

HB344
By Representative Sells
RFD Judiciary
Rd 1 27-FEB-20

SYNOPSIS: This bill would require wireless telecommunications providers to install and activate filters on wireless telecommunications devices that block Internet access to material that is harmful to minors.

This bill would authorize the deactivation of a filter under certain conditions.

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 Recompile 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 require wireless telecommunications service providers to offer filters that block Internet access to certain material that is harmful to minors; to authorize the deactivation of a filter under certain conditions; to provide for injunctive relief and criminal penalties; 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 Recompile of the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

- (1) **FILTER.** Hardware, software, or an application that restricts or blocks Internet access to websites, electronic mail, chat, or other Internet-based communications based on category, site, or content.
- (2) **MATERIAL THAT IS HARMFUL TO MINORS.** Any sexually explicit picture, video, image, graphic image file, visual representation, or other sexually explicit material that can be viewed to which all of the following apply:
 - a. The average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors, is designed to appeal to, or is designed to pander to, the prurient interest of minors.

b. Depicts, describes, or represents, in a manner patently offensive with respect to minors, an actual or simulated sexual act, sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals or post-pubescent female breast.

c. Taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

(3) WIRELESS TELECOMMUNICATIONS DEVICE. A handheld cellular telephone, text-messaging device, personal digital assistant, standalone computer, or other similar devices that may be readily used to initiate or receive communication, information, or data.

(b) Beginning January 1, 2021, wireless telecommunications service providers shall install and activate a filter that is capable of effectively filtering material that is harmful to minors on each wireless telecommunications device that has access to the Internet.

(c) A person regularly engaged in the business of selling or leasing wireless telecommunications devices may not sell or lease a wireless telecommunications device unless the device contains pre-installed and active filter that blocks or restricts Internet access to websites that contain material that is harmful to minors.

(d) The filter shall do all of the following:

(1) Be capable of filtering material that is harmful to minors on the Internet, mobile data networks, applications, home wireless networks, and public wireless networks.

(2) Provide adults, parents, and legal guardians the opportunity to deactivate or customize the filter settings for themselves or their children.

(3) To the extent possible, be incapable of being deactivated or uninstalled by a minor.

(e) Each filter shall be given a unique passcode from the wireless telecommunications service provider that can be used to deactivate the filter, customize content to be filtered, and allow access to individual blocked websites.

(f) At the time of purchase of a wireless telecommunications device:

(1) If the purchaser is an adult, the unique passcode shall be given to the adult purchaser at the time of purchase.

(2) If the purchaser is a minor, a minor's unique passcode shall be given to the minor's parent or legal guardian.

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

(h)(1) If a filter blocks material that is not harmful to minors and the blockage is reported to the wireless telecommunications service provider's call center or reporting website, the wireless telecommunications service provider shall unblock the material within a reasonable time after receiving the report.

(2) Declaratory relief may be sought to unblock material that is not harmful to minors.

(i) A wireless telecommunications service provider shall do both of the following:

(1) Send filter updates to owners of wireless telecommunications devices to which the service provider provides service 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 may report obscene material that has breached the filter.

(j)(1) A wireless telecommunications service provider of a wireless telecommunications device shall determine within a reasonable time if material under subdivision (i) (2) is material that is harmful to minors. If the wireless telecommunications service provider determines that the material is harmful to minors, then within a reasonable

time period the service provider shall install a filter update that incorporates the material and restricts or blocks Internet access to the material.

(2) If the wireless telecommunications service provider does not respond to a report under subdivision (a) (2), the owner of the device or the Attorney General may bring a civil action against the wireless telecommunications service provider.

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

(k) A wireless telecommunications service provider is not liable for a violation of this act if it makes a good faith effort to apply a generally accepted and commercially reasonable method of compliance in accordance with this act and that the technology it employs is consistent with industry standards and has the ability to discover and block new websites and material that is harmful to minors in order to fulfill the requirements of this act.

(l) A person who is not a parent or legal guardian of a minor who shares a unique passcode with that minor which results in the minor being exposed to material that is harmful to minors shall be guilty of a Class A misdemeanor.

Section 2. 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 3. This act shall become effective on January 1, 2021, following its passage and approval by the Governor, or its otherwise becoming law.

Internet

Telecommunications

Crimes and Offenses

Criminal Law and Procedure

Attorney General