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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2865 Session of  
2022

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INTRODUCED BY GREGORY, ARMANINI, BERNSTINE, HELM, JOZWIAK,  
MEHAFFIE, ORTITAY, PENNYCUICK, RADER, SHUSTERMAN AND  
ZIMMERMAN, OCTOBER 3, 2022

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REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, OCTOBER 3, 2022

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AN ACT

1 Providing for filtered devices required, for manufacturer  
2 liability, for damages and for civil action for enforcement  
3 and penalties.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Protection of  
8 Minors from Unfiltered Devices Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall  
11 have the meanings given to them in this section unless the  
12 context clearly indicates otherwise:

13 "Activate." The process of powering on a device and  
14 associating the device with a new user account.

15 "Device." A tablet or a smart phone sold in this  
16 Commonwealth and manufactured on or after January 1 of the year  
17 following the effective date of this section.

18 "Filter." Software installed on a device that is capable of

1 preventing the device from accessing or displaying material that  
2 is harmful to minors through the Internet or any applications  
3 owned and controlled by the manufacturer and installed on the  
4 device.

5 "Harmful to minors." That quality of any description or  
6 representation, in whatsoever form, of nudity, sexual conduct,  
7 sexual excitement or sadomasochistic abuse when it:

8 (1) taken as a whole, appeals to the prurient interest  
9 in sex of minors;

10 (2) is patently offensive to prevailing standards in the  
11 adult community as a whole with respect to what is suitable  
12 material for minors; and

13 (3) taken as a whole, does not have serious value for  
14 minors.

15 "Internet." The global information system that is logically  
16 linked together by a globally unique address space based on the  
17 Internet protocol, or its subsequent extensions, and that is  
18 able to support communications using the transmission control  
19 protocol/Internet protocol suite, or its subsequent extensions,  
20 or other Internet-protocol-compatible protocols and that  
21 provides, uses or makes accessible, either publicly or  
22 privately, high-level services layered on communications and  
23 related infrastructure.

24 "Manufacturer." A person that is engaged in the business of  
25 manufacturing a device.

26 "Minor." An individual under 18 years of age who is not  
27 emancipated, married or a member of the armed forces of the  
28 United States.

29 "Smart phone." An electronic device that combines a cell  
30 phone with a handheld computer, typically offering Internet

1 access, data storage and text and email capabilities.

2 "Tablet." A mobile device that:

3 (1) is equipped with a mobile operating system,  
4 touchscreen display and rechargeable battery; and

5 (2) has the ability to support access to a cellular  
6 network.

7 Section 3. Filter required.

8 Beginning on January 1 following the effective date of this  
9 section, a manufacturer shall manufacture a device that, when  
10 activated in this Commonwealth, automatically enables a filter  
11 that:

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

14 (i) A mobile data network.

15 (ii) An application owned and controlled by the  
16 manufacturer.

17 (iii) A wired or wireless Internet network.

18 (2) notifies the user of the device when the filter  
19 blocks the device from downloading an application or  
20 accessing a website.

21 (3) provides a user with the opportunity to unblock a  
22 filtered application or website.

23 (4) reasonably precludes a user, other than a user with  
24 a passcode to the device, the opportunity to deactivate,  
25 modify or uninstall the filter.

26 Section 4. Manufacturer liability.

27 (a) General rule.--Beginning January 1 following the  
28 effective date of this subsection, a manufacturer of a device is  
29 liable to a minor in this Commonwealth if:

30 (1) The device is activated in this Commonwealth.

1           (2) The device does not, upon activation in this  
2 Commonwealth, enable a filter that complies with the  
3 requirements of section 3.

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

6           (b) Construction.--Nothing in this section shall affect any  
7 private right of action existing under law.

8           (c) Application.--Notwithstanding subsection (a), this  
9 section shall not apply to a manufacturer that makes a good  
10 faith effort to provide a device that, upon activation of the  
11 device in this Commonwealth, automatically enables a generally  
12 accepted and commercially reasonable method of filtration  
13 in accordance with this act and industry standards.

