

By: Lozano

H.B. No. 1936

A BILL TO BE ENTITLED

AN ACT

relating to electronic device filters for certain explicit material; creating a criminal offense; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 5, Business & Commerce Code, is amended by adding Chapter 121 to read as follows:

CHAPTER 121. ELECTRONIC DEVICE FILTERS

SUBCHAPTER A. ELECTRONIC DEVICE FILTER REQUIREMENTS

Sec. 121.001. DEFINITIONS. In this chapter:

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

(2) "Electronic device" means a smart phone or tablet that is capable of connecting to a cellular network and the Internet.

(3) "Explicit material" means visual material depicting:

(A) the intimate parts of a person;

(B) sexual conduct; or

(C) simulated sexual conduct.

(4) "Filter" means software installed on an electronic device that is capable of preventing the device from accessing or displaying explicit material.

(5) "Intimate parts" has the meaning assigned by

1 Section 21.16, Penal Code.

2 (6) "Manufacturer" means a person that:

3 (A) is engaged in the business of manufacturing  
4 electronic devices; and

5 (B) maintains a registered agent under Section  
6 5.201, Business Organizations Code.

7 (7) "Minor" means a person younger than 18 years of age  
8 who:

9 (A) has never been married;

10 (B) is not a member of the United States military  
11 forces; and

12 (C) has not had the disabilities of minority  
13 removed for general purposes.

14 (8) "Sexual conduct" has the meaning assigned by  
15 Section 21.16, Penal Code.

16 (9) "Simulated" has the meaning assigned by Section  
17 21.16, Penal Code.

18 (10) "Visual material" has the meaning assigned by  
19 Section 21.16, Penal Code.

20 Sec. 121.002. ELECTRONIC DEVICE FILTER REQUIRED. (a) A  
21 manufacturer shall automatically enable a filter on an electronic  
22 device that is activated in this state.

23 (b) A filter described by Subsection (a), when enabled,  
24 must:

25 (1) prevent a minor user from accessing, downloading,  
26 or displaying explicit material through use of:

27 (A) a mobile data network;

1                   (B) an Internet network, including Wi-Fi; or

2                   (C) a software application owned and controlled  
3 by the manufacturer of the electronic device;

4                   (2) notify the user of the electronic device when the  
5 filter prevents the device from accessing or displaying explicit  
6 material;

7                   (3) allow the user of the electronic device to  
8 circumvent the filter by entering a password or access code; and

9                   (4) reasonably prevent a user of the electronic device  
10 from circumventing, modifying, removing, or uninstalling the  
11 filter without entering a password or access code.

12                   Sec. 121.003. VIOLATION. (a) A manufacturer violates this  
13 chapter if:

14                   (1) the manufacturer manufactures an electronic  
15 device that is activated in this state;

16                   (2) the device does not automatically enable a filter  
17 under Section 121.002; and

18                   (3) a minor user accesses explicit material on the  
19 device.

20                   (b) A person violates this chapter if:

21                   (1) the person circumvents, modifies, removes, or  
22 uninstalls a filter under Section 121.002 on the electronic device  
23 of a minor user;

24                   (2) the person is not the parent or legal guardian of  
25 the minor user;

26                   (3) the person takes the action under Subdivision (1):

27                   (A) without permission from the parent or legal

1 guardian of the minor user; and

2 (B) with knowledge that circumventing,  
3 modifying, removing, or uninstalling the filter may result in the  
4 minor user accessing explicit material; and

5 (4) the minor user accesses explicit material on the  
6 device.

7 (c) Notwithstanding Subsection (a), a manufacturer does not  
8 violate this chapter if the manufacturer makes a good faith effort  
9 to provide an electronic device that automatically enables a filter  
10 under Section 121.002.

11 SUBCHAPTER B. ENFORCEMENT

12 Sec. 121.051. CIVIL PENALTY. (a) A manufacturer who  
13 violates Section 121.003(a) is liable to this state for a civil  
14 penalty in an amount not to exceed \$30,000 for each violation.

15 (b) The attorney general may bring an action in the name of  
16 the state to recover a civil penalty under this section. The  
17 attorney general may recover attorney's fees and costs incurred in  
18 bringing an action under this section.

19 (c) The action may be brought in a district court in:

20 (1) Travis County; or

21 (2) a county in which any part of the violation or  
22 threatened violation occurs.

23 (d) The attorney general shall deposit a civil penalty  
24 collected under this section in the state treasury to the credit of  
25 the general revenue fund.

26 Sec. 121.052. CIVIL ACTION AGAINST MANUFACTURER. (a) A  
27 parent or guardian of a minor user of an electronic device who

1 accesses explicit material on the device due to the actions of a  
2 manufacturer under Section 121.003(a) may bring a civil action  
3 against the manufacturer of the device.

4 (b) A parent or guardian who brings an action under this  
5 section shall provide written notice of the action to the attorney  
6 general.

7 (c) Notwithstanding Sections 41.003 and 41.004, Civil  
8 Practice and Remedies Code, a parent or guardian who prevails in an  
9 action under this section is entitled to recover:

10 (1) damages in the amount of \$10,000;

11 (2) court costs; and

12 (3) attorney's fees.

13 (d) A court may certify an action brought against a  
14 manufacturer under this section as a class action.

15 Sec. 121.053. CIVIL ACTION AGAINST NONPARENT VIOLATOR. (a)  
16 In this section, "nonparent violator" means a person who violates  
17 Section 121.003(b).

18 (b) A parent or guardian of a minor who accesses explicit  
19 material on an electronic device due to the actions of a nonparent  
20 violator under Section 121.003(b) may bring a civil action against  
21 the nonparent violator.

22 (c) Notwithstanding Sections 41.003 and 41.004, Civil  
23 Practice and Remedies Code, a parent or guardian who prevails in an  
24 action under this section is entitled to recover:

25 (1) damages in the amount of \$1,000;

26 (2) court costs; and

27 (3) attorney's fees.

1       (d) It shall be a defense in an action under this section  
2 that the nonparent violator acted at the request of the parent or  
3 guardian of the minor user who accessed explicit material.

4       Sec. 121.054. OTHER ACTION BY ATTORNEY GENERAL. (a) In  
5 addition to collecting the penalty under Section 121.051, the  
6 attorney general may bring a civil action to enjoin a manufacturer  
7 from further violating this chapter.

8       (b) The attorney general may join an action for which the  
9 attorney general receives notice under Section 121.052(b).

10       (c) The court shall permit the attorney general to join an  
11 action in accordance with Subsection (b) not later than the 30th day  
12 after the date the attorney general receives notice of the action.

13       (d) If the attorney general joins an action in accordance  
14 with Subsection (b), the attorney general may seek the remedies  
15 provided under Subsection (a) and Section 121.051.

16       Sec. 121.055. OFFENSE; CRIMINAL PENALTY. (a) In this  
17 section, "nonparent violator" has the meaning assigned by Section  
18 121.053.

19       (b) A nonparent violator who violates Section 121.003(b)  
20 commits an offense.

21       (c) An offense under this section is:

- 22               (1) a Class A misdemeanor for a first offense; and  
23               (2) a state jail felony for a second or subsequent  
24 offense.

25       SECTION 2. This Act takes effect September 1, 2023.