

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4

# A Bill

HOUSE BILL 1933

5 By: Representative Cloud  
6

## For An Act To Be Entitled

8 AN ACT TO ESTABLISH THE PROTECTION OF MINORS FROM  
9 UNFILTERED DEVICES ACT; TO CREATE A CAUSE OF ACTION  
10 FOR FAILURE TO INSTALL A FILTER ON A DEVICE IN  
11 CERTAIN CIRCUMSTANCES; AND FOR OTHER PURPOSES.  
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## Subtitle

14 TO ESTABLISH THE PROTECTION OF MINORS  
15 FROM UNFILTERED DEVICES ACT; AND TO  
16 CREATE A CAUSE OF ACTION FOR FAILURE TO  
17 INSTALL A FILTER ON A DEVICE IN CERTAIN  
18 CIRCUMSTANCES.  
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
23

24 SECTION 1. Arkansas Code Title 4, Chapter 88, is amended to add an  
25 additional subchapter to read as follows:

26 Subchapter 11 – Protection of Minors from Unfiltered Devices Act

27  
28 4-88-1101. Title.

29 This subchapter shall be known and may be cited as the "Protection of  
30 Minors from Unfiltered Devices Act".  
31

32 4-88-1102. Definitions.

33 As used in this subchapter:

34 (1) "Activate" means the process of powering on a device and  
35 associating it with a new user account;

36 (2) "Device" means a tablet or a smartphone;



1                   (A) Manufactured on or after January 1, 2022; and

2                   (B) Sold in Arkansas;

3                   (3) "Filter" means software installed on a device that is  
 4 capable of preventing the device from accessing or displaying material that  
 5 is harmful to minors through the internet or any applications owned and  
 6 controlled by the manufacturer and installed on the device;

7                   (4) "Harmful to minors" means the same as defined in § 5-68-501;

8                   (5) "Internet" means the same as defined in 31 U.S.C. § 5362, as  
 9 it existed on January 1, 2021;

10                   (6)(A) "Manufacturer" means a person that:

11                                 (i) Is engaged in the business of manufacturing a  
 12 device; and

13                                 (ii) Has a commercial registered agent as that term  
 14 is defined in the Model Registered Agents Act, § 4-20-101 et seq.

15                   (B) "Manufacturer" includes a registrant as that term is  
 16 defined in § 4-71-201;

17                   (7) "Minor" means an individual under eighteen (18) years of  
 18 age;

19                   (8) "Smartphone" means a communication device:

20                                 (A) Possessing a unique electronic serial number that is  
 21 programmed into its computer chip by a manufacturer; and

22                                 (B) The operation of which is dependent on the  
 23 transmission of the electronic serial number along with a mobile  
 24 identification number assigned by the carrier in the form of radio signals  
 25 through a cellular network, cellular sites, and mobile switching stations;  
 26 and

27                   (9) "Tablet" means a mobile device that:

28                                 (A) Is equipped with a mobile operating system,  
 29 touchscreen display, and rechargeable battery; and

30                                 (B) Has the ability to support access to a cellular  
 31 network.

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 33                   4-88-1103. Filter required.

34                   Beginning on January 1, 2022, a manufacturer shall manufacture a device  
 35 that, when activated in the state, automatically enables a filter that:

36                                 (1) When enabled, prevents the user from accessing or

1 downloading material that is harmful to minors on:

2 (A) Mobile data networks;

3 (B) Applications owned and controlled by the manufacturer;

4 (C) Wired internet networks; and

5 (D) Wireless internet networks;

6 (2) Notifies the user of the device when the filter blocks the  
 7 device from downloading an application or accessing a website;

8 (3) Gives a user with a passcode the opportunity to unblock a  
 9 filtered application or website; and

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

12  
 13 4-88-1104. Liability.

14 (a) Beginning January 1, 2022, a manufacturer of a device is liable  
 15 for providing an unfiltered device to a minor in this state if:

16 (1) The device is activated in this state;

17 (2) The device does not, upon activation in the state, enable a  
 18 filter that complies with the requirements described in § 4-88-1103; and

19 (3) The minor accesses material that is harmful to minors while  
 20 using the device.

21 (b) This subchapter does not affect any private right of action  
 22 existing under other law, including contract law.

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

28  
 29 4-88-1105. Damages – Class action.

30 (a) If a court finds that a manufacturer is liable under § 4-88-1104,  
 31 the court may award the plaintiff actual damages.

