HB298 INTRODUCED

SHXZ77-1


RFD: Commerce and Small Business

First Read: 12-Apr-23
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
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, sexual excitement, or sadomasochistic abuse when it: a. Taken as a whole, appeals to the prurient interest of minors; b. is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and c. taken as a whole, does not have serious value for minors, which includes only serious literary, artistic, political, or scientific value for minors.

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

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

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

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

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

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

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

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

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

(1) When enabled, prevents the user from accessing
material that is harmful to minors on any of the following:
   b. Internet browsers or search engines.
   c. Wired Internet networks.
   d. Wireless Internet networks.

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

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

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

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

(1) The device is activated in this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Nominal damages.

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

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

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