

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 772 (Delegate Henson)
 Economic Matters

**Internet–Connected Devices and Internet Service Providers – Default Filtering of
 Obscene Content (Maryland Online Child Protection Act)**

This bill prohibits a person from selling an Internet-connected device intended for minors unless that device includes specified features related to blocking harmful content. A violation is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA’s civil and criminal penalty provisions. The bill also (1) requires the Office of Statewide Broadband (OSB) to give preference to grant applications that include use of broadband providers that implement use of filters by default and (2) generally requires all State agencies to give preference in their procurement practices to Internet service providers that implement the use of filters by default.

Fiscal Summary

State Effect: General fund expenditures for the Office of the Attorney General (OAG) Consumer Protection Division (CPD) increase by \$74,100 in FY 2025; future years reflect annualization, inflation, and ongoing operating expenses. State expenditures (all funds) may increase for procurement beginning in FY 2027, as discussed below. Total special fund expenditures from OSB are unaffected; however, the bill may result in a different distribution of grants from the affected special funds. The bill’s imposition of existing penalty provisions is not anticipated to have a material impact on State finances or operations. Revenues are not affected.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	74,100	87,800	91,700	95,700	99,900
GF/SF/FF Exp.	0	0	-	-	-
NonBud Exp.	0	0	-	-	-
Higher Ed Exp.	0	0	-	-	-
Net Effect	(\$74,100)	(\$87,800)	(-)	(-)	(-)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local revenues may be affected to the extent that the bill results in a different distribution of grant funding from OSB, as discussed below. The bill's imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Definitions

“Device intended for minors” means a device that is marketed toward or primarily sold for the use of individuals younger than age 18. It includes an Internet-connected gaming device and a device that specifically advertises child safety features.

“Harmful to minors” means 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, lacks serious artistic, educational, literary, political, or scientific value for minors.

“Obscene” means that the (1) average adult applying contemporary community standards would find that the work, as a whole, appeals to the prurient interest; (2) work depicts sexual conduct in a way that is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material; and (3) work, taken as a whole, lacks serious artistic, educational, literary, political, or scientific value.

“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 application owned and controlled by the manufacturer and installed on the device.

For the purposes of State procurement law, “preference” means (1) a percentage-based price preference or (2) any other provision that favors Internet service providers that implement the use of filters by default.

Sale of Internet-connected Devices in the State

A person may only sell an Internet-connected device intended for minors if:

- the device is sold with an activated filter that blocks content that is harmful to minors;
- the device is sold with activated, configurable privacy settings that are the most protective available against the collection of a user's information;
- the device does not display advertisements targeted at minors based on conclusions drawn from personal data; and
- the device does not collect, use, or share the user's personal data beyond what is necessary to provide the core functions of the device.

Any filter on an Internet-connected device may be disabled only by an individual who is at least 18 years old and whose age is verified through a qualifying age verification procedure, meaning age verification accomplished through the use of a reputable independent third party that is in the business of verifying an individual's personally identifiable information.

As noted above, a violation related to the sale of an Internet-connected device intended for minors and/or the disabling requirements of a filter is an unfair, abusive, or deceptive trade practice under MCPA.

Office of Statewide Broadband

In distributing grants from the Digital Connectivity Fund and the Rural Broadband Assistance Fund, OSB must give preference to grant applications that include the use of broadband providers that implement the use of filters by default.

State Procurement

Beginning October 1, 2026, all State agencies must give preference to Internet service providers that implement the use of filters by default in their procurement practices. The Board of Public Works must adopt regulations that require State schools and facilities to establish a percentage price preference for Internet service providers that implement the use of filters by default.

Current Law:

Maryland Consumer Protection Act

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 that 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.

CPD within OAG 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.

Office of Statewide Broadband

Chapter 74 of 2021 established OSB within the Department of Housing and Community Development as the successor to the Office of Rural Broadband and charged OSB with expanded responsibilities relating to planning, data collection, outreach, and intergovernmental coordination. Notably, the Act required OSB to prepare a statewide plan ensuring universal, affordable, reliable broadband Internet connectivity exceeding specified federal standards by December 31, 2026. OSB must annually report to the Governor and the General Assembly on the progress of the State's efforts to develop and implement the statewide plan, among other things.