32 (b) A class action may be brought under this subchapter according to  
 33 the Arkansas Rules of Civil Procedure.

34  
 35 4-88-1106. Civil action for enforcement – Penalties.

36 (a)(1) A manufacturer that is found liable under § 4-88-1104 shall be:

1                   (A) Liable for civil penalties not to exceed ten dollars  
2 (\$10.00) per violation, plus filing fees and attorney's fees, in addition to  
3 any other penalty established by law; and

4                   (B) Enjoined from further violations.

5                   (2) A civil penalty may be assessed and recovered in a civil  
6 action brought in any court of competent jurisdiction.

7                   (3) For purposes of assessing a penalty under subdivision  
8 (a)(1)(A) of this section, a manufacturer is considered to have committed a  
9 separate violation for each device manufactured on or after January 1, 2022,  
10 and activated in this state on which:

11                   (A) A filter is not automatically enabled; and

12                   (B) A minor encounters material harmful to minors.

13                   (4) The total civil penalty assessed in a civil action brought  
14 under this section may not exceed five hundred dollars (\$500), regardless of  
15 how many separate violations the plaintiff establishes.

16                   (b)(1) A plaintiff shall prove and a court shall find, by clear and  
17 convincing evidence, that a manufacturer manufactured a device on or after  
18 January 1, 2022, that was activated in this state in violation of § 4-88-  
19 1103.

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

22                   (c) The court shall specify the amount of each of the following for  
23 each violation:

24                   (1) The civil penalty;

25                   (2) Filing fees; and

26                   (3) Attorney's fees.

27                   (d) In assessing the amount of a civil penalty for a violation of this  
28 subchapter, the court shall consider the following:

29                   (1) The nature and extent of the violation;

30                   (2) The number and severity of the violations;

31                   (3) The economic effect of the penalty on the violator;

32                   (4) The good faith measures the violator took to comply with  
33 this subchapter;

34                   (5) The timing of the measures the violator took to comply with  
35 this subchapter;

36                   (6) The knowingness of the violator's misconduct;

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

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

4           (e) Actions under this subchapter may be brought by the Attorney  
5 General in the name of the people of this state or by a private individual  
6 described in subsection (f) of this section.

7           (f) A private individual may bring an action in the public interest to  
8 establish liability under § 4-88-1104 and after satisfying the requirements  
9 of subsections (g)-(i) of this section, if:

10           (1) The individual has served on the alleged violator and the  
11 Attorney General a notice of an alleged violation of § 4-88-1103;

12           (2) The Attorney General has not provided a letter to the  
13 noticing party within forty-five (45) days after the day on which the  
14 Attorney General receives the notice of an alleged violation indicating that:

15           (A) An action is currently being pursued or will be  
16 pursued by the Attorney General regarding the violation; or

17           (B) The Attorney General believes that there is no merit  
18 to the action; and

19           (3) The alleged violator has not responded to the notice of  
20 alleged violation or returned the proof of compliance form provided in  
21 subsection (k) of this section.

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

25           (2) The notice of an alleged violation shall:

26           (A) State that the individual executing the notice  
27 believes that there is a violation; and

28           (B) Provide factual information sufficient to establish  
29 the basis for the alleged violation.

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

32           (2) The Attorney General shall provide, within forty-five (45)  
33 days after the day on which the Attorney General received the notice of an  
34 alleged violation, a letter to the noticing party and the alleged violator  
35 that states whether or not the Attorney General finds merit in the action.

36           (i)(1) An individual who serves a notice of an alleged violation

1 described in subsection (g) of this section shall complete and provide to the  
 2 alleged violator at the time the notice of the alleged violation is served, a  
 3 notice of special compliance procedure and proof of compliance form under  
 4 subsection (k) of this section.

5 (2) The individual may file an action against the alleged  
 6 violator, or recover from the alleged violator, if:

7 (A) The notice of alleged violation alleges that the  
 8 alleged violator failed to manufacture a device that, when activated in this  
 9 state, automatically enabled a filter as required under § 4-88-1103;

10 (B) A minor encountered material harmful to minors on the  
 11 device without the option to enable a filter; and

12 (C) Within sixty (60) days after the day on which the  
 13 alleged violator receives the notice of the alleged violation, the alleged  
 14 violator has not:

15 (i) Corrected the alleged violation and all similar  
 16 violations known to the alleged violator;

17 (ii) Agreed to pay a penalty for the alleged  
 18 violation in the amount of ten dollars (\$10.00) per violation, up to a  
 19 maximum of five hundred dollars (\$500), regardless of the number of separate  
 20 violations alleged in the notice; and

21 (iii) Notified, in writing, the noticing party and  
 22 the Attorney General that the violation has been corrected.

