above, with a
16 copy to the Alabama Attorney General's Office, postmarked
17 within 50 days of you receiving this notice.

18 I hereby agree to pay, within 60 days of receipt of
19 this notice, a penalty of ten dollars (\$10) for each violation
20 alleged to the Noticing Party only and certify that I have
21 complied by (check only one of the following):

22 Providing the party at the address shown above
23 with information about how to enable a filter.

24 Providing the party at the address shown above
25 with information about how to exchange a device that did not
26 have a filter automatically enable upon activation for a

1 replacement device of the same model that will automatically
2 enable the filter upon activation in the state.

3 CERTIFICATION

4 My statements on this form, and on any attachments
5 to it, are true, complete, and correct to the best of my
6 knowledge and belief and are made in good faith. I have
7 carefully read the instructions to complete this form.

8 Signature of alleged violator or authorized
9 representative:

10 Date:

11 Name and title of signatory:"

12 (l) If a lawsuit is commenced, the plaintiff may
13 include additional violations in the claim that are discovered
14 through the discovery process.

15 (m) An alleged violator shall satisfy the conditions
16 set forth in subsection (k) only one time per device.

17 (n) (1) Notwithstanding an alleged violator's
18 compliance with subsection (j), the Attorney General may file
19 an action pursuant to subsection (e) against the alleged
20 violator.

21 (2) In any action, a court shall reduce the amount
22 of any civil penalty for a violation to reflect any payment
23 made by the alleged violator to a private individual in
24 accordance with subsection (j) for the same alleged violation.

25 (o) Payments shall be made as follows:

26 (1) A civil penalty ordered by the court shall be
27 paid to the plaintiff as directed by the court.

1 (2) A penalty paid in accordance with the special
2 compliance procedure in subsection (k) shall be made directly
3 to the noticing party.

4 (p) (1) Fifty percent of any penalty paid in
5 accordance with this section, excluding attorney fees or
6 costs, shall be deposited into the Alabama Crime Victims
7 Compensation Fund for the purpose of providing compensation or
8 other benefits to crime victims.

9 (2) If the penalty is paid to a noticing party in
10 accordance with subsection (k), the noticing party shall remit
11 the amount required by this subsection, along with a copy of
12 the Special Compliance Procedure document.

13 (3) If a civil penalty is ordered by the court, the
14 plaintiff shall remit the amount required by this subsection
15 along with a copy of the court order.

16 (q) Nothing in this section applies to a
17 manufacturer who makes a good faith effort to install and
18 enable upon activation in the state a generally accepted and
19 commercially reasonable method of filtration in accordance
20 with this act and industry standards.

21 Section 7. This act shall become operative on
22 January 1 following the year of the date of legislative
23 enactment of Section 3(1) or its substantial equivalent into
24 law by not less than five states, as certified by the Director
25 of the Legislative Services Agency.

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