**South Carolina General Assembly**

125th Session, 2023-2024

**H. 4689**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. T. Moore, Guffey, Carter, Pope, Chapman, Taylor, Hartnett, West, Felder, Ligon, Lawson, Moss, B.L. Cox and Hyde

Companion/Similar bill(s): 591, 4540

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Introduced in the House on January 9, 2024

Currently residing in the House

Summary: Children's Device Protection Act

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 12/14/2023 House Prefiled

 12/14/2023 House Referred to Committee on **Judiciary**

 1/9/2024 House Introduced and read first time (House Journal‑page 123)

 1/9/2024 House Referred to Committee on **Judiciary** (House Journal‑page 123)

 1/9/2024 House Member(s) request name added as sponsor: West

 1/10/2024 House Member(s) request name added as sponsor: Felder

 1/24/2024 House Member(s) request name added as sponsor: Ligon,
 Lawson, Moss, B.L. Cox

 1/25/2024 House Member(s) request name added as sponsor: Hyde

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**VERSIONS OF THIS BILL**

[12/14/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/4689_20231214.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS By ENACTING THE “CHILDREN’S DEVICE PROTECTION ACT” BY ADDING ARTICLE 3 TO CHAPTER 1, TITLE 63 SO AS to REQUIRE SMARTPHONES and tablets TO CONTAIN CERTAIN FILTERS AND OTHER FEATURES TO PREVENT MINORS FROM ACCESSING OBSCENE MATERIALS THROUGH THE INTERNET; TO CREATE CIVIL AND CRIMINAL LIABILITY FOR MANUFACTURERS OF THESE DEVICES FOR CERTAIN VIOLATIONS OF THE PROVISIONS OF THIS ARTICLE, WITH EXCEPTIONS, and TO AUTHORIZE THE ATTORNEY GENERAL AND SOLICITORS TO BRING ACTIONS to enforce the provisions of the article; tO CREATE A PRIVATE CAUSE OF ACTION FOR PARENTs OR LEGAL GUARDIANs OF MINORs IN CERTAIN CIRCUMSTANCES AND TO ESTABLISH DAMAGES THAT MAY BE RECOVERED; and to designate sections 63-1-10 through 63-1-50 as article 1, entitled “state policy and general provisions”; AND BY AMENDING SECTION 16-17-490, RELATING TO THE CRIME OF CONTRIBUTING TO THE DELINQUENCY OF A MINOR, SO AS TO MAKE CONFORMING CHANGES.

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

SECTION 1. This act may be cited as the “Children’s Device Protection Act”.

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

 Article 3

 Protection for Minors from Exposure to Obscenity on Internet-Accessible Devices

 Section 63-1-310. As used in this article:

 (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 smartphone manufactured on or after January first of the year following the year this article takes effect.

 (3) “Filter” means software installed on a device that is capable of preventing the device from accessing or displaying obscene material as defined by Section 16-15-305 through Internet browsers or search engines via mobile data networks, wired Internet networks, and wireless Internet networks.

 (4) “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.

 (5) “Manufacturer” means a person or company that:

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

 (b) holds the patents for the device it manufactures; and

 (c) has a designated registered agent as required by Section 33-5-101.

 (6) “Minor” means an individual under the age of eighteen who is not emancipated, married, or a member of the Armed Forces of the United States.

 (7) “Obscenity” means the same as that term is defined in Section 16-15-305.

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

 (9) “Smartphone” means an electronic device that combines a cell phone with a hand-held computer, typically offering Internet access through a browser or search engine, data storage, text, and email capabilities.

 (10) “Tablet” means an Internet-ready device equipped with an operating system, touchscreen display, rechargeable battery, and the ability to support access to a cellular network.

 Section 63-1-320. Beginning January first of the year following the year this article takes effect, all devices activated in the State must:

 (1) contain a filter;

 (2) determine the age of the user during activation and account set-up;

 (3) set the filter to “on” for minor users;

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

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

 (6) give the user with a password the opportunity to deactivate and reactivate the filter.

 Section 63-1-330. (A) Beginning January first of the year following the year this article takes effect, a manufacturer of a device is subject to civil and criminal liability if:

 (1) the device is activated in the State;

 (2) the device does not, upon activation, enable a filter that complies with the requirements described in Section 63-1-320; and

 (3) a minor accesses material that is obscene 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 the State, automatically enables a generally accepted and commercially reasonable filter that blocks obscene content on all Internet browsers or search engines accessed on the device in accordance with this section.

 (C) Nothing in this article shall be construed to create a cause of action against the retailer of a device.

 Section 63-1-340. (A) Whenever the South Carolina Attorney General or a solicitor has reason to believe that a person violated or is violating the provisions of this article, the Attorney General or solicitor acting in the public interest may bring an action in the name of the state against such person to:

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

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

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

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

 (C) The Attorney General or solicitor 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 first of the year following the year this article takes effect, that violates the provisions of Section 63-1-330.

 Section 63-1-350. (A) Any parent or legal guardian of a minor that accesses obscene content in violation of Section 63-1-320 may bring a private cause of action in any court of competent jurisdiction against a manufacturer who failed to comply with the provisions of Section 63-1-320.

 (B)(1) A prevailing plaintiff may recover:

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

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

 (c) nominal damages; and

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

 (2) A prevailing plaintiff is entitled to the collection of attorney’s fees against a violating manufacturer.

 (C) Nothing in this section precludes the bringing of a class action lawsuit against a manufacturer for conduct in violation of Section 63-1-320 that is knowing and wilful.

 (D) 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 who disables the filter from a device in the possession of the child which results in the child’s exposure to obscene content.

 Section 63-1-360. With the exception of a minor’s parent or legal guardian, any person may be liable in a civil action for enabling the password to remove the filter on a device in the possession of the minor if the minor accesses content that is obscene.

B. Sections 63-1-10 through 63-1-50 are designated as Article 1 entitled, “State Policy and General Provisions”.

SECTION 3. Section 16-17-490 is amended by adding before the second undesignated paragraph following item (10):

 (11) To deactivate the filter on an Internet accessible device in a minor’s possession, if as a result the minor accesses content that is obscene.

SECTION 4. This act takes effect upon approval by the Governor.

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