

1 HB344
2 203544-2
3 By Representative Sells
4 RFD: Judiciary
5 First Read: 27-FEB-20

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

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

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

17 Amendment 621 of the Constitution of Alabama
18 of 1901, now appearing as Section 111.05 of the
19 Official Recompilation of the Constitution of
20 Alabama of 1901, as amended, prohibits a general
21 law whose purpose or effect would be to require a
22 new or increased expenditure of local funds from
23 becoming effective with regard to a local
24 governmental entity without enactment by a 2/3 vote
25 unless: it comes within one of a number of
26 specified exceptions; it is approved by the
27 affected entity; or the Legislature appropriates

1 funds, or provides a local source of revenue, to
2 the entity for the purpose.

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

10
11 A BILL
12 TO BE ENTITLED
13 AN ACT

14
15 Relating to Internet access; to require wireless
16 telecommunications service providers to offer filters that
17 block Internet access to certain material that is harmful to
18 minors; to authorize the deactivation of a filter under
19 certain conditions; to provide for injunctive relief and
20 criminal penalties; and in connection therewith would have as
21 its purpose or effect the requirement of a new or increased
22 expenditure of local funds within the meaning of Amendment 621
23 of the Constitution of Alabama of 1901, now appearing as
24 Section 111.05 of the Official ReCompilation of the
25 Constitution of Alabama of 1901, as amended.
26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

3 (1) FILTER. Hardware, software, or an application
4 that restricts or blocks Internet access to websites,
5 electronic mail, chat, or other Internet-based communications
6 based on category, site, or content.

7 (2) MATERIAL THAT IS HARMFUL TO MINORS. Any sexually
8 explicit picture, video, image, graphic image file, visual
9 representation, or other sexually explicit material that can
10 be viewed to which all of the following apply:

11 a. The average person, applying contemporary
12 community standards, would find, taking the material as a
13 whole and with respect to minors, is designed to appeal to, or
14 is designed to pander to, the prurient interest of minors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (1) Send filter updates to owners of wireless
20 telecommunications devices to which the service provider
21 provides service to ensure the quality and performance of the
22 filter in restricting or blocking obscene material.

23 (2) Establish reporting websites or call centers
24 where an owner of a device may report obscene material that
25 has breached the filter.

26 (j) (1) A wireless telecommunications service
27 provider of a wireless telecommunications device shall

1 determine within a reasonable time if material under
2 subdivision (i) (2) is material that is harmful to minors. If
3 the wireless telecommunications service provider determines
4 that the material is harmful to minors, then within a
5 reasonable time period the service provider shall install a
6 filter update that incorporates the material and restricts or
7 blocks Internet access to the material.

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

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

21 (k) A wireless telecommunications service provider
22 is not liable for a violation of this act if it makes a good
23 faith effort to apply a generally accepted and commercially
24 reasonable method of compliance in accordance with this act
25 and that the technology it employs is consistent with industry
26 standards and has the ability to discover and block new

1 websites and material that is harmful to minors in order to
2 fulfill the requirements of this act.

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

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