14 Section 5. Damages.

15           If a court finds that a manufacturer is liable under section  
16 4, the court may award the plaintiff actual damages. A class  
17 action may be brought under this act in accordance with  
18 Pennsylvania Rules of Civil Procedure.

19 Section 6. Civil action for enforcement and penalties.

20           (a) Penalties.--A manufacturer that is found liable under  
21 this act shall be:

22           (1) Liable for civil penalties not to exceed \$10 per  
23 violation, plus filing fees and attorney fees, in addition to  
24 any other penalty established by law. A manufacturer  
25 is considered to have committed a separate violation for each  
26 device manufactured on or after January 1 following the  
27 effective date of this paragraph, and activated in this  
28 Commonwealth on which:

29           (i) a filter is not automatically enabled; and

30           (ii) a minor encounters material harmful to minors.

1 (2) Enjoined from further violations.

2 (b) Damages cap.--The total civil penalty assessed in a  
3 civil action brought under this section may not exceed \$500,  
4 regardless of the number of separate violations the plaintiff  
5 establishes.

6 (c) Jurisdiction and burden.--The civil penalty may be  
7 assessed and recovered in a civil action brought in any court of  
8 competent jurisdiction in this Commonwealth. A plaintiff shall  
9 prove and a court shall find, by clear and convincing  
10 evidence, that a manufacturer manufactured a device on or after  
11 January 1 following the effective date of this subsection that  
12 was activated in this Commonwealth in violation of section 3.  
13 The plaintiff shall prove all other elements by a preponderance  
14 of the evidence.

15 (d) Court award.--For each violation, the court shall  
16 specify the amount of the civil penalty, filing fees and  
17 attorney fees. In assessing the amount of a civil penalty for a  
18 violation of this act, the court shall consider the following:

19 (1) The nature and extent of the violation.

20 (2) The number and severity of the violations.

21 (3) The economic effect of the penalty on the violator.

22 (4) The good faith measures the violator took to comply  
23 with this act.

24 (5) The timing of the measures the violator took to  
25 comply with this act.

26 (6) The willfulness of the violator's misconduct.

27 (7) The deterrent effect that the imposition of the  
28 penalty would have on both the violator and the regulated  
29 community as a whole.

30 (8) Any other factor that the court determines.

1 (e) Actions.--Actions under this part may be brought by the  
2 Attorney General's office or by a private individual. A private  
3 individual may bring an action in the public interest to  
4 establish liability under section 4 after satisfying the  
5 requirements of subsections (f), (g) and (h), if:

6 (1) The individual has served on the alleged violator  
7 and the Attorney General's office a notice of an alleged  
8 violation of section 3.

9 (2) The Attorney General's office has not provided a  
10 letter to the noticing party within 45 days after the day on  
11 which the Attorney General's office receives the notice of an  
12 alleged violation indicating that:

13 (i) an action is currently being pursued or will be  
14 pursued by the Attorney General's office regarding the  
15 violation; or

16 (ii) the Attorney General believes that there is no  
17 merit to the action.

18 (3) The alleged violator has not responded to the notice  
19 of alleged violation or returned the proof of compliance form  
20 provided in subsection (i).

21 (f) Notice.--The attorney for the noticing party, or the  
22 noticing party if the noticing party is not represented by an  
23 attorney, shall execute the notice of an alleged violation. The  
24 notice of an alleged violation shall:

25 (1) State that the individual executing the notice  
26 believes that there is a violation.

27 (2) Provide factual information sufficient to establish  
28 the basis for the alleged violation.

29 (g) Review.--The Attorney General shall review the notice of  
30 an alleged violation and may confer with the noticing party. The

1 Attorney General shall provide, within 45 days after the day on  
2 which the notice of an alleged violation was received, a letter  
3 to the noticing party and the alleged violator that states  
4 whether or not the Attorney General finds merit in the action.