Chapter 74 also established (1) the Digital Inclusion Fund, to provide a competitive grant program to support capacity building for local governments and nonprofit organizations seeking to further access to high-speed Internet and implement programs to expand digital literacy and (2) the Digital Connectivity Fund, to assist in the establishment and expansion of affordable broadband communication services in disconnected areas and communities in the State. In addition, the Act transferred the existing Rural Broadband Assistance Fund from the Department of Commerce to OSB. The purpose of the Rural Broadband Assistance Fund is to assist in the establishment of broadband communication services in rural and underserved areas of the State.

Preferences in State Procurement

State procurement law includes various purchasing price preferences, including for locally grown foods, small businesses, resident bidders, environmentally preferable products, and mercury-free products. In general, purchase price preferences do not exceed 5% of the lowest responsive bid price.

State Fiscal Effect:

Office of the Attorney General

Given the potentially significant number of consumer products affected by the bill, and consequently, the potential number of complaints that could be received, CPD requires one full-time investigator to investigate any complaints received and handle communications with vendors to ensure compliance. Therefore, general fund expenditures increase by \$74,108 in fiscal 2025, which accounts for the bill’s October 1, 2024 effective date. This estimate reflects the cost of hiring one full-time investigator. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salaries and Fringe Benefits	\$66,852
Operating Expenses	<u>7,256</u>
Total FY 2025 State Expenditures	\$74,108

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Procurement

Application of a percentage price preference likely increases the cost of Internet-ready devices and Internet service by State agencies by up to 5%. To the extent the price preference and other requirements discourage participation in State procurement, competition for State contracts decreases, which has been shown to increase overall procurement costs.

Office of Statewide Broadband

The bill requires OSB to give preference to grant applications that include broadband providers that implement the use of filters by default when distributing funds from the Digital Connectivity Fund and the Rural Broadband Assistance Fund. The bill is not anticipated to change *total* spending from the two special funds but may result in a different distribution of funds among entities that receive grants. Any such impact, however, cannot be reliably predicted without actual experience under the bill.

Local Revenues: Local governments that apply for grants from the Digital Connectivity Fund and the Rural Broadband Assistance Fund are subject to the preference for grants that include Internet service providers that use filters by default. Local governments that do not include such providers are, therefore, disadvantaged in the grant award process, and those that do use such providers benefit from the preference. Although total grants awarded from

the funds are not affected, the total amount awarded to local governments, and the distribution among local governments, may be affected, but a reliable estimate of any such effect is not feasible.

Small Business Effect: Small businesses engaged in the sale of electronic devices may be significantly affected by the bill. Any such vendor is likely to be responsible for ensuring that any devices intended for minors meet the bill's specifications. Doing so may increase administrative and upfront costs to purchase these products at wholesale since these devices are likely to be more expensive compared to devices that do not meet the bill's specifications.

Additional Comments: The bill's prohibition against the sale of "electronic devices intended for minors" without specified filters, privacy settings, and other requirements could be interpreted to apply to nearly all laptops, personal computers, tablets, and cell phones sold in the State, resulting in potentially significant operational issues and/or increased costs for State agencies, local agencies, and small businesses.

Specifically, the bill defines "electronic device intended for minors" to include an Internet-connected gaming device; every laptop, personal computer, tablet, and cell phone is capable of being used to play games, and many come pre-installed with various types of games. If interpreted in this manner, many of these electronic devices may be prohibited from sale unless they have the specified features. The bill's requirement that any such device be sold with an activated filter that blocks harmful content to minors that may only be disabled through an age verification procedure through an independent third party may be the most disruptive. Though many devices may have parental controls built in, either directly or through administrator privileges, it is unlikely that many devices have software built in to connect to a third party to verify an individual user's age. Even if the affected devices are modified to include the filter and verification software, the modifications are likely to increase the price of the product.

Additional Information

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

Designated Cross File: SB 780 (Senator Muse) - Finance.

Information Source(s): Department of Information Technology; Office of the Attorney General (Consumer Protection Division); Maryland State Department of Education; Maryland School for the Deaf; University System of Maryland; Department of General Services; Department of Public Safety and Correctional Services; Board of Public Works; Maryland Department of Transportation; Department of Veterans Affairs; Baltimore County Public Schools; Montgomery County Public Schools; Department of Legislative Services

Fiscal Note History: First Reader - February 16, 2024
km/mcr

Analysis by: Richard L. Duncan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510