

**Amendment - 1st Reading-white - Requested by: Lola Sheldon-Galloway - (H) Energy,
Technology and Federal Relations**

- 2023

68th Legislature 2023

Drafter: Milly Allen, 406-444-9280

HB0349.001.002

1 HOUSE BILL NO. 349

2 INTRODUCED BY L. SHELDON-GALLOWAY, J. SCHILLINGER, B. MITCHELL, T. MOORE, G. KMETZ

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING AN OBSCENITY FILTER BE ENABLED BY
5 DEFAULT ON ELECTRONIC DEVICES SOLD AND ACTIVATED IN THE STATE; AMENDING SECTION 45-8-
6 206, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9
10 NEW SECTION. Section 1. Short title. [Sections 1 through 6] may be cited as the "Children's Default
11 to Safety Act".

12
13 NEW SECTION. Section 2. Definitions. For the purposes of [sections 1 through 6], the following
14 definitions apply:

15 (1) "Activate" means the process of powering on an electronic device and associating it with a new
16 user account.

17 (2) "Electronic device" means a tablet or a smart phone.

18 (3) "Internet" has the same meaning as provided in 2-17-551.

19 (4) "Manufacturer" means a person that is engaged in the business of manufacturing an electronic
20 device and has a commercial registered agent as defined in 35-7-102.

21 (5) "Obscenity filter" means software installed on an electronic device that is capable of preventing
22 the electronic device from accessing or displaying obscenity, pursuant to 45-8-201, through the internet or any
23 applications owned and controlled by the manufacturer and installed on the device.

24 (6) "Smart phone" means an electronic device that combines a cell phone with a hand-held
25 computer, typically offering internet access, data storage, text, and e-mail capabilities.

26 (7) "Tablet" means an electronic device equipped with a mobile operating system, touchscreen
27 display, and rechargeable battery, typically offering internet access.

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1 (2) When the amount of actual damages is difficult to ascertain due to the nature of the injury, the
2 court, in its discretion, may award liquidated damages in the amount of \$10,000 to the injured party.

3 (3) A class action may be brought under [sections 1 through 6] in accordance with state law.
4

5 **NEW SECTION. Section 6. Civil action for enforcement -- damages.** (1) (a) Except as provided in
6 subsection (8), a manufacturer that is found liable under [section 4] is liable for civil penalties not to exceed
7 \$10,000 per violation, plus filing fees and attorney fees, in addition to any other penalty established by law.

8 (b) The civil penalty may be assessed and recovered in a civil action brought in any court of
9 competent jurisdiction.

10 (c) For purposes of assessing a penalty under this subsection (1), a manufacturer is considered to
11 have committed a separate violation for each electronic device sold and activated in the state.

12 ~~(d) — The total civil penalty assessed in a civil action brought under this section may not exceed~~
13 ~~\$50,000 regardless of how many separate violations the plaintiff establishes.~~

14 (2) (a) A plaintiff shall prove and a court shall find, by clear and convincing evidence, that a
15 manufacturer manufactured a device on or after July 1, 2023, and that it was activated in violation of [section 4].

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

17 (3) For each violation, the court shall specify the amount of the:

18 (a) civil penalty;

19 (b) filing fees; and

20 (c) attorney fees.

21 (4) In assessing the amount of a civil penalty for a violation of [sections 1 through 6], the court
22 shall consider the:

23 (a) nature and extent of the violation;

24 (b) number and severity of the violations;

25 (c) economic effect of the penalty on the violator;

26 (d) good faith measures the violator took to comply with [sections 1 through 6];

27 (e) timing of the measures the violator took to comply with [sections 1 through 6];

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1 (f) willfulness of the violator's misconduct;

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

4 (h) other factors determined by the court to be pertinent.

5 (5) Actions pursuant to this section may be brought by the attorney general in the name of the
6 people of the state or by a private individual in accordance with subsection (6).

7 (6) A private individual may bring an action in the public interest to establish liability under [section
8 4] if:

9 (a) the individual has served the alleged violator and the attorney general a notice of an alleged
10 violation of subsection (1); and

11 (b) the attorney general has not provided a letter to the noticing party within 45 days after the day
12 on which the attorney general receives the notice of an alleged violation indicating that:

13 (i) an action is currently being pursued or will be pursued by the attorney general regarding the
14 violation; or

15 (ii) the attorney general believes that there is no merit to the action.

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

18 (8) A manufacturer who makes a good faith effort to install and enable on activation in the state a
19 generally accepted and commercially reasonable method of filtration in accordance with [sections 1 through 6]
20 and industry standards is not liable under [section 4].

21

22 **Section 7.** Section 45-8-206, MCA, is amended to read:

23 **"45-8-206. Public display or dissemination of obscene material to minors.** (1) A person having
24 custody, control, or supervision of any commercial establishment or newsstand may not knowingly or
25 purposely:

26 (a) display obscene material to minors in such a way that minors, as a part of the invited public, will
27 be able to view the material. However, a person is considered not to have displayed obscene material to minors