

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1082
Economic Matters

(Delegate McComas, *et al.*)

**Commercial Law - Protection of Minors From Unfiltered Tablets or Smart
Phones**

This bill prohibits a manufacturer – beginning January 1, 2024 – from manufacturing a device for sale and use in the State, unless, when activated, the device automatically enables a filter that has specified functionalities capable of preventing the device from accessing or displaying certain content that is “harmful to minors,” as specified. The bill also establishes civil penalties and authorizes an individual to bring a civil action against a manufacturer that violates the bill’s requirements. Violation of the bill is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA).

Fiscal Summary

State Effect: The bill’s imposition of existing MCPA enforcement provisions and new penalty provisions, including any potential minimal increase in revenues from new civil penalties authorized by the bill, is not anticipated to have a material impact on State finances or operations.

Local Effect: This bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: “Activate” is the process of powering on a device and associating it with a new user account.

“Filter” is 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.

“Harmful to minors” is that quality of any description or representation of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when it (1) taken as a whole, appeals to the prurient interest in sex of minors; (2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and (3) taken as a whole, does not have serious literary, artistic, political, or scientific value for minors.

Device Filter Requirement for Manufacturers

Beginning January 1, 2024, a manufacturer may not manufacture a device for sale and use in the State unless, when activated, the device automatically enables a filter that:

- 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;
- notifies the user of the device when the filter blocks the device from downloading an application or accessing a website;
- gives a user with a passcode the opportunity to unblock a filtered application or website; and
- reasonably precludes a user other than a user with a passcode the opportunity to deactivate, modify, or uninstall the filter.

Violations and Civil Penalties

Violation of the bill is subject to the enforcement provisions of MCPA, except MCPA’s civil and criminal penalty provisions. A manufacturer who violates the bill’s provisions is liable for civil penalties of up to \$10 per violation and is considered to have committed a separate violation for each device manufactured on or after January 1, 2024, and activated in the State on which (1) a filter is not automatically enabled and (2) a minor encounters material harmful to minors. The total civil penalty assessed against a manufacturer may not exceed \$500 for each minor who is the subject of a violation of the bill’s provisions.

In addition, an individual alleging a violation may bring a civil action against the manufacturer; a prevailing plaintiff may recover the greater of \$500 or actual damages and reasonable attorney's fees and costs, as well as any other relief the court determines to be appropriate.

Current Law: An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Department of Information Technology; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Legislative Services

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km/jkb

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