

IN THE SENATE

SENATE BILL NO. 1057

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 REGARD-
5 ING MANUFACTURER LIABILITY, TO PROVIDE FOR INDIVIDUAL LIABILITY, TO
6 PROVIDE FOR ATTORNEY GENERAL PROCEEDINGS, TO PROVIDE FOR PRIVATE CAUSES
7 OF ACTION, AND TO PROVIDE FOR CRIMINAL PENALTIES; AND DECLARING AN EMER-
8 GENCY 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 of the year following the year this chapter takes effect.

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" means the same as that term is defined in sec-
34 tion 18-1514, Idaho Code.

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

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

4 (6) "Manufacturer" means a person who:

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

6 (b) Has a commercial designated registered agent as required by section
 7 30-21-402, Idaho Code.

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

11 (8) "Smart phone" means an electronic device that combines a cell phone
 12 with a hand-held computer, typically offering internet access, data stor-
 13 age, text, and email capabilities.

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

17 48-2004. FILTER REQUIRED. Beginning on January 1 of the year following
 18 the year this chapter takes effect, a manufacturer shall manufacture a de-
 19 vice that, when activated in the state, automatically enables a filter that:

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

22 (a) Mobile data networks;

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

24 (c) Wired internet networks; and

25 (d) Wireless internet networks;

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

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

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

32 48-2005. MANUFACTURER LIABILITY. (1) Beginning on January 1 of the
 33 year following the year this chapter takes effect, a manufacturer of a device
 34 shall be subject to civil and criminal liability if:

35 (a) The device is activated in the state;

36 (b) The device does not, upon activation, enable a filter that complies
 37 with the requirements described in section 48-2004, Idaho Code; and

38 (c) A minor accesses material that is harmful to minors on the device.

39 (2) Notwithstanding the provisions of subsection (1) of this section,
 40 this section does not apply to a manufacturer that makes a good faith effort
 41 to provide a device that, upon activation of the device in this state, au-
 42 tomatically enables a generally accepted and commercially reasonable method
 43 of filtration in accordance with this chapter and industry standards.

44 48-2006. INDIVIDUAL LIABILITY. With the exception of a minor's parent
 45 or legal guardian, any person may be liable in a civil action for knowingly
 46 enabling a passcode to remove a filter on a device in the possession of a mi-
 47 nor if the minor accesses material that is harmful to minors on the device.

1 48-2007. PROCEEDINGS BY THE ATTORNEY GENERAL. (1) Whenever the attorney
2 general has reason to believe that a manufacturer violated or is violating
3 the provisions of this chapter, the attorney general, acting in the public
4 interest, may bring an action in the name of the state against the manufacturer:
5

6 (a) To enjoin any action that constitutes a violation of this chapter by
7 issuance of a temporary restraining order or preliminary or permanent
8 injunction;

9 (b) To recover from the alleged violator a civil penalty not to exceed
10 five thousand dollars (\$5,000) per violation, and not to exceed a total
11 of forty thousand dollars (\$40,000) in aggregate, as determined by the
12 court;

13 (c) To recover from the alleged violator the attorney general's reasonable
14 expenses, investigative costs, and attorney's fees; and

15 (d) To obtain other appropriate relief as provided for under this chapter.
16

17 (2) The attorney general, in addition to other powers conferred upon
18 him by this chapter, may issue subpoenas to any person and conduct hearings
19 in aid of any investigation or inquiry.

20 (3) The attorney general may seek the revocation of any license or certificate
21 authorizing a manufacturer to engage in business in this state.

22 (4) For purposes of assessing a penalty under this section, a manufacturer
23 is considered to have committed a separate violation for each device
24 manufactured on or after January 1 of the year following the year this chapter
25 takes effect that violates the provisions of section 48-2005, Idaho
26 Code.

27 48-2008. PRIVATE CAUSES OF ACTION BY A PARENT OR LEGAL GUARDIAN. (1)
28 Any parent or legal guardian of a minor who accesses material that is harmful
29 to minors in violation of section 48-2004, Idaho Code, may bring a private
30 cause of action in any court of competent jurisdiction against a manufacturer
31 who failed to comply with the provision of section 48-2005, Idaho Code.

32 (2) Any parent or legal guardian of a minor may bring an action in a
33 court of competent jurisdiction against any person who is not the parent or
34 legal guardian of the minor and who knowingly enables the passcode to remove
35 or deactivate a filter on a device in the possession of a minor resulting in
36 the minor's exposure to content that is harmful to minors.

37 (3) A prevailing plaintiff may recover:

38 (a) Actual damages or, in the alternative, in the discretion of the
39 court where actual damages are difficult to ascertain due to the nature
40 of the injury, liquidated damages in the amount of forty thousand dollars
41 (\$40,000) for each violation;

42 (b) When a violation is found knowing and willful, punitive damages in
43 an amount determined by the court;

44 (c) Nominal damages; and

45 (d) Such other relief the court deems appropriate, including court
46 costs and expenses.

47 (4) Nothing in this section shall preclude the bringing of a class action
48 lawsuit against a manufacturer where its conduct in violation of section
49 48-2004, Idaho Code, is knowing and willful.

1 48-2009. CRIMINAL PENALTIES. (1) Beginning on January 1 of the year
2 following the year this chapter takes effect, it shall be a criminal offense
3 for any person, with the exception of a parent or legal guardian, to know-
4 ingly and willfully enable the passcode to remove or deactivate the filter on
5 a device in the possession of a minor.

6 (2) Those found to be in violation of the provisions of this section
7 shall pay a fine not to exceed five thousand dollars (\$5,000) for the first
8 offense and not to exceed fifty thousand dollars (\$50,000) for the second of-
9 fense.

10 (3) A person who is found guilty under the provisions of this section
11 two (2) or more times may be imprisoned for a period of time not to exceed one
12 (1) year.

13 SECTION 2. An emergency existing therefor, which emergency is hereby
14 declared to exist, this act shall be in full force and effect on and after
15 July 1, 2023.