

IN THE SENATE

SENATE BILL NO. 1261

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE PROTECTION OF MINORS; AMENDING TITLE 48, IDAHO CODE, BY THE
2 ADDITION OF A NEW CHAPTER 20, TITLE 48, IDAHO CODE, TO PROVIDE A SHORT
3 TITLE, TO PROVIDE A DECLARATION OF POLICY, TO DEFINE TERMS, TO REQUIRE
4 THE INSTALLATION OF FILTERS ON DEVICES, TO ESTABLISH PROVISIONS RE-
5 GARDING VIOLATIONS, TO PROVIDE FOR ATTORNEY GENERAL ENFORCEMENT, TO
6 PROVIDE AUTHORITY FOR ADDITIONAL RELIEF, AND TO PROVIDE FOR CERTAIN
7 CIVIL CAUSES OF ACTION BY PARENTS OR LEGAL GUARDIANS; AND DECLARING AN
8 EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
9

10 Be It Enacted by the Legislature of the State of Idaho:

11 SECTION 1. That Title 48, Idaho Code, be, and the same is hereby amended
12 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
13 ter 20, Title 48, Idaho Code, and to read as follows:

14 CHAPTER 20

15 PARENTAL RIGHTS PROTECTION OF MINORS ACT

16 48-2001. SHORT TITLE. This chapter shall be known and may be cited as
17 the "Parental Rights Protection of Minors Act."

18 48-2002. DECLARATION OF POLICY. The Idaho legislature, recognizing
19 the importance of mental health in the growth and education of minors and a
20 need to protect minors from accessing or downloading pornographic content
21 that is harmful, declares it to be the policy of the state to promote the
22 mental health of minors and adopt a comprehensive and proactive approach to
23 reducing minors' access to such harmful content.

24 48-2003. DEFINITIONS. As used in this chapter:

25 (1) "Activate" means the process of powering on a device and associat-
26 ing it with a new user account.

27 (2) "Device" means a tablet or a smartphone manufactured on or after
28 January 1, 2023.

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

33 (4) "Harmful to minors" is as defined in section 18-1514, Idaho Code.

34 (5) "Internet" means the global information system that is logically
35 linked together by a globally unique address space based on the internet
36 protocol (IP), or its subsequent extensions, and that is able to support
37 communications using the transmission control protocol/internet protocol
38 suite, or its subsequent extensions, or other IP-compatible protocols, and

1 that provides, uses, or makes accessible, either publicly or privately,
2 high-level services layered on communications and related infrastructure.

3 (6) (a) "Manufacturer" means a person who is engaged in the business of
4 manufacturing a device.

5 (b) "Manufacturer" includes a registrant as that term is defined in
6 section 48-501, Idaho Code.

7 (7) "Minor" means an individual under the age of eighteen (18) years who
8 is not emancipated, married, or a member of the armed forces of the United
9 States.

10 (8) "Smartphone" means an electronic device that combines a cellular
11 phone with a hand-held computer, typically offering internet access, data
12 storage, text, and email capabilities.

13 (9) "Tablet" means an internet-ready device equipped with an operating
14 system, touchscreen display, and rechargeable battery and that has the abil-
15 ity to support access to a cellular network.

16 48-2004. FILTER REQUIRED. Beginning on January 1, 2023, all devices
17 manufactured by a manufacturer shall, when activated in the state, automati-
18 cally enable a filter that:

19 (1) When enabled, prevents a user from accessing or downloading mate-
20 rial that is harmful to minors on:

21 (a) Mobile data networks;

22 (b) Applications owned and controlled by the manufacturer;

23 (c) Wired internet networks; and

24 (d) Wireless internet networks;

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

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

29 (4) Reasonably precludes a user without a passcode from deactivating,
30 modifying, or uninstalling such a filter.

31 48-2005. VIOLATIONS. (1) Beginning on January 1, 2023, a manufacturer
32 of a device violates this chapter if a device is activated in the state of
33 Idaho and:

34 (a) The device does not, upon activation, enable a filter that complies
35 with the requirements described in this chapter, or the manufacturer
36 fails to meet the requirements of section 48-2004, Idaho Code; and

37 (b) A minor accesses material that is harmful to minors on the device.

38 (2) Notwithstanding the provisions of subsection (1) of this section,
39 this section does not apply to a manufacturer that makes a good faith ef-
40 fort to provide a device that, upon activation of the device in the state of
41 Idaho, automatically enables a generally accepted and commercially reason-
42 able method of filtration in accordance with this chapter and industry stan-
43 dards.

