

Senate File 50 - Introduced

SENATE FILE 50

BY SALMON

A BILL FOR

1 An Act relating to requirements for filters on mobile devices
2 activated in the state, providing for civil liability for
3 manufacturers of mobile devices for certain violations, and
4 including penalties.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 710B.1 Short title.

2 This chapter shall be known and may be cited as "*Cause of*
3 *Action to Protect Minors from Unfiltered Devices*".

4 Sec. 2. NEW SECTION. 710B.2 Definitions.

5 As used in this chapter, unless the context otherwise
6 requires:

7 1. "*Activate*" means the process of powering on a device and
8 associating it with a new user account.

9 2. "*Device*" means a tablet or a smart phone sold in this
10 state and manufactured on or after January 1, 2024.

11 3. "*Filter*" means software installed on a device that is
12 capable of preventing the device from accessing or displaying
13 material that is harmful to minors through the internet
14 or through any applications owned and controlled by the
15 manufacturer and installed on the device.

16 4. "*Harmful to minors*" means any description or
17 representation, in any form, of nudity, sexual conduct,
18 sexual excitement, or sadomasochistic abuse that is all of the
19 following:

20 a. Taken as a whole, appeals to the prurient interest in sex
21 of minors.

22 b. Is patently offensive to prevailing standards in the
23 adult community as a whole with respect to what is suitable
24 material for minors.

25 c. Taken as a whole, does not have serious literary,
26 artistic, political, or scientific value for minors.

27 5. a. "*Manufacturer*" means a person that is engaged in the
28 business of manufacturing devices and that has a registered
29 office and a registered agent that is one of the following:

30 (1) An individual who resides in this state and whose
31 business office is identical with the registered office.

32 (2) A domestic corporation whose business office is
33 identical with the registered office.

34 (3) A foreign corporation authorized to transact business
35 in this state whose business office is identical with the

1 registered office.

2 *b.* "Manufacturer" includes a registrant as defined in
3 section 548.101.

4 6. "Minor" means an individual under the age of eighteen who
5 is not emancipated, married, or a member of the armed forces of
6 the United States.

7 7. "Smart phone" means an electronic device that combines
8 a cell phone with a hand-held computer, typically offering
9 internet access, data storage, and text and electronic mail
10 capabilities.

11 8. "Tablet" means a mobile device that is equipped with a
12 mobile operating system, touchscreen display, and rechargeable
13 battery, and has the ability to support access to a cellular
14 network.

15 Sec. 3. NEW SECTION. 710B.3 **Required filter.**

16 A manufacturer shall manufacture devices that when such
17 a device is activated in this state the device automatically
18 enables a filter that does all of the following:

19 1. Prevents a user of the device from accessing or
20 downloading material that is harmful to minors on any of the
21 following:

22 *a.* A mobile data network.

23 *b.* An application owned and controlled by the manufacturer
24 that is installed on the device.

25 *c.* A wired or wireless internet network.

26 2. Notifies the user of the device if the filter blocks the
27 device from downloading an application or accessing a website.

28 3. Provides a user of the device who has a passcode the
29 ability to unblock a filtered application or internet site.

30 4. Reasonably precludes a user other than a user with a
31 passcode the ability to deactivate, modify, or uninstall the
32 filter.

33 Sec. 4. NEW SECTION. 710B.4 **Manufacturer liability.**

34 1. A manufacturer of a device is liable to a minor who
35 resides in the state if all of the following occur:

1 *a.* The device is activated in this state.

2 *b.* Upon activation in the state, the device does not enable
3 a filter that complies with section 710B.3.

4 *c.* Using the device, the minor accesses material that is
5 harmful to minors.

6 2. This section shall not be construed to affect any private
7 right of action existing under any other law.

8 3. Notwithstanding subsection 1, this section shall
9 not apply to a manufacturer that makes a good-faith effort
10 to manufacture a device that upon activation in this state
11 automatically enables a generally accepted and commercially
12 reasonable method of filtration in accordance with this chapter
13 and applicable industry standards.