5 (h) Notice of special compliance.--An individual who serves  
6 a notice of an alleged violation described in subsection (f)  
7 shall complete and provide to the alleged violator at the time  
8 the notice of the alleged violation is served, a notice of  
9 special compliance procedure and the proof of compliance form  
10 under subsection (i). The individual may file an action against  
11 the alleged violator, or recover from the alleged violator, if:

12 (1) The notice of alleged violation alleges that the  
13 alleged violator failed to manufacture a device that, when  
14 activated in this Commonwealth, automatically enabled a  
15 filter as required under section 3.

16 (2) A minor encountered material harmful to minors on  
17 the device without the option to enable a filter.

18 (3) Within 60 days after the day on which the alleged  
19 violator receives the notice of the alleged violation, the  
20 alleged violator has not:

21 (i) Corrected the alleged violation and all similar  
22 violations known to the alleged violator.

23 (ii) Agreed to pay a penalty for the alleged  
24 violation in the amount of \$10 per violation, up to \$500,  
25 regardless of the number of separate violations alleged  
26 in the notice.

27 (iii) Notified, in writing, the noticing party and  
28 the Attorney General's office that the violation has been  
29 corrected. The written notice under this subsection shall  
30 be the notice of special compliance procedure and the

1 proof of compliance form specified in subsection (i). The  
2 alleged violator shall deliver the civil penalty to the  
3 noticing party within 60 days after the day on which the  
4 alleged violator received the notice of the alleged  
5 violation.

6 (i) Form of notice.--The notice required to be provided to  
7 an alleged violator under subsection (h) shall be presented as  
8 follows:

9 Date: \_\_\_\_\_

10 Name of Noticing Party or Attorney for Noticing Party:

11 \_\_\_\_\_

12 Address: \_\_\_\_\_

13 Phone Number: \_\_\_\_\_

14 SPECIAL COMPLIANCE PROCEDURE

15 PROOF OF COMPLIANCE

16 You are receiving this form because the Noticing Party listed  
17 above has alleged that you are in violation of section 3 of  
18 the Protection of Minors from Unfiltered Devices Act.

19 The Noticing Party may bring legal proceedings against you  
20 for the alleged violation checked below if:

21 (1) You have not actually taken the corrective steps  
22 that you have certified in this form.

23 (2) The Noticing Party has not received this form at  
24 the address shown above, accurately completed by you,  
25 postmarked within 50 days after you receive this notice.

26 (3) The Noticing Party does not receive the required  
27 \$10 penalty payment for each violation alleged, with a  
28 total payment not to exceed \$500 regardless of the number  
29 of separate violations alleged in the notice, from you at  
30 the address shown above postmarked within 60 days of your



1 receiving this notice.

2 PART 1: TO BE COMPLETED BY THE NOTICING PARTY

3 OR ATTORNEY FOR THE NOTICING PARTY

4 This notice of alleged violation is for failure to provide an  
5 activated filter to protect minors against exposure to  
6 materials considered harmful to minors. Provide complete  
7 description of violations, including when and where observed  
8 and the serial numbers of the devices involved.

9 Date: \_\_\_\_\_

10 Name of Noticing Party or Attorney for Noticing Party:

11 \_\_\_\_\_

12 Address: \_\_\_\_\_

13 Phone Number: \_\_\_\_\_

14 PART 2: TO BE COMPLETED BY THE

15 ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

16 Certification of Compliance. Accurate completion of this form  
17 will demonstrate you are now in compliance with section 3 of  
18 the Protection of Minors from Unfiltered Devices Act, for the  
19 alleged violation listed above. You must complete and submit  
20 the form below to the Noticing Party at the address shown  
21 above, with a copy to the Pennsylvania Attorney General's  
22 Office, postmarked within 50 days of you receiving this  
23 notice.