23 (j)(1) The written notice required in subdivision (i)(2)(C)(iii) of  
 24 this section shall be the notice of special compliance procedure and proof of  
 25 compliance form specified in subsection (k) of this section.

26 (2) The alleged violator shall deliver the civil penalty to the  
 27 noticing party within sixty (60) days after the day on which the alleged  
 28 violator received the notice of the alleged violation.

29 (k) The notice required to be provided to an alleged violator under  
 30 subsection (i) of this section shall be presented as follows:

31 "Date:

32 Name of Noticing Party or Attorney for Noticing Party:

33 Address:

34 Phone Number:

35 SPECIAL COMPLIANCE PROCEDURE

36 PROOF OF COMPLIANCE

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You are receiving this form because the Noticing Party listed above has alleged that you are in violation of the Protection of Minors from Unfiltered Devices Act, § 4-88-1101 et seq. The Noticing Party may bring legal proceedings against you for the alleged violation checked below if:

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

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

(3) The Noticing Party does not receive the required penalty payment of ten dollars (\$10.00) for each violation alleged, with a total payment not to exceed five hundred dollars (\$500) regardless of the number of separate violations alleged in the notice, from you at the address shown above postmarked within sixty (60) days of your receiving this notice.

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

This notice of alleged violation is for failure to provide an activated filter to protect minors against exposure to materials considered harmful to minors. [complete description of violation(s), including when and where observed and the serial number(s) of the device(s) involved]

Date:

Name of Noticing Party or Attorney for Noticing Party:

Address:

Phone Number:

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE  
CERTIFICATION OF COMPLIANCE

Accurate completion of this form will demonstrate you are now in compliance with the Protection of Minors from Unfiltered Devices Act, § 4-88-1101 et seq., for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, with a copy to the Arkansas Attorney General’s Office, postmarked within fifty (50) days

1 of you receiving this notice. I hereby agree to pay, within sixty (60) days  
 2 of receipt of this notice, a penalty of ten dollars (\$10.00) for each  
 3 violation alleged to the Noticing Party only and certify that I have complied  
 4 by [check only one (1) of the following]:

5 [ ] Providing the party at the address shown above with information about how  
 6 to enable a filter.

7 [ ] Providing the party at the address shown above with information about how  
 8 to exchange a device that did not have a filter automatically enable upon  
 9 activation for a replacement device of the same model that will automatically  
 10 enable the filter upon activation in the state.

11  
 12 CERTIFICATION

13  
 14 My statements on this form, and on any attachments to it, are true, complete,  
 15 and correct to the best of my knowledge and belief and are made in good  
 16 faith. I have carefully read the instructions to complete this form.

17 Signature of alleged violator or authorized representative:

18 Date:

19 Name and title of signatory:".

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

22 (m) An alleged violator shall satisfy the conditions stated in  
 23 subsection (k) of this section only one (1) time per device.

24 (n)(1) Notwithstanding an alleged violator's compliance with  
 25 subsection (j) of this section, the Attorney General may file an action under  
 26 subsection (e) of this section against the alleged violator.

27 (2) In any action, a court shall reduce the amount of any civil  
 28 penalty for a violation to reflect any payment made by the alleged violator  
 29 for the same alleged violation.

30 (o) Payments shall be made as follows:

31 (1) A civil penalty ordered by the court shall be paid to the  
 32 plaintiff as directed by the court; and

33 (2) A penalty paid according to the special compliance procedure  
 34 in subsection (k) of this section shall be made directly to the noticing  
 35 party.

36 (p)(1) If the penalty is paid to a noticing party according to



1 subsection (k) of this section, the noticing party shall remit the amount  
2 required by this subsection along with a copy of the special compliance  
3 procedure document to the Attorney General.

4 (2) If a civil penalty is ordered by the court, the plaintiff  
5 shall remit the amount required along with a copy of the court order.

6 (q) This section does not apply to a manufacturer who makes a good  
7 faith effort to install and enable upon activation in this state a generally  
8 accepted and commercially reasonable method of filtration according to this  
9 subchapter and industry standards.

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