14 Sec. 5. NEW SECTION. **710B.5 Class actions.**

15 A class action may be brought under this chapter in
16 accordance with the Iowa rules of civil procedure.

17 Sec. 6. NEW SECTION. **710B.6 Civil actions.**

18 1. A court of competent jurisdiction that finds a
19 manufacturer liable under section 710B.4 shall enjoin the
20 manufacturer from committing further violations and may
21 order civil penalties not to exceed five thousand dollars per
22 violation, plus filing and attorney fees, in addition to any
23 other penalty established by law.

24 2. *a.* For purposes of imposing a civil penalty under
25 subsection 1, a manufacturer shall be considered to have
26 committed a separate violation for each device manufactured on
27 or after January 1, 2024, that is activated in the state and
28 for which all of the following are true:

29 (1) A filter pursuant to section 710B.3 is not enabled.

30 (2) A minor encounters material harmful to minors.

31 *b.* Notwithstanding paragraph "*a*", the maximum civil penalty
32 imposed in a civil action brought under this section shall not
33 exceed fifty thousand dollars.

34 3. *a.* A plaintiff must prove and a court must find by clear
35 and convincing evidence that a manufacturer manufactured a

1 device, on or after January 1, 2024, that was activated in this
2 state in violation of section 710B.4, subsection 1.

3 *b.* A plaintiff must prove by a preponderance of the evidence
4 that a minor accessed material harmful to minors on the device
5 referenced in paragraph *"a"*.

6 *c.* The court shall specify the amount of each of the
7 following for each violation for which a manufacturer is found
8 liable:

9 (1) The civil penalty.

10 (2) The court costs.

11 (3) Reasonable attorney fees.

12 *d.* In determining the civil penalty for a violation of this
13 chapter the court shall consider all of the following:

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

15 (2) The severity of the violation.

16 (3) The potential economic effect of the civil penalty on
17 the manufacturer.

18 (4) The good-faith measures the manufacturer took to comply
19 with this chapter.

20 (5) The willfulness of the manufacturer's misconduct.

21 (6) The deterrent effect that the imposition of the
22 civil penalty will have on both the manufacturer and other
23 manufacturers that are subject to this chapter.

24 (7) Any other factors that the court deems appropriate.

25 *e.* The attorney general may bring a civil action under this
26 chapter in the name of the people of this state.

27 *f.* A private individual may file a civil action under this
28 chapter to establish a manufacturer's liability under section
29 710B.4 after the requirements of paragraphs *"g"*, *"h"*, and
30 *"i"*, and all of the following prerequisite requirements, are
31 satisfied:

32 (1) The individual has served on the manufacturer and the
33 attorney general's office a notice of an alleged violation of
34 section 710B.3.

35 (2) Within forty-five days after the date on which the

1 attorney general receives the notice of an alleged violation
2 under subparagraph (1), the attorney general has not provided
3 a letter to the noticing party that indicates any of the
4 following:

5 (a) An action is currently being pursued or will be pursued
6 by the attorney general regarding the alleged violation.

7 (b) The attorney general has determined that there is no
8 merit to the action.

9 (3) The manufacturer has not responded to the notice of
10 alleged violation, or returned the certification of compliance
11 served on the manufacturer pursuant to paragraph "i".

12 g. (1) The attorney for the noticing party, or the noticing
13 party if the noticing party is not represented by an attorney,
14 shall execute the notice of an alleged violation.

15 (2) The notice of an alleged violation shall do all of the
16 following:

17 (a) State that the individual executing the notice believes
18 in good faith that the manufacturer has committed a violation.

19 (b) Provide factual information sufficient to establish the
20 noticing party's basis for asserting that the manufacturer has
21 committed the alleged violation.

22 h. (1) The attorney general shall review the notice of an
23 alleged violation and may confer with the noticing party.

24 (2) The attorney general shall provide, within forty-five
25 calendar days after the date on which the attorney general
26 receives the notice of an alleged violation, a letter to the
27 noticing party and to the manufacturer that states whether the
28 attorney general finds merit in the action.