44 48-2006. CIVIL PROCEEDINGS BY THE ATTORNEY GENERAL. (1) Whenever the
45 attorney general has reason to believe that a manufacturer violated or is vi-
46 olating the provisions of this chapter, the attorney general, acting in the

1 public interest, may bring a civil action in the name of the state against
2 such manufacturer:

3 (a) To enjoin any action that constitutes a violation of this chapter by
4 issuance of a temporary restraining order or preliminary or permanent
5 injunction, upon the giving of appropriate notice to the alleged viola-
6 tor as provided in the Idaho rules of civil procedure;

7 (b) To recover from the alleged violator a civil penalty not to exceed
8 five thousand dollars (\$5,000) per violation, and not to exceed a to-
9 tal of fifty thousand dollars (\$50,000) per year in aggregate, as deter-
10 mined by the district court;

11 (c) To recover from the alleged violator the attorney general's reason-
12 able expenses, investigative costs, and attorney's fees; and

13 (d) To obtain other appropriate relief as provided for under this chap-
14 ter.

15 (2) All penalties, costs, and fees received or recovered by the attor-
16 ney general shall be remitted to the consumer protection fund and expended
17 pursuant to section 48-606(5), Idaho Code. Such moneys deposited into the
18 consumer protection fund under this chapter shall be used for the further-
19 ance of the attorney general's duties and activities under this chapter.

20 (3) To accomplish the objectives and to carry out the duties prescribed
21 by this chapter, the attorney general, in addition to other powers conferred
22 upon him by this chapter, may issue subpoenas to any person and conduct hear-
23 ings in aid of any investigation or inquiry; provided, however, that infor-
24 mation obtained pursuant to the powers conferred in this chapter shall be
25 subject to disclosure pursuant to chapter 1, title 74, Idaho Code.

26 (4) For purposes of assessing a penalty under this section, a manufac-
27 turer is considered to have committed a separate violation for each device
28 manufactured on or after January 1, 2023, that violates the provisions of
29 section 48-2005, Idaho Code.

30 (5) Only the attorney general may bring legal action pursuant to this
31 section and section 48-2007, Idaho Code.

32 48-2007. ADDITIONAL RELIEF BY COURT AUTHORIZED. In any action brought
33 by the attorney general under this chapter wherein the state prevails, the
34 court may, in addition to such other relief as provided for under this chap-
35 ter:

36 (1) Make such orders or judgments as may be necessary to prevent a manu-
37 facturer from continuing to violate the provisions of this chapter;

38 (2) Make such orders or judgments as may be necessary to compensate any
39 consumer, affected minor, or parent or legal guardian of such affected minor
40 for actual damages sustained;

41 (3) Revoke any license or certificate authorizing a manufacturer to en-
42 gage in business in this state;

43 (4) Enjoin any manufacturer from engaging in business in this state;
44 and

45 (5) Grant other appropriate relief.

46 48-2008. CIVIL ACTION BY PARENT OR LEGAL GUARDIAN. (1) Any parent or
47 legal guardian of a child who has accessed pornographic content that is harm-
48 ful to minors in violation of section 48-2005, Idaho Code, may bring a pri-

1 vate, civil cause of action in any court of competent jurisdiction against
2 a manufacturer who failed to comply with the provision of section 48-2005,
3 Idaho Code. A prevailing plaintiff under this subsection shall be entitled
4 to the payment of attorney's fees and court costs and may recover actual dam-
5 ages or:

6 (a) In the discretion of the court where actual damages are difficult
7 to ascertain due to the nature of the injury, liquidated damages in the
8 amount of five thousand dollars (\$5,000) for each violation;

9 (b) When a violation is found knowing and willful, punitive damages in
10 an amount set by the court;

11 (c) Nominal damages; or

12 (d) Such other relief the court deems appropriate.

13 (2) Nothing in the laws of this state shall prohibit the bringing of a
14 class action against a manufacturer whose conduct in violation of section
15 48-2005, Idaho Code, is knowing and willful.

16 (3) Any parent or legal guardian of a child may bring a private, civil
17 action in a court of competent jurisdiction against a person who is not the
18 parent or legal guardian and who provides the passcode to remove the filter
19 from a device in the possession of the child that results in the child's ex-
20 posure to content that is harmful to minors. A prevailing plaintiff under
21 this subsection shall be entitled to the payment of attorney's fees and court
22 costs and may recover actual damages or:

23 (a) In the discretion of the court where actual damages are difficult
24 to ascertain due to the nature of the injury, liquidated damages in the
25 amount of five thousand dollars (\$5,000) for each violation;

26 (b) Nominal damages; or

27 (c) Such other relief the court deems appropriate.

28 SECTION 2. An emergency existing therefor, which emergency is hereby
29 declared to exist, this act shall be in full force and effect on and after
30 July 1, 2022.