24 I hereby agree to pay, within 60 days of receipt of this  
25 notice, a penalty of \$10 for each violation alleged to the  
26 Noticing Party only and certify that I have complied by  
27 (check only one of the following):

28 [ ] Providing the party at the address shown above with  
29 information about how to enable a filter.

30 [ ] Providing the party at the address shown above with

1 information about how to exchange a device that did not  
2 have a filter automatically enable upon activation for a  
3 replacement device of the same model that will  
4 automatically enable the filter upon activation in this  
5 Commonwealth.

6 CERTIFICATION

7 My statements on this form, and on any attachments to it, are  
8 true, complete and correct to the best of my knowledge and  
9 belief and are made in good faith. I have carefully read the  
10 instructions to complete this form.

11 Signature of alleged violator or authorized representative:

12 \_\_\_\_\_

13 Date: \_\_\_\_\_

14 Name and title of signatory: \_\_\_\_\_

15 (j) Additional violations included.--If a lawsuit is  
16 commenced, the plaintiff may include additional violations in  
17 the claim that are discovered through the discovery process. An  
18 alleged violator shall satisfy the conditions specified in  
19 subsection (i) only one time per device. Notwithstanding an  
20 alleged violator's compliance with subsection (h), the Attorney  
21 General may file an action under subsection (e) against the  
22 alleged violator.

23 (k) Reduction of civil penalty.--In any action, a court  
24 shall reduce the amount of any civil penalty for a violation to  
25 reflect any payment made by the alleged violator to a private  
26 individual in accordance with subsection (h) for the same  
27 alleged violation. Payments shall be made as follows:

28 (1) a civil penalty ordered by the court shall be paid  
29 to the plaintiff as directed by the court; and

30 (2) a penalty paid in accordance with the special

1 compliance procedure in subsection (i) shall be made directly  
2 to the noticing party.

3 (l) Award of penalty.--The Office of Victims' Services shall  
4 receive 50% of any penalty paid in accordance with this section.  
5 Money received shall be deposited into the Crime Victim Services  
6 and Compensation Fund. The penalty amount upon which the 50% is  
7 calculated may not include attorney fees or costs awarded by the  
8 court. If the penalty is paid to a noticing party in accordance  
9 with subsection (i), the noticing party shall remit the amount  
10 required by this subsection along with a copy of the Special  
11 Compliance Procedure document. If a civil penalty is ordered by  
12 the court, the plaintiff shall remit the amount required by this  
13 subsection along with a copy of the court order.

14 (m) Copy of notice.--The Attorney General's office shall  
15 provide to the Office of Victims' Services a copy of all notices  
16 of alleged violations to which the Attorney General's office did  
17 not respond with a letter of merit in accordance with subsection  
18 (g). The court shall provide to the Office of Victims' Services  
19 a copy of the court's order for payment. The Office of Victims'  
20 Services shall:

21 (1) maintain a record of documents and payments  
22 submitted under subsections (l) and (n) and this subsection;  
23 and

24 (2) create and provide to the General Assembly in odd-  
25 numbered years beginning after November of the year following  
26 the effective date of this paragraph a report containing the  
27 following for the previous two years:

28 (i) the number of notices of alleged violations  
29 received from the Attorney General's office;

30 (ii) the number of court orders received; and

1           (iii) the total amount received and deposited into  
2           the Crime Victim Services and Compensation Fund.

3           (n) Adjustment.--Beginning May 1 of the year following the  
4 effective date of this section, and at each five-year interval,  
5 the Administrative Office of Pennsylvania Courts shall adjust  
6 the dollar amount of the civil penalty provided in subsection  
7 (a) based on the change in the annual Consumer Price Index for  
8 the most recent five-year period ending on December 31 of the  
9 previous year and rounded to the nearest \$5. The Attorney  
10 General shall transmit a notice of the dollar amount of the  
11 civil penalty together with the date of the next scheduled  
12 adjustment to the Legislative Reference Bureau for publication  
13 in the Pennsylvania Bulletin.

14 Section 7. Effective date.

15           This act shall take effect in 60 days.