

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
93rd General Assembly  
Regular Session, 2021

# A Bill

HOUSE BILL 1933

By: Representative Cloud

## For An Act To Be Entitled

AN ACT TO ESTABLISH THE PROTECTION OF MINORS FROM UNFILTERED DEVICES ACT; TO CREATE A CAUSE OF ACTION FOR FAILURE TO INSTALL A FILTER ON A DEVICE IN CERTAIN CIRCUMSTANCES; AND FOR OTHER PURPOSES.

## Subtitle

TO ESTABLISH THE PROTECTION OF MINORS FROM UNFILTERED DEVICES ACT; AND TO CREATE A CAUSE OF ACTION FOR FAILURE TO INSTALL A FILTER ON A DEVICE IN CERTAIN CIRCUMSTANCES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 4, Chapter 88, is amended to add an additional subchapter to read as follows:

Subchapter 11 – Protection of Minors from Unfiltered Devices Act

4-88-1101. Title.

This subchapter shall be known and may be cited as the "Protection of Minors from Unfiltered Devices Act".

4-88-1102. Definitions.

As used in this subchapter:

(1) "Activate" means the process of powering on a device and associating it with a new user account;

(2) "Device" means a tablet or a smartphone;



(A) Manufactured on or after January 1, 2022; and

(B) Sold in Arkansas;

(3) "Filter" means software installed on a device that is capable of preventing the device from accessing or displaying material that is harmful to minors through the internet or any applications owned and controlled by the manufacturer and installed on the device;

(4) "Harmful to minors" means the same as defined in § 5-68-501;

(5) "Internet" means the same as defined in 31 U.S.C. § 5362, as it existed on January 1, 2021;

(6)(A) "Manufacturer" means a person that:

(i) Is engaged in the business of manufacturing a device; and

(ii) Has a commercial registered agent as that term is defined in the Model Registered Agents Act, § 4-20-101 et seq.

(B) "Manufacturer" includes a registrant as that term is defined in § 4-71-201;

(7) "Minor" means an individual under eighteen (18) years of age;

(8) "Smartphone" means a communication device:

(A) Possessing a unique electronic serial number that is programmed into its computer chip by a manufacturer; and

(B) The operation of which is dependent on the transmission of the electronic serial number along with a mobile identification number assigned by the carrier in the form of radio signals through a cellular network, cellular sites, and mobile switching stations; and

(9) "Tablet" means a mobile device that:

(A) Is equipped with a mobile operating system, touchscreen display, and rechargeable battery; and

(B) Has the ability to support access to a cellular network.

4-88-1103. Filter required.

Beginning on January 1, 2022, a manufacturer shall manufacture a device that, when activated in the state, automatically enables a filter that:

(1) When enabled, prevents the user from accessing or

downloading material that is harmful to minors on:

- (A) Mobile data networks;
- (B) Applications owned and controlled by the manufacturer;
- (C) Wired internet networks; and
- (D) Wireless internet networks;

(2) Notifies the user of the device when the filter blocks the device from downloading an application or accessing a website;

(3) Gives a user with a passcode the opportunity to unblock a filtered application or website; and

(4) Reasonably precludes a user other than a user with a passcode the opportunity to deactivate, modify, or uninstall the filter.

#### 4-88-1104. Liability.

(a) Beginning January 1, 2022, a manufacturer of a device is liable for providing an unfiltered device to a minor in this state if:

(1) The device is activated in this state;

(2) The device does not, upon activation in the state, enable a filter that complies with the requirements described in § 4-88-1103; and

(3) The minor accesses material that is harmful to minors while using the device.

(b) This subchapter does not affect any private right of action existing under other law, including contract law.

(c) Notwithstanding subsection (a) of this section, this section does not apply to a manufacturer that makes a good faith effort to provide a device that, upon activation of the device in this state, automatically enables a generally accepted and commercially reasonable method of filtration according to this subchapter and industry standards.

