

Comment Report

HF 2051

A bill for an act relating to obscene material available on devices and imposing civil liability on entities who publish or distribute obscene material on the internet.

Subcommittee Members: Gustoff-CH, Nordman, Srinivas

Date: 01/23/2024

Time: 12:00 PM

Location: RM 103, Sup. Ct. Chamber

Name: Sandy Wilson

Comment: Citizen Engagement declares IN FAVOR of HF 2051.

Name: Hunter Hamberlin

Comment: The Taxpayers Protection Alliance (TPA) is a nonprofit, nonpartisan taxpayer and consumer watchdog group. TPA insists that you reconsider this legislation on account of its great potential to harm American taxpayers and consumers. We have attached a onepage documenting detailing the issues with device filter bills and other similar proposals in an effort to protect children online. While wellintended, we believe this legislation to be misguided. We urge you all to consider different solutions to this problem. Feel free to reach out to me if you all have any questions.



MANDATED DEVICE AND CONTENT FILTERS

Background:

Device or content filters require device manufacturers to have a built-in filter to deter obscene applications and other content from a customer's device. Device filter bills would require that all device manufacturers include filters that, by default, block obscene material deemed "harmful to minors." In some cases, users would be required to present personal identification information to verify they are 18 years of age or older while also paying a filter deactivation fee.¹ Device filter bills are unconstitutional attempts to supercharge a solution the free market has already provided via voluntary parental controls. Further, default filters undermine parental choice and responsibility in determining the best way to deal with exposure to harmful content.

Issues:

- Device filter bills require manufacturers to automatically filter content and applications that are deemed "harmful to minors," while ignoring the ripple effects of these requirements for consumers who use smartphones, tablets and other devices.
- Content filter mandates raise serious constitutional questions, and they have been tried before. In 1996, Congress passed the Communications Decency Act. That same year, the Supreme Court struck down the law because of its violation of the First Amendment. This law would have blocked content that adults would constitutionally be entitled to receive. Device content filters would act similarly by denying adults access to digital speech they are entitled to.²
- Harmful content is a subjective term, covering huge swathes of lawful content. Filter bills additionally violate the First Amendment by deputizing private companies to censor protected speech and content.
- These bills (if passed into law) are not feasible for manufacturers or consumers. It is uneconomical to manufacturer, program, and ship smart devices, to follow disparate laws across multiple states.³
- Device manufacturers already have filtering and content moderation mechanisms on smartphones, tablets and other technology that can access WiFi. These mechanisms are easily accessible to consumers with children, and already solve the problems that device filter bills are targeting.⁴
- Putting the power in the hands of parents to filter content for their children takes the decision out of the government's hands, therefore passing constitutional muster.

Recommended Solutions:

- Policymakers should be focused on outreach and education of existing device filtering mechanisms to parental and underage consumers to better make sure they are not accessing malicious content and to not encroach on the constitutional rights of adult users and content producers.
- Device manufacturers and wireless providers already have solutions to content moderation. A device manufacturer like Apple has the Screen Time function on their iPhones that can limit access to specific apps and prevent certain purchases, while also controlling for content.⁵ A wireless provider like T-Mobile has Web Guard, which prevents access to adult content when on T-Mobile's cellular network.⁶

The Taxpayers Protection Alliance (TPA) opposes any kind of device or content filter legislation.

¹ <https://www.thecgo.org/research/keeping-kids-safe-online-how-should-policymakers-approach-age-verification/>

² https://jamesmadison.org/wp-content/uploads/IssueCommentary_TeenOnlineSafety_Jul2023-v05.pdf

³ <https://api.ctia.org/wp-content/uploads/2022/03/CTIA-Letter-in-Opposition-to-Tennessee-HB-2579-SB-2354-State-Mandated-Content-Filters.pdf>

⁴ Ibid

⁵ <https://appleinsider.com/articles/21/03/06/adult-content-filters-for-iphone-and-ipad-required-under-utah-bill>

⁶ <https://www.t-mobile.com/support/plans-features/web-guard-device-content-filter>