

**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

HB0349.001.003

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) 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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(f) willfulness of the violator's misconduct;

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

(h) other factors determined by the court to be pertinent.

(5) Actions pursuant to this section may be brought by the attorney general in the name of the people of the state or by a private individual in accordance with subsection (6).

(6) A private individual may bring an action in the public interest to establish liability under [section 4] if:

(a) the individual has served the alleged violator and the attorney general a notice of an alleged violation of subsection (1); and

(b) the attorney general has not provided a letter to the noticing party within 45 days after the day on which the attorney general receives the notice of an alleged violation indicating that:

(i) an action is currently being pursued or will be pursued by the attorney general regarding the violation; or

(ii) the attorney general believes that there is no merit to the action.

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

(8) A manufacturer who makes a good faith effort to install and enable on activation in the state a generally accepted and commercially reasonable method of filtration in accordance with [sections 1 through 6] and industry standards is not liable under [section 4].

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

"45-8-206. Public display or dissemination of obscene material to minors. (1) A person having custody, control, or supervision of any commercial establishment or newsstand may not knowingly or purposely:

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

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2 NEW SECTION. Section 9. Codification instruction. [Sections 1 through 6] are intended to be
3 codified as an integral part of Title 27, chapter 1 and the provisions of Title 27, chapter 1 apply to [sections 1
4 through 6].

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6 NEW SECTION. Section 10. Applicability. [This act] applies to electronic devices manufactured in
7 or outside the state ~~on or after July 1, 2023,~~ and sold and activated in the state on or after January 1, 2024.

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- END -