HB428

183289-1

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RFD: Commerce and Small Business

First Read: 16-MAR-17
SYNOPSIS: This bill would prohibit the sale of a device that provides Internet access unless the device contains an active filter that blocks access to specified types of obscene material.

This bill would establish a procedure for a consumer to have a filter deactivated, impose a filter deactivation fee, and provide for the collection and distribution of the fee.

This bill would require a person selling a device that provides Internet access to respond to reports of obscene material that has breached the filter.

This bill would provide for injunctive relief and civil and criminal penalties.

Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from
becoming effective with regard to a local
governmental entity without enactment by a 2/3 vote
unless: it comes within one of a number of
specified exceptions; it is approved by the
affected entity; or the Legislature appropriates
funds, or provides a local source of revenue, to
the entity for the purpose.

The purpose or effect of this bill would be
to require a new or increased expenditure of local
funds within the meaning of the amendment. However,
the bill does not require approval of a local
governmental entity or enactment by a 2/3 vote to
become effective because it comes within one of the
specified exceptions contained in the amendment.

A BILL
TO BE ENTITLED
AN ACT

Relating to Internet access; to prohibit the sale of
a device providing Internet access unless the device contains
an active filter that blocks Internet access to obscene
material; to provide requirements for a consumer to have such
filter deactivated; to provide for a filter deactivation fee
and to provide for the collection and distribution thereof; to
provide for injunctive relief, civil and criminal penalties,
and attorney fees and costs; and in connection therewith would
have as its purpose or effect the requirement of a new or
increased expenditure of local funds within the meaning of
Amendment 621 of the Constitution of Alabama of 1901, now
appearing as Section 111.05 of the Official Recompilation of
the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. As used in this act, the following terms
have the following meanings:

(1) ASSIGNATION. The making of an appointment or
engagement for prostitution, or any act in furtherance of such
appointment or engagement.

(2) CELLULAR TELEPHONE. A communication device
containing a unique electronic serial number that is
programmed into its computer chip by its manufacturer and
whose operation is dependent on the transmission of that
electronic serial number along with a mobile identification
number, which is assigned by the cellular telephone carrier,
in the form of radio signals through cell sites and mobile
switching stations.

(3) CHILD PORNOGRAPHY. An image depicting a minor
engaged in sexual conduct.

(4) COMPUTER. An electronic, magnetic, optical,
electrochemical, or other high speed data processing device
performing logical, arithmetic, or storage functions and
includes any data storage facility or communications facility
directly related to or operating in conjunction with such
device. The term includes: Any online service, Internet
service, or local bulletin board; any electronic storage
device, including a floppy disk or other magnetic storage
device; or any compact disc that has read-only memory and the
capacity to store audio, video, or written materials.

(5) DATA COMMUNICATIONS DEVICE. An electronic device
that receives electronic information from one source and
transmits or routes it to another, including, but not limited
to, any such bridge, router, switch, or gateway.

(6) DEVICE. A cellular telephone, computer, data
communications device, or other product manufactured,
distributed, or sold in this state that provides Internet
access.

(7) FILTER. Hardware or software that restricts or
blocks Internet access to websites, electronic mail, chat, or
other Internet-based communications based on category, site,
or content.

(8) HUMAN TRAFFICKING. Has the same meaning as in
Article 8, Chapter 6, of Title 13A, Code of Alabama 1975.

(9) OBSCENE MATERIAL. a. The term includes material
to which all of the following apply:

1. The average person, applying contemporary
community standards, would find, taken as a whole, appeals to
the prurient interest.

2. Depicts or describes, in a patently offensive
way, sexual conduct or excretory functions.

3. Taken as a whole, lacks serious literary,
artistic, political, or scientific value.
4. Facilitates or promotes prostitution, assignation, human trafficking, or sexual cyberharassment.

b. The term does not include material that depicts a mother who is breastfeeding her baby.

(10) PROSTITUTION. The giving or receiving of the body for sexual activity for hire.