#### 4-88-1105. Damages – Class action.

(a) If a court finds that a manufacturer is liable under § 4-88-1104, the court may award the plaintiff actual damages.

(b) A class action may be brought under this subchapter according to the Arkansas Rules of Civil Procedure.

#### 4-88-1106. Civil action for enforcement – Penalties.

(a)(1) A manufacturer that is found liable under § 4-88-1104 shall be:

(A) Liable for civil penalties not to exceed ten dollars (\$10.00) per violation, plus filing fees and attorney's fees, in addition to any other penalty established by law; and

(B) Enjoined from further violations.

(2) A civil penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction.

(3) For purposes of assessing a penalty under subdivision (a)(1)(A) of this section, a manufacturer is considered to have committed a separate violation for each device manufactured on or after January 1, 2022, and activated in this state on which:

(A) A filter is not automatically enabled; and

(B) A minor encounters material harmful to minors.

(4) The total civil penalty assessed in a civil action brought under this section may not exceed five hundred dollars (\$500), regardless of how many separate violations the plaintiff establishes.

(b)(1) A plaintiff shall prove and a court shall find, by clear and convincing evidence, that a manufacturer manufactured a device on or after January 1, 2022, that was activated in this state in violation of § 4-88-1103.

(2) The plaintiff shall prove all other elements by a preponderance of the evidence.

(c) The court shall specify the amount of each of the following for each violation:

(1) The civil penalty;

(2) Filing fees; and

(3) Attorney's fees.

(d) In assessing the amount of a civil penalty for a violation of this subchapter, the court shall consider the following:

(1) The nature and extent of the violation;

(2) The number and severity of the violations;

(3) The economic effect of the penalty on the violator;

(4) The good faith measures the violator took to comply with this subchapter;

(5) The timing of the measures the violator took to comply with this subchapter;

(6) The knowingness of the violator's misconduct;

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

(8) Any other factor that the court determines justice requires.

(e) Actions under this subchapter may be brought by the Attorney General in the name of the people of this state or by a private individual described in subsection (f) of this section.

(f) A private individual may bring an action in the public interest to establish liability under § 4-88-1104 and after satisfying the requirements of subsections (g)-(i) of this section, if:

(1) The individual has served on the alleged violator and the Attorney General a notice of an alleged violation of § 4-88-1103;

(2) The Attorney General has not provided a letter to the noticing party within forty-five (45) days after the day on which the Attorney General receives the notice of an alleged violation indicating that:

(A) An action is currently being pursued or will be pursued by the Attorney General regarding the violation; or

(B) The Attorney General believes that there is no merit to the action; and

(3) The alleged violator has not responded to the notice of alleged violation or returned the proof of compliance form provided in subsection (k) of this section.

(g)(1) The attorney for the noticing party, or the noticing party if the noticing party is not represented by an attorney, shall execute the notice of an alleged violation.

(2) The notice of an alleged violation shall:

(A) State that the individual executing the notice believes that there is a violation; and

(B) Provide factual information sufficient to establish the basis for the alleged violation.

(h)(1) The Attorney General shall review the notice of an alleged violation and may confer with the noticing party.

(2) The Attorney General shall provide, within forty-five (45) days after the day on which the Attorney General received the notice of an alleged violation, a letter to the noticing party and the alleged violator that states whether or not the Attorney General finds merit in the action.

(i)(1) An individual who serves a notice of an alleged violation

described in subsection (g) of this section shall complete and provide to the alleged violator at the time the notice of the alleged violation is served, a notice of special compliance procedure and proof of compliance form under subsection (k) of this section.

(2) The individual may file an action against the alleged violator, or recover from the alleged violator, if:

(A) The notice of alleged violation alleges that the alleged violator failed to manufacture a device that, when activated in this state, automatically enabled a filter as required under § 4-88-1103;

(B) A minor encountered material harmful to minors on the device without the option to enable a filter; and

(C) Within sixty (60) days after the day on which the alleged violator receives the notice of the alleged violation, the alleged violator has not:

(i) Corrected the alleged violation and all similar violations known to the alleged violator;

(ii) Agreed to pay a penalty for the alleged violation in the amount of ten dollars (\$10.00) per violation, up to a maximum of five hundred dollars (\$500), regardless of the number of separate violations alleged in the notice; and

(iii) Notified, in writing, the noticing party and the Attorney General that the violation has been corrected.

