

**Amendment - 1st Reading-white - Requested by: Lola Sheldon-Galloway - (H) Energy,
Technology and Federal Relations**

- 2023

68th Legislature 2023

Drafter: Milly Allen, 406-444-9280

HB0349.001.001

HOUSE BILL NO. 349

INTRODUCED BY L. SHELDON-GALLOWAY, J. SCHILLINGER, B. MITCHELL, T. MOORE, G. KMETZ

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING AN OBSCENITY FILTER BE ENABLED BY
DEFAULT ON ELECTRONIC DEVICES SOLD AND ACTIVATED IN THE STATE; AMENDING SECTION 45-8-
206, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Short title. [Sections 1 through 6] may be cited as the "Children's Default
to Safety Act".

NEW SECTION. Section 2. Definitions. For the purposes of [sections 1 through 6], the following
definitions apply:

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

(2) "Electronic device" means a tablet or a smart phone.

(3) "Internet" has the same meaning as provided in 2-17-551.

(4) "Manufacturer" means a person that is engaged in the business of manufacturing an electronic
device and has a commercial registered agent as defined in 35-7-102 and a patent.

(5) "Obscenity filter" means software installed on an electronic device that is capable of preventing
the electronic device from accessing or displaying obscenity, pursuant to 45-8-201, through the internet or any
applications owned and controlled by the manufacturer and installed on the device.

(6) "Smart phone" means an electronic device that combines a cell phone with a hand-held
computer, typically offering internet access, data storage, text, and e-mail capabilities.

(7) "Tablet" means an electronic device equipped with a mobile operating system, touchscreen
display, and rechargeable battery, typically offering internet access.

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2 **NEW SECTION. Section 3. Obscenity filter required.** A manufacturer shall manufacture an

3 electronic device that, when activated in the state, automatically enables an obscenity filter that:

4 (1) prevents the user from accessing or downloading material that is obscene to minors on mobile
5 data networks, applications owned and controlled by the manufacturer, and wired or wireless internet networks;

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

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

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

11

12 **NEW SECTION. Section 4. Liability -- limitations.** (1) A manufacturer of an electronic device is

13 liable if on activation of an electronic device sold and activated in the state:

14 (a) (i) the electronic device does not enable an obscenity filter that prevents the display of obscene
15 material to minors in such a way that minors will be able to view the material; or

16 (ii) the manufacturer knowingly or in reckless disregard provides the passcode to a minor to
17 unblock the obscenity filter; and

18 (b) the electronic device displays or disseminates obscene material to a minor, including any
19 performance that is obscene to minors.

20 (2) Nothing in [sections 1 through 6] affects any private right of action existing under other law,
21 including contract.

22 (3) This section does not apply to a manufacturer that makes a good faith effort to provide a device
23 that, on activation of the device in the state, automatically enables a generally accepted and commercially
24 reasonable method of filtration in accordance with [sections 1 through 6] and industry standards.

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26 **NEW SECTION. Section 5. Damages.** (1) If a court finds that a manufacturer is liable pursuant to

27 [section 4], the court may award the plaintiff actual damages.

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(2) When the amount of actual damages is difficult to ascertain due to the nature of the injury, the court, in its discretion, may award liquidated damages in the amount of \$10,000 to the injured party.

(3) A class action may be brought under [sections 1 through 6] in accordance with state law.

NEW SECTION. Section 6. Civil action for enforcement -- damages. (1) (a) Except as provided in subsection (8), a manufacturer that is found liable under [section 4] is liable for civil penalties not to exceed \$10,000 per violation, plus filing fees and attorney fees, in addition to any other penalty established by law.

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

(c) For purposes of assessing a penalty under this subsection (1), a manufacturer is considered to have committed a separate violation for each electronic device sold and activated in the state.

(d) The total civil penalty assessed in a civil action brought under this section may not exceed \$50,000 regardless of how many separate violations the plaintiff establishes.

(2) (a) A plaintiff shall prove and a court shall find, by clear and convincing evidence, that a manufacturer manufactured a device on or after July 1, 2023, and that it was activated in violation of [section 4].