(11) SEXUAL CYBERHARASSMENT. To publish a sexually explicit image of a person that contains or conveys the personal identification information of the depicted person to an Internet website without the depicted person's consent, for no legitimate purpose, with the intent of causing emotional distress to the depicted person.

Section 2. (a) On and after January 1, 2018, a person may not sell a device unless it contains an active filter that blocks or restricts Internet access to sites containing any of the following:

(1) Obscene material.

(2) Child pornography.

(3) Images used for sexual cyberharassment.

(4) Solicitation or offers for prostitution, assignation, or human trafficking.

(b) The Attorney General may seek injunctive relief against a person that violates this section.

Section 3. (a) The seller shall provide for the deactivation of a filter if the owner of the device does all of the following:
(1) Requests in writing that the filter be deactivated.

(2) Verifies that the owner is 18 years of age or older.

(3) Acknowledges receiving a written warning regarding the potential danger of deactivating the filter.

(4) Remits a twenty dollar ($20) one-time filter deactivation fee to the seller, which the seller shall collect on behalf of the state.

(b) A seller may charge its own reasonable filter deactivation fee in addition to the fee charged in subsection (a).

(c) A person selling a device may not share the methods, source code, or other operating instructions of the filter unless the conditions in this section are met.

Section 4. (a) A person that sells a device without a filter to a minor commits a Class C felony.

(b) A person that sells a device without a filter to an adult commits a Class A misdemeanor.

Section 5. (a) Each quarter, a person that receives a filter deactivation fee under Section 3 shall do both of the following:

(1) Remit all fee proceeds to the Department of Revenue in the manner prescribed by the Department of Revenue.

(2) File a report with the Department of Revenue containing the information prescribed by the Department of Revenue.
(b) The Department of Revenue shall deposit the funds remitted under this section as follows:

(1) Sixty percent shall be deposited into the Alabama Crime Victims Compensation Fund.

(2) Twenty percent shall be deposited into an account to be used by the Secretary of the Alabama State Law Enforcement Agency to provide grants to state agencies, units of local government, and nongovernmental organizations to:
   a. Develop, expand, or strengthen programs for victims of human trafficking and child exploitation. The programs may include any of the following:
      1. Health and mental health services.
      2. Temporary and permanent housing placement.
      3. Legal and immigration services.
      4. Employment placement, education, and training.
   b. Ensure prevention of human trafficking, including increasing public awareness.
   c. Ensure protection of victims of human trafficking, including training of first responders.

(3) The remaining funds shall be deposited in the state General Fund.

Section 6. (a) A manufacturer of a device that provides internet access shall:

(1) Send filter updates to owners of the device regularly to ensure the quality and performance of the filter in restricting or blocking obscene material.
(2) Establish reporting websites or call centers where an owner of a device made by the manufacturer may report obscene material that has breached the filter.

(b)(1) A manufacturer of a device shall determine within a reasonable time if material under subsection (a)(2) is obscene. If the manufacturer determines that the material is obscene it, within a reasonable time, shall install a filter update that incorporates the obscene material and restricts or blocks Internet access to such material.

(2) If the manufacturer does not respond to a report under subsection (a)(2), the owner of the device or the Attorney General may bring a civil action against the manufacturer.

(3) In an action under subdivision (2), the court may impose a five hundred dollar ($500) civil penalty for each item of obscene material that was reported but not subsequently filtered by the manufacturer, require the manufacturer to reimburse the owner the purchase price of the device, and award reasonable attorney fees and costs.

Section 7. (a) If the filter blocks material that is not obscene and the blockage is reported to the manufacturer's call center or reporting website, the manufacturer shall unblock the material within a reasonable time after receiving the report.

(b) Declaratory relief may be sought to unblock material that is not obscene.
(c) In an action under subsection (b), the court may be awarded reasonable attorney fees and costs.

Section 8. A manufacturer shall not filter a commercial social networking website that has its own call center or reporting website and is proactive in removing obscene material once reported.

Section 9. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Amendment 621, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, because the bill defines a new crime or amends the definition of an existing crime.

Section 10. This act shall become effective on January 1, 2018, following its passage and approval by the Governor, or its otherwise becoming law.