29 i. (1) An individual who serves a notice of an alleged
30 violation described in paragraph "g" shall complete and serve on
31 the manufacturer simultaneously with the notice of the alleged
32 violation, a notice of special compliance procedure and proof
33 of compliance form pursuant to paragraph "j".

34 (2) The individual may file a civil action against the
35 manufacturer, or recover from the manufacturer, if all of the

1 following requirements are satisfied:

2 (a) The notice of alleged violation alleges that the
3 manufacturer failed to manufacture a device that when activated
4 in this state automatically enabled a filter as required under
5 section 710B.3.

6 (b) A minor encountered material harmful to minors on the
7 device.

8 (c) Within sixty calendar days after the date on which the
9 manufacturer receives the notice of the alleged violation, the
10 manufacturer has failed to do all of the following:

11 (i) Correct the alleged violation and all similar
12 violations known to the manufacturer.

13 (ii) Agree to pay a penalty to the noticing party for the
14 alleged violation in the amount of ten dollars per violation,
15 up to a maximum of five hundred dollars, regardless of the
16 number of separate violations alleged in the notice. The
17 manufacturer shall deliver the penalty to the noticing
18 party within sixty calendar days after the date on which the
19 manufacturer receives notice of the alleged violation.

20 (iii) Notify the noticing party and the attorney general's
21 office in writing that the violation has been corrected. The
22 notice must be the notice of special compliance procedure and
23 proof of compliance form specified in paragraph "k".

24 j. The notice required to be provided to a manufacturer
25 pursuant to paragraph "i" shall be presented as follows:

26 Date.

27 Name of the noticing party or of the attorney for the
28 noticing party.

29 Address of the noticing party or of the attorney for the
30 noticing party.

31 Phone number of the noticing party or of the attorney for the
32 noticing party.

33 SPECIAL COMPLIANCE PROCEDURE

34 PROOF OF COMPLIANCE

35 You are receiving this form because the noticing party

1 listed above has alleged that you are in violation of Iowa Code
2 section 710B.3. The noticing party may bring legal proceedings
3 against you for the alleged violation checked below if:

4 You have not actually taken the corrective steps that you
5 certify in this form.

6 The noticing party has not received this form at the address
7 shown above, accurately completed by you, postmarked within
8 fifty calendar days of the date that you receive this notice.

9 The noticing party has not received the required ten dollar
10 penalty payment for each alleged violation, with a total
11 payment not to exceed five hundred dollars regardless of the
12 number of separate violations alleged in the notice, at the
13 address shown above and postmarked within sixty calendar days
14 of the date of that you receive this notice.

15 PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR THE
16 ATTORNEY FOR THE NOTICING PARTY

17 This notice of alleged violation is for failure to provide
18 an activated filter to protect minors against exposure to
19 materials considered harmful to minors. [Provide a complete
20 description of all alleged violations, including when and where
21 observed and the serial numbers of all devices involved.]

22 Date.

23 Name of the noticing party or of the attorney for the
24 noticing party.

25 Address of the noticing party or of the attorney for the
26 noticing party.

27 Phone number of the noticing party or of the attorney for the
28 noticing party.

29 PART 2: TO BE COMPLETED BY THE MANUFACTURER'S AUTHORIZED
30 REPRESENTATIVE

31 CERTIFICATION OF COMPLIANCE

32 Accurate completion of this form certifies that you have
33 corrected the alleged violations listed above and are now in
34 compliance with Iowa Code section 710B.3. You must complete
35 and submit the form below to the noticing party at the address

1 shown above, and mail a copy to the Iowa Attorney General's
2 Office, postmarked within fifty calendar days of the date that
3 you received this notice.

4 [Name of manufacturer] hereby agrees to pay to the noticing
5 party within sixty calendar days of the date that [name of
6 manufacturer] received this notice, a penalty of ten dollars
7 for each alleged violation and certifies that [name of
8 manufacturer] has complied with Iowa Code section 710B.3 by
9 (check one of the following):

10 [] Providing the noticing party shown above with
11 information about how to enable a filter on a device that did
12 not have a filter automatically enabled upon activation in the
13 state.

