HB428

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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
devolution fee to the seller, which the seller shall collect
on behalf of the state.

(b) A seller may charge its own reasonable filter
devolution 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 devolution 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.