

HOUSE BILL NO. 408

INTRODUCED BY A. REGIER, M. NOLAND

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS REGARDING MINORS' ACCESS TO OBSCENE CONTENT ON DEVICES VIA THE INTERNET; REQUIRING ALL DEVICES ACTIVATED IN MONTANA ON OR AFTER JANUARY 1, 2026, TO CONTAIN A FILTER TO PREVENT A MINOR'S ACCESS TO OBSCENE CONTENT; ESTABLISHING LIABILITY FOR A DEVICE MANUFACTURER THAT FAILS TO ENABLE DEVICE FILTERS; ESTABLISHING LIABILITY FOR A PERSON WHO REMOVES THE FILTER FROM A MINOR'S DEVICE AND THE MINOR USES THE DEVICE TO ACCESS OBSCENE CONTENT; PROVIDING DEFINITIONS; PROVIDING PENALTIES; PROVIDING EXCEPTIONS; AND PROVIDING A DELAYED EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Definitions. As used in [sections 1 through 6 5], the following definitions apply:

(1) "Activate" means the process of powering on a device and associating it with a user account.

(2) "Device" means a tablet or a smartphone manufactured on or after [the effective date of this act].

(3) "Filter" means generally accepted and commercially reasonable software used on a device that is capable of preventing a device from accessing or displaying obscene content through internet browsers or search engines owned or controlled by the manufacturer in accordance with prevailing industry standards, including blocking known websites linked to obscene content via mobile data networks, wired internet networks, and wireless internet networks.

(4) "Internet" means the global information system that:

(a) is logically linked together by a globally unique address space based on the internet protocol or its subsequent extensions;

(b) is able to support communications using the transmission control protocol or internet protocol

suite, its subsequent extensions, or other internet protocol-compatible protocol; and

(c) provides, uses, or makes publicly or privately accessible high-level services layered on communications and related infrastructure.

(5) "Manufacturer" means a person or company that:

(a) is engaged in the business of manufacturing a device;

(b) (i) holds the patents for the device it manufactures; or

(ii) holds the patents for the operating system on a device; and

(c) has a designated commercial registered agent as required by 35-7-106.

(6) "Minor" means an individual under 18 years of age who is not emancipated, married, or a member of the armed forces of the United States.

(7) "Obscene content" has the same meaning as provided in 45-8-201(2).

(8) "Operating system" means software that manages all of the other application programs on a device.

(9) "Password" means a string of characters or other secure method used to enable, deactivate, modify, or uninstall a filter on a device.

(10) "Retailer" means a person who is not a manufacturer who sells devices directly to consumers. The term includes an employee of a retailer acting in the course and scope of the employee's employment.

(11) "Smartphone" means an electronic device that combines a cell phone with a handheld computer and typically offers internet access through a browser or search engine, data storage, text, and e-mail capabilities.

(12) "Tablet" means a mobile device equipped with a mobile operating system, touchscreen display, rechargeable battery, and the ability to support access to a cellular network.

NEW SECTION. Section 2. Filter required. A device activated in the state must:

(1) contain a filter;

(2) ask the user to provide the user's age during activation and account setup;

(3) automatically enable the filter when the user is a minor based on the age provided by the user as provided in subsection (2);

- 1 (4) allow a password to be established for the filter;
- 2 (5) notify the user when the filter blocks the device from accessing a website; and
- 3 (6) provide the option to deactivate and reactivate the filter for a user who is not a minor and who
- 4 has the filter password.

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6 **NEW SECTION. Section 3. Manufacturer liability.** (1) The manufacturer of a device is subject to

7 civil liability if:

- 8 (a) the device is activated in the state;
- 9 (b) the device does not enable a filter that complies with the requirements provided in [section 2]
- 10 on activation; and
- 11 (c) a minor accesses obscene content on the device.
- 12 (2) Notwithstanding subsection (1), this section does not apply to a manufacturer that makes a
- 13 good faith effort to provide a device that automatically enables a filter as required by [section 2] on activation of
- 14 the device in the state.
- 15 (3) Nothing in [sections 1 through 6 5]:
- 16 (a) applies to a device manufactured before [the effective date of this act]; or
- 17 (b) creates a cause of action against the retailer of a device.

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19 **NEW SECTION. Section 4. Individual liability.** (1) A person WHO IS NOT A MINOR may be liable in a

20 civil and criminal action if the person intentionally enables the password to remove the filter on a device in the

21 possession of a minor and the minor accesses obscene content on the device.

- 22 (2) This section does not apply to the parent or legal guardian of a minor.
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24 **NEW SECTION. Section 5. ~~Proceedings -- action by attorney general.~~** (1) ~~The attorney general~~

25 ~~may bring an action in court against a person for a violation of [sections 1 through 6] to:~~

- 26 ~~(a) enjoin any action that constitutes a violation of [sections 1 through 6] by the issuance of a~~
- 27 ~~temporary restraining order or preliminary or permanent injunction;~~
- 28 ~~(b) recover from a violator a civil penalty not to exceed \$5,000 for each violation and not to exceed~~

\$50,000 in aggregate;

(c) ~~recover from a violator the attorney general's reasonable expenses, investigative costs, and attorney fees; and~~

(d) ~~obtain other appropriate relief.~~

(2) ~~The attorney general may seek revocation of a license or certificate authorizing a manufacturer to engage in business in the state if, after the manufacturer is found to have violated provisions of [sections 1 through 6], the manufacturer demonstrates a repeated pattern of violations of the provisions of [sections 1 through 6].~~

(3) ~~For the purposes of assessing a penalty under this section, a manufacturer is considered to have committed a separate violation for each device manufactured after [the effective date of this act] that violates the provisions of [section 2].~~

NEW SECTION. Section 5. Parent or legal guardian -- civil action. (1) A parent or legal guardian of a minor who accesses obscene content on a device in violation of [section 2] may bring a private cause of action against a manufacturer in a court of competent jurisdiction.

(2) A parent or legal guardian bringing an action under subsection (1) may recover:

(a) (i) actual damages; or

(ii) if actual damages are difficult to ascertain due to the nature of the injury, \$50,000 for each violation;

(b) if a violation is found to be knowing and willful, punitive damages in an amount determined by the court;

(c) nominal damages;

(d) attorney fees; and

(e) any other relief the court considers appropriate, including court costs and expenses.

(3) Nothing in this section precludes bringing a class action suit against a manufacturer if the manufacturer's conduct in violation of [section 2] is knowing and willful.

(4) A parent or legal guardian of a minor may bring an action in a court of competent jurisdiction against a person who:

4 (5) A parent or legal guardian bringing an action under subsection (4) may recover:

5 (a) (i) actual damages; or

6 (ii) if actual damages are difficult to ascertain due to the nature of the injury, \$1,000 for each

7 violation; and

8 (b) any other relief the court considers appropriate.

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