(j)(1) The written notice required in subdivision (i)(2)(C)(iii) of this section shall be the notice of special compliance procedure and proof of compliance form specified in subsection (k) of this section.

(2) The alleged violator shall deliver the civil penalty to the noticing party within sixty (60) days after the day on which the alleged violator received the notice of the alleged violation.

(k) The notice required to be provided to an alleged violator under subsection (i) of this section shall be presented as follows:

"Date:

Name of Noticing Party or Attorney for Noticing Party:

Address:

Phone Number:

SPECIAL COMPLIANCE PROCEDURE

PROOF OF COMPLIANCE

You are receiving this form because the Noticing Party listed above has alleged that you are in violation of the Protection of Minors from Unfiltered Devices Act, § 4-88-1101 et seq. The Noticing Party may bring legal proceedings against you for the alleged violation checked below if:

(1) You have not actually taken the corrective steps that you have certified in this form;

(2) The Noticing Party has not received this form at the address shown above, accurately completed by you, postmarked within fifty (50) days after you receive this notice; and

(3) The Noticing Party does not receive the required penalty payment of ten dollars (\$10.00) for each violation alleged, with a total payment not to exceed five hundred dollars (\$500) regardless of the number of separate violations alleged in the notice, from you at the address shown above postmarked within sixty (60) days of your receiving this notice.

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

This notice of alleged violation is for failure to provide an activated filter to protect minors against exposure to materials considered harmful to minors. [complete description of violation(s), including when and where observed and the serial number(s) of the device(s) involved]

Date:

Name of Noticing Party or Attorney for Noticing Party:

Address:

Phone Number:

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE  
CERTIFICATION OF COMPLIANCE

Accurate completion of this form will demonstrate you are now in compliance with the Protection of Minors from Unfiltered Devices Act, § 4-88-1101 et seq., for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, with a copy to the Arkansas Attorney General's Office, postmarked within fifty (50) days

of you receiving this notice. I hereby agree to pay, within sixty (60) days of receipt of this notice, a penalty of ten dollars (\$10.00) for each violation alleged to the Noticing Party only and certify that I have complied by [check only one (1) of the following]:

[ ] Providing the party at the address shown above with information about how to enable a filter.

[ ] Providing the party at the address shown above with information about how to exchange a device that did not have a filter automatically enable upon activation for a replacement device of the same model that will automatically enable the filter upon activation in the state.

#### CERTIFICATION

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form.

Signature of alleged violator or authorized representative:

Date:

Name and title of signatory:".

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

(m) An alleged violator shall satisfy the conditions stated in subsection (k) of this section only one (1) time per device.

(n)(1) Notwithstanding an alleged violator's compliance with subsection (j) of this section, the Attorney General may file an action under subsection (e) of this section against the alleged violator.

(2) In any action, a court shall reduce the amount of any civil penalty for a violation to reflect any payment made by the alleged violator for the same alleged violation.

(o) Payments shall be made as follows:

(1) A civil penalty ordered by the court shall be paid to the plaintiff as directed by the court; and

(2) A penalty paid according to the special compliance procedure in subsection (k) of this section shall be made directly to the noticing party.

(p)(1) If the penalty is paid to a noticing party according to

subsection (k) of this section, the noticing party shall remit the amount required by this subsection along with a copy of the special compliance procedure document to the Attorney General.

(2) If a civil penalty is ordered by the court, the plaintiff shall remit the amount required along with a copy of the court order.

(q) This section does not apply to a manufacturer who makes a good faith effort to install and enable upon activation in this state a generally accepted and commercially reasonable method of filtration according to this subchapter and industry standards.