14 [] Providing the noticing party shown above with
15 information about how to exchange a device that did not have a
16 filter automatically enabled upon activation in the state for a
17 replacement device of the same model that will automatically
18 enable a filter upon activation in the state.

19 CERTIFICATION

20 All statements on this form, and on any attachments to
21 this form, are true, complete, and correct to the best of my
22 knowledge and are made in good faith. I have carefully read
23 the instructions to complete this form.

24 Signature of manufacturer's authorized representative.

25 Date.

26 Name and title of manufacturer's authorized representative.

27 *k.* If a lawsuit is commenced by the plaintiff, the plaintiff
28 may include additional violations in the claim if additional
29 violations are disclosed during the discovery process.

30 *l.* A manufacturer shall only be required to satisfy the
31 requirements applicable to the manufacturer under paragraph "*k*"
32 once per device.

33 *m.* (1) Notwithstanding a manufacturer's compliance with
34 paragraph "*i*", the attorney general may file an action under
35 paragraph "*e*".

1 (2) In a civil action filed under this chapter, the court
2 shall reduce the amount of any civil penalty imposed upon a
3 manufacturer for a violation of this chapter to reflect any
4 payments made by the manufacturer under paragraph "j" for the
5 same violation.

6 Sec. 7. NEW SECTION. 710B.7 Penalties.

7 1. A civil penalty ordered by a court under this chapter
8 shall be paid by the manufacturer to the plaintiff as directed
9 by the court. The court shall provide a copy of the court order
10 to the attorney general's office.

11 2. A manufacturer shall pay a penalty paid in accordance
12 with the special compliance procedure in section 710B.6,
13 subsection 3, paragraph "j", directly to the noticing party.

14 3. a. Fifty percent of any penalty paid under this chapter
15 shall be deposited by the attorney general's office into the
16 victim compensation fund established in section 915.94. The
17 penalty amount upon which the fifty percent is calculated shall
18 not include attorney fees or costs awarded by the court.

19 b. Within thirty calendar days of the date of the receipt of
20 a civil penalty pursuant to subsection 1, the plaintiff shall
21 remit the amount required under paragraph "a" and a copy of the
22 court order to the attorney general's office.

23 c. Within thirty calendar days of the date of the receipt of
24 a penalty pursuant to subsection 2, the noticing party shall
25 remit the amount required under paragraph "a" and a copy of the
26 special compliance procedure document under section 710B.6,
27 subsection 3, paragraph "j", to the attorney general's office.

28 4. The attorney general's office shall maintain a log of all
29 notices of alleged violations to which the attorney general's
30 office did not respond with a letter of merit under section
31 710B.6, subsection 3, paragraph "h", subparagraph (2).

32 5. a. The attorney general's office shall maintain a
33 record of all documents and payments submitted to the attorney
34 general's office under subsection 3.

35 b. The attorney general shall annually report to the

1 general assembly in odd-numbered years, beginning in 2025,
2 the following information for the immediately preceding two
3 consecutive calendar years:

4 (1) The number of court orders received by the attorney
5 general's office under subsection 1.

6 (2) The number of notices received by the attorney general's
7 office under subsection 4.

8 (3) The total dollar amount received by the attorney
9 general's office and deposited into the victim compensation
10 fund under subsection 3.

11 Sec. 8. NEW SECTION. 710B.8 Civil penalties — adjustment.

12 1. Beginning July 1, 2025, and at each subsequent five-year
13 interval, the general assembly shall adjust the dollar amount
14 of the civil penalty provided in section 710B.6 based on the
15 change in the annual consumer price index for the most recent
16 five-year period ending on December 31 of the immediately
17 preceding calendar year, and rounded to the nearest five-dollar
18 increment.

19 2. The attorney general shall publish the dollar amount of
20 the adjusted civil penalty under subsection 1, and the date
21 of the next scheduled adjustment, on the attorney general's
22 internet site.