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

(3) For each violation, the court shall specify the amount of the:

(a) civil penalty;

(b) filing fees; and

(c) attorney fees.

(4) In assessing the amount of a civil penalty for a violation of [sections 1 through 6], the court shall consider the:

(a) nature and extent of the violation;

(b) number and severity of the violations;

(c) economic effect of the penalty on the violator;

(d) good faith measures the violator took to comply with [sections 1 through 6];

(e) timing of the measures the violator took to comply with [sections 1 through 6];

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- 1 (f) willfulness of the violator's misconduct;
- 2 (g) deterrent effect that the imposition of the penalty would have on both the violator and the
- 3 regulated community as a whole; and
- 4 (h) other factors determined by the court to be pertinent.
- 5 (5) Actions pursuant to this section may be brought by the attorney general in the name of the
- 6 people of the state or by a private individual in accordance with subsection (6).
- 7 (6) A private individual may bring an action in the public interest to establish liability under [section
- 8 4] if:
- 9 (a) the individual has served the alleged violator and the attorney general a notice of an alleged
- 10 violation of subsection (1); and
- 11 (b) the attorney general has not provided a letter to the noticing party within 45 days after the day
- 12 on which the attorney general receives the notice of an alleged violation indicating that:
- 13 (i) an action is currently being pursued or will be pursued by the attorney general regarding the
- 14 violation; or
- 15 (ii) the attorney general believes that there is no merit to the action.
- 16 (7) If a lawsuit is commenced, the plaintiff may include additional violations in the claim that are
- 17 discovered through the discovery process.
- 18 (8) A manufacturer who makes a good faith effort to install and enable on activation in the state a
- 19 generally accepted and commercially reasonable method of filtration in accordance with [sections 1 through 6]
- 20 and industry standards is not liable under [section 4].

21

22 **Section 7.** Section 45-8-206, MCA, is amended to read:

23 **"45-8-206. Public display or dissemination of obscene material to minors.** (1) A person having

24 custody, control, or supervision of any commercial establishment or newsstand may not knowingly or

25 purposely:

- 26 (a) display obscene material to minors in such a way that minors, as a part of the invited public, will
- 27 be able to view the material. However, a person is considered not to have displayed obscene material to minors

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1 if the material is kept behind devices commonly known as blinder racks so that the lower two-thirds of the
2 material is not exposed to view or other reasonable efforts were made to prevent view of the material by a
3 minor.

4 (b) sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view,
5 with or without consideration, any obscene material; or

6 (c) present to a minor or participate in presenting to a minor, with or without consideration, any
7 performance that is obscene to minors.

8 (2) A person who is not a minor's parent or legal guardian may not provide a minor with the
9 passcode to remove the obscenity filter on an electronic device, as those terms are defined in [section 1].

10 (2)(3) A person does not violate this section if:

11 (a) the person had reasonable cause to believe the minor was 18 years of age. "Reasonable
12 cause" includes but is not limited to being shown a draft card, driver's license, marriage license, birth certificate,
13 educational identification card, governmental identification card, tribal identification card, or other official or
14 apparently official card or document purporting to establish that the person is 18 years of age;

15 (b) the person is, or is acting as, an employee of a bona fide public school, college, or university or
16 a retail outlet affiliated with and serving the educational purposes of a school, college, or university and the
17 material or performance was disseminated in accordance with policies approved by the governing body of the
18 institution;

19 (c) the person is an officer, director, trustee, or employee of a public library or museum and the
20 material or performance was acquired by the library or museum and disseminated in accordance with policies
21 approved by the governing body of the library or museum;

22 (d) an exhibition in a state of nudity is for a bona fide scientific or medical purpose for a bona fide
23 school, library, or museum; or

24 (e) the person is a retail sales clerk with no financial interest in the material or performance or in
25 the establishment displaying or selling the material or performance."

26
27 NEW SECTION. Section 8. Effective date. [This act] is effective January 1, 2024.

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