

IN THE SENATE

SENATE BILL NO. 1222

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO CHILDREN'S DEVICE PROTECTION; AMENDING TITLE 48, IDAHO CODE,
2 BY THE ADDITION OF A NEW CHAPTER 21, TITLE 48, IDAHO CODE, TO PROVIDE
3 A SHORT TITLE, TO PROVIDE A DECLARATION OF POLICY, TO DEFINE TERMS, TO
4 REQUIRE INTERNET FILTERING ON CERTAIN DEVICES, TO ESTABLISH PROVISIONS
5 REGARDING MANUFACTURER LIABILITY, TO PROVIDE FOR INDIVIDUAL LIABIL-
6 ITY, TO PROVIDE FOR ATTORNEY GENERAL PROCEEDINGS, TO PROVIDE FOR CIVIL
7 ACTION BY A PARENT OR LEGAL GUARDIAN, AND TO PROVIDE FOR CRIMINAL PENAL-
8 TIES; AND DECLARING AN 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 21, Title 48, Idaho Code, and to read as follows:

14 CHAPTER 21

15 CHILDREN'S DEVICE PROTECTION ACT

16 48-2101. SHORT TITLE. This chapter shall be known and may be cited as
17 the "Children's Device Protection Act."

18 48-2102. 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 48-2103. DEFINITIONS. As used in this chapter:

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

27 (2) "Device" means a tablet or a smartphone manufactured on or after
28 January 1, 2025.

29 (3) "Filter" means software installed on a device that is capable of
30 preventing the device from accessing or displaying obscene material as de-
31 fined by state law through internet browsers or search engines via mobile
32 data networks, wired internet networks, and wireless internet networks.

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

1 or privately, high-level services layered on communications and related
2 infrastructure.

3 (5) "Manufacturer" means a person or company that:

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

5 (b) Holds the patents for the device; and

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

8 (6) "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 (7) "Obscene material" means the same as that term is defined in section
12 18-4101, Idaho Code.

13 (8) "Password" means a string of characters or numbers or other secure
14 method used to enable, deactivate, modify, or uninstall a filter on a device.

15 (9) "Smartphone" means an electronic device that combines a cell phone
16 with a handheld computer, typically offering internet access through a
17 browser or search engine, data storage, text, and email capabilities.

18 (10) "Tablet" means an internet-ready device equipped with an operating
19 system, touchscreen display, rechargeable battery, and the ability to sup-
20 port access to a cellular network.

21 48-2104. FILTER REQUIRED. Beginning on January 1, 2025, all devices
22 activated in the state must:

23 (1) Contain a filter;

24 (2) Determine the age of the user during activation and account setup;

25 (3) Enable the filter for minor users;

26 (4) Allow a password to be established for the filter;

27 (5) Notify the user of the device when the filter blocks the device from
28 accessing a website; and

29 (6) Provide the user with a password the opportunity to deactivate and
30 reactivate the filter.

31 48-2105. MANUFACTURER LIABILITY. (1) Beginning January 1, 2025, a
32 manufacturer of a device shall be subject to civil and criminal liability if:

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

34 (b) The device does not, upon activation, enable a filter that complies
35 with the requirements described in section 48-2104, Idaho Code; and

36 (c) A minor accesses obscene material on the device.

37 (2) Notwithstanding the provisions of subsection (1) of this section,
38 this section does not apply to a manufacturer that makes a good faith effort
39 to provide a device that, upon activation of the device in the state, auto-
40 matically enables a generally accepted and commercially reasonable filter
41 that blocks obscene material on all internet browsers or search engines ac-
42 cessed on the device in accordance with the provisions of this chapter.

43 (3) Nothing in this chapter shall be construed to create a cause of ac-
44 tion against the retailer of a device.

45 48-2106. INDIVIDUAL LIABILITY. With the exception of a minor's parent
46 or legal guardian, any person may be liable in a civil action for enabling the

1 password to deactivate the filter on a device in the possession of said minor
2 if the minor accesses obscene material.

3 48-2107. PROCEEDINGS BY THE ATTORNEY GENERAL. (1) Whenever the attor-
4 ney general has reason to believe that a person violated or is violating the
5 provisions of this chapter, the attorney general, acting in the public in-
6 terest, may bring an action in the name of the state against such person:

7 (a) To enjoin any action that constitutes a violation of this chapter by
8 the issuance of a temporary restraining order or preliminary or perma-
9 nent injunction;

10 (b) To recover from the alleged violator a civil penalty not to exceed
11 five thousand dollars (\$5,000) per violation, and not to exceed a total
12 of fifty thousand dollars (\$50,000) in aggregate in any specific case,
13 as determined by the court;

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

16 (d) To obtain other appropriate relief as provided for pursuant to this
17 chapter.

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

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

23 (4) For purposes of assessing a penalty pursuant to this section, a man-
24 ufacturer is considered to have committed a separate violation for each de-
25 vice manufactured on or after January 1, 2025, that violates the provisions
26 of section 48-2104, Idaho Code.

27 48-2108. CIVIL ACTION BY THE PARENT OR LEGAL GUARDIAN. (1) Any parent
28 or legal guardian of a minor that accesses obscene material in violation of
29 the provisions of section 48-2104, Idaho Code, may bring a private cause of
30 action in any court of competent jurisdiction against a manufacturer that
31 failed to comply with the provisions of section 48-2104, Idaho Code.

32 (2) (a) A prevailing plaintiff may recover actual damages or, in the
33 discretion of the court where actual damages are difficult to ascertain
34 due to the nature of the injury, liquidated damages in the amount of
35 fifty thousand dollars (\$50,000) for each violation.

36 (b) When a violation is found to be knowing and willful, a prevailing
37 plaintiff may recover punitive damages in an amount determined by the
38 court.

39 (c) A prevailing plaintiff may also recover nominal damages and such
40 other relief as the court deems appropriate, including court costs and
41 expenses.

42 (3) A prevailing plaintiff under this section shall be entitled to the
43 collection of attorney's fees against a violating manufacturer. A prevail-
44 ing defendant under this section shall be entitled to the collection of at-
45 torney's fees against the plaintiff if the court determines that the plain-
46 tiff brought or pursued the action without a reasonable basis in fact or law.

1 (4) Nothing in this section shall preclude the bringing of a class ac-
2 tion lawsuit against a manufacturer where its conduct in violation of sec-
3 tion 48-2104, Idaho Code, is knowing and willful.

4 (5) Any parent or legal guardian of a child may bring an action in a
5 court of competent jurisdiction against any person who is not the parent or
6 legal guardian of the child and who disables the filter from a device in the
7 possession of the child, which results in the child's exposure to obscene ma-
8 terial.

9 48-2109. CRIMINAL PENALTIES. (1) Beginning on January 1, 2025, it
10 shall be a criminal offense for any person, except for a parent or legal
11 guardian, to disable the filter on a device in the possession of a minor.

12 (2) A person found to be in violation of this section shall pay a fine
13 not to exceed five thousand dollars (\$5,000) for the first offense and not to
14 exceed fifty thousand dollars (\$50,000) for the second offense.

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

18 SECTION 2. An emergency existing therefor, which emergency is hereby
19 declared to exist, this act shall be in full force and effect on and after
20 July 1, 2024.