

1 HB428
2 183289-1
3 By Representatives Williams (JD), Wingo, Brown, Sells,
4 Beckman, Ingram, Crawford, Fridy, Nordgren, Williams (JW),
5 Farley, Sanderford, Pettus, Ledbetter, Treadaway, Faulkner,
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7 and Hill
8 RFD: Commerce and Small Business
9 First Read: 16-MAR-17

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8 SYNOPSIS: This bill would prohibit the sale of a
9 device that provides Internet access unless the
10 device contains an active filter that blocks access
11 to specified types of obscene material.

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

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

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

22 Amendment 621 of the Constitution of Alabama
23 of 1901, now appearing as Section 111.05 of the
24 Official Recompilation of the Constitution of
25 Alabama of 1901, as amended, prohibits a general
26 law whose purpose or effect would be to require a
27 new or increased expenditure of local funds from

1 becoming effective with regard to a local
2 governmental entity without enactment by a 2/3 vote
3 unless: it comes within one of a number of
4 specified exceptions; it is approved by the
5 affected entity; or the Legislature appropriates
6 funds, or provides a local source of revenue, to
7 the entity for the purpose.

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

15
16 A BILL
17 TO BE ENTITLED
18 AN ACT
19

20 Relating to Internet access; to prohibit the sale of
21 a device providing Internet access unless the device contains
22 an active filter that blocks Internet access to obscene
23 material; to provide requirements for a consumer to have such
24 filter deactivated; to provide for a filter deactivation fee
25 and to provide for the collection and distribution thereof; to
26 provide for injunctive relief, civil and criminal penalties,
27 and attorney fees and costs; and in connection therewith would

1 have as its purpose or effect the requirement of a new or
2 increased expenditure of local funds within the meaning of
3 Amendment 621 of the Constitution of Alabama of 1901, now
4 appearing as Section 111.05 of the Official Recompilation of
5 the Constitution of Alabama of 1901, as amended.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

22 (4) COMPUTER. An electronic, magnetic, optical,
23 electrochemical, or other high speed data processing device
24 performing logical, arithmetic, or storage functions and
25 includes any data storage facility or communications facility
26 directly related to or operating in conjunction with such
27 device. The term includes: Any online service, Internet

1 service, or local bulletin board; any electronic storage
2 device, including a floppy disk or other magnetic storage
3 device; or any compact disc that has read-only memory and the
4 capacity to store audio, video, or written materials.

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

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

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

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

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

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

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

26 3. Taken as a whole, lacks serious literary,
27 artistic, political, or scientific value.

1 4. Facilitates or promotes prostitution,
2 assignment, human trafficking, or sexual cyberharassment.

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

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

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

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

17 (1) Obscene material.

18 (2) Child pornography.

19 (3) Images used for sexual cyberharassment.

20 (4) Solicitation or offers for prostitution,
21 assignment, or human trafficking.

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

24 Section 3. (a) The seller shall provide for the
25 deactivation of a filter if the owner of the device does all
26 of the following:

1 (1) Requests in writing that the filter be
2 deactivated.

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

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

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

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

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

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

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

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

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

25 (2) File a report with the Department of Revenue
26 containing the information prescribed by the Department of
27 Revenue.

1 (b) The Department of Revenue shall deposit the
2 funds remitted under this section as follows:

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

5 (2) Twenty percent shall be deposited into an
6 account to be used by the Secretary of the Alabama State Law
7 Enforcement Agency to provide grants to state agencies, units
8 of local government, and nongovernmental organizations to:

9 a. Develop, expand, or strengthen programs for
10 victims of human trafficking and child exploitation. The
11 programs may include any of the following:

- 12 1. Health and mental health services.
- 13 2. Temporary and permanent housing placement.
- 14 3. Legal and immigration services.
- 15 4. Employment placement, education, and training.

16 b. Ensure prevention of human trafficking, including
17 increasing public awareness.

18 c. Ensure protection of victims of human
19 trafficking, including training of first responders.

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

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

24 (1) Send filter updates to owners of the device
25 regularly to ensure the quality and performance of the filter
26 in restricting or blocking obscene material.

1 (2) Establish reporting websites or call centers
2 where an owner of a device made by the manufacturer may report
3 obscene material that has breached the filter.

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

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

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

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

25 (b) Declaratory relief may be sought to unblock
26 material that is not obscene.

1 (c) In an action under subsection (b), the court may
2 be awarded reasonable attorney fees and costs.

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

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

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