**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “YOUTH PROTECTION FROM INTERNET PORNOGRAPHY ACT”, BY ADDING ARTICLE 3 TO CHAPTER 1, TITLE 63 SO AS TO PROVIDE PROTECTIONS FOR CHILDREN AGAINST UNFILTERED DEVICES; TO PROVIDE NECESSARY DEFINITIONS; TO REQUIRE MANUFACTURERS TO PROVIDE AUTOMATIC FILTERING CAPABILITIES ON DEVICES ACTIVATED IN THIS STATE; TO SUBJECT MANUFACTURERS TO CIVIL AND CRIMINAL LIABILITY FOR VIOLATIONS OF THIS ARTICLE; AND TO SUBJECT INDIVIDUALS TO CRIMINAL AND CIVIL LIABILITY FOR VIOLATIONS OF THIS ARTICLE; TO AMEND SECTION 16‑17‑490, RELATING TO CONTRIBUTING TO THE DELINQUENCY OF A MINOR, SO AS TO PROHIBIT PROVIDING A PASSCODE TO REMOVE THE PORNOGRAPHY FILTER FOR AN INTERNET‑ACCESSIBLE DEVICE BY SOMEONE OTHER THAN A MINOR’S PARENT OR LEGAL GUARDIAN; AND TO DESIGNATE SECTIONS 63‑1‑10 THROUGH 63‑1‑50 AS ARTICLE 1, ENTITLED “GENERAL PROVISIONS”.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act must be known and may be cited as the “Youth Protection from Internet Pornography Act”.

SECTION 2. Chapter 1, Title 63 of the 1976 Code is amended by adding:

“Article 3

Protection from Unfiltered Devices

Section 63‑1‑300. (1) ‘Activate’ means the process of powering on a device and associating it with a new user account.

(2) ‘Device’ means a tablet or a smart phone manufactured on or after January 1, 2023.

(3) ‘Filter’ means software installed on a device that is capable of preventing the device from accessing or displaying material that is harmful to minors through the Internet or any applications owned and controlled by the manufacturer and installed on the device.

(4) ‘Harmful to minors’ means the same as the term is defined in Section 16‑15‑375(1).

(5) ‘Internet’ means the global information system that is logically linked together by a globally unique address space based on the Internet protocol (IP), or its subsequent extensions, and that is able to support communications using the transmission control protocol/Internet protocol(TCP/IP) suite, or its subsequent extensions, or other IP‑compatible protocols, and that provides, uses, or makes accessible, either publicly or privately, high‑level services layered on communications and related infrastructure.

(6) ‘Manufacturer’ means a person that:

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

(b) has a designated registered agent as required by Section 33‑5‑101.

(7) ‘Minor’ means an individual under the age of 18 who is not emancipated, married, or a member of the Armed Forces of the United States.

(8) ‘Smart phone’ means an electronic device that combines a cellular phone with a hand‑held computer, typically offering Internet access, data storage, text, and email capabilities.

(9) ‘Tablet’ means an Internet‑ready device equipped with an operating system, touchscreen display, rechargeable battery, and has the ability to support access to a cellular network.

Section 63‑1‑310. Beginning January 1, 2023, a manufacturer must manufacture a device that, when activated in this State, automatically enables a filter that:

(A) when enabled, prevents the user from accessing or downloading material that is harmful to minors on:

(1) mobile data networks;

(2) applications owned and controlled by the manufacturer;

(3) wired Internet networks; and

(4) wireless Internet networks;

(B) notifies the user of the device when the filter blocks the device from downloading an application or accessing a website;

(C) gives a user with a passcode the opportunity to unblock a filtered application or website; and

(D) reasonably precludes a user other than a user with a passcode the opportunity to deactivate, modify, or uninstall the filter.

Section 63‑1‑320. (A) Beginning January 1, 2023, a manufacturer of a device is subject to civil and criminal liability if:

(1) the device is activated in this State; and

(2) the device does not, upon activation, enable a filter that complies with the requirements described in Section 63‑1‑310; and

(3) the minor accesses material that is harmful to minors on the device.

(B) Notwithstanding subsection (A), this section does not apply to a manufacturer that makes a good faith effort to provide a device that, upon activation of the device in this State, automatically enables a generally accepted and commercially reasonable method of filtration in accordance with this section and industry standards.

Section 63‑1‑330. (A) Whenever the South Carolina Attorney General has reason to believe that a person violated or is violating the provisions of this article, the Attorney General, acting in the public interest, may bring an action in the name of the State against such person:

(1) to enjoin any action that constitutes a violation of this chapter by issuance of a temporary restraining order or preliminary or permanent injunction;

(2) to recover from the alleged violator a civil penalty not to exceed five thousand dollars per violation, and not to exceed a total of fifty thousand dollars in aggregate, as determined by the court;

(3) to recover from the alleged violator the Attorney General’s reasonable expenses, investigative costs, and attorney’s fees; and

(4) to obtain appropriate relief as provided for under this article.

(B) The Attorney General, in addition to other powers conferred upon him by this article, may issue subpoenas to any person and conduct hearings in aid of any investigation or inquiry.

(C) The Attorney General may seek the revocation of any license or certificate authorizing a manufacturer to engage in business in this State.

(D) For purposes of assessing a penalty under this section, a manufacturer is considered to have committed a separate violation for each device manufactured on or after January 1, 2023, that violates the provisions of Section 63‑1‑320.

Section 63‑1‑340. (A) Any parent or legal guardian of a minor that accesses pornographic content that is harmful to minors in violation of Section 63‑1‑310 may bring a private cause of action in any court of competent jurisdiction against a manufacturer who fails to comply with the provisions of Section 63‑1‑310.

(1) A prevailing plaintiff may recover:

(a) actual damages; or

(b) in the alternative, in the discretion of the court where actual damages are difficult to ascertain due to the nature of the inquiry, liquidated damages in the amount of fifty thousand dollars for each violation; and

(c) when a violation is found to be knowing and wilful, punitive damages in an amount determined by the court;

(d) nominal damages;

(e) attorney’s fees; and

(f) such other relief as the court deems appropriate, including court costs and expenses.

(B) Nothing herein precludes bringing a class action lawsuit against a manufacturer where its conduct is in violation of Section 63‑1‑310 and is knowing and wilful.

(C) Any parent or legal guardian of a child may bring an action in a court of competent jurisdiction against any person who is not the parent or legal guardian of the child and provides the passcode to remove the filter from a device in the possession of a child which results in the child’s exposure to content that is harmful to minors.

Section 63‑1‑350. (A) Beginning on January 1, 2023, it is a criminal offense for any person, with the exception of a parent or legal guardian, to provide the passcode to remove the filter on a device in the possession of a minor.

(B) Anyone found to be in violation of subsection (A) shall be guilty of a misdemeanor and must pay a fine not to exceed five thousand dollars for the first offense and not to exceed fifty thousand dollars for the second offense. Jail time may be considered for repeat offenders not to exceed one year.”

SECTION 3. Section 16‑17‑490 of the 1976 Code is amended by adding an appropriately numbered item before the undesignated paragraph to read:

“( ) To provide a passcode to remove the pornography filter on an Internet‑accessible device in the possession of a minor, unless the adult is the minor’s parent or legal guardian.”

SECTION 4. Sections 63‑1‑10 through 63‑1‑50 are designated as Article 1 entitled ‘General Provisions’.

SECTION 5. This act takes effect upon approval by the Governor.

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