23

EXPLANATION

24 The inclusion of this explanation does not constitute agreement with
25 the explanation's substance by the members of the general assembly.

26 This bill relates to requirements for filters on mobile
27 devices activated in the state, and provides for civil
28 liability for manufacturers of mobile devices for certain
29 violations.

30 "Device" is defined in the bill as a tablet or a smart
31 phone sold in Iowa and manufactured on or after January 1,
32 2024. "Filter" is defined as software installed on a device
33 that is capable of preventing the device from accessing or
34 displaying material that is harmful to minors through the
35 internet, or through any applications owned and controlled by

1 the manufacturer and installed on the device. "Manufacturer",
2 "harmful to minors", and "activate" are also defined in the
3 bill.

4 The bill requires manufacturers to manufacture devices that
5 when activated in this state automatically enable a filter
6 that performs the functions detailed in the bill. The bill
7 provides that a manufacturer of a device is liable to a minor
8 who resides in the state if the device is activated in this
9 state and upon activation does not enable a filter and the
10 minor uses the device to access material that is harmful to
11 minors. Liability does not extend to a manufacturer that
12 makes a good-faith effort to manufacture a device that upon
13 activation automatically enables a generally accepted and
14 commercially reasonable method of filtration in accordance with
15 the requirements in the bill, and with applicable industry
16 standards.

17 The bill provides that a class action may be brought in
18 accordance with the Iowa rules of civil procedure. A court of
19 competent jurisdiction that finds a manufacturer liable must
20 enjoin the manufacturer from committing further violations, and
21 may order civil penalties not to exceed \$5,000 per violation,
22 plus filing fees and reasonable attorney fees, in addition to
23 any other penalty available by law. A manufacturer shall be
24 considered to have committed a separate violation for each
25 device manufactured on or after January 1, 2024. The total
26 civil penalty imposed in a civil action cannot exceed \$50,000.

27 A plaintiff must prove, and a court must find, by clear and
28 convincing evidence, that a manufacturer manufactured a device
29 in violation of the bill on or after January 1, 2024, and
30 prove by a preponderance of the evidence that a minor accessed
31 material harmful to minors on such a device. The court must
32 specify the amount of the civil penalty, court costs, and
33 attorney fees for each violation for which the manufacturer is
34 found liable. In determining the civil penalty for a violation
35 of the bill, the court must consider the factors as detailed

1 in the bill.

2 The attorney general may bring a civil action in the name
3 of the people of this state, and a private individual may file
4 a civil action to establish a manufacturer's liability, after
5 satisfying prerequisite requirements, including a notice to the
6 manufacturer to which the manufacturer must respond as detailed
7 in the bill. The manufacturer's response may include a penalty
8 paid directly to the noticing party by the manufacturer.

9 If a lawsuit is commenced, the plaintiff may include
10 additional violations in the claim if additional violations
11 are disclosed during the discovery process. A civil penalty
12 ordered by a court under the bill must be paid to the plaintiff
13 as directed by the court, and the court must provide a copy
14 of the order to the office of the attorney general. Fifty
15 percent of any penalty paid must be deposited by the office of
16 the attorney general in the victim compensation fund (fund)
17 established in Code section 915.94. The penalty amount upon
18 which the 50 percent is calculated shall not include attorney
19 fees or costs awarded by the court. Within 30 calendar days
20 of the date of the receipt of a civil penalty ordered by the
21 court, the plaintiff must remit 50 percent and a copy of the
22 court order to the office of the attorney general. Within 30
23 calendar days of the date of the receipt of a penalty paid
24 directly to the noticing party by a manufacturer, the noticing
25 party must remit 50 percent and specific documentation as
26 detailed in the bill to the office of the attorney general.

27 The attorney general's office must maintain a log of all
28 notices of alleged violations to which the attorney general's
29 office did not respond with a letter of merit. The office of
30 the attorney general must maintain a record of all documents
31 and payments submitted to the office of the attorney general
32 pursuant to the provisions of the bill. The attorney general
33 shall annually report to the general assembly in odd-numbered
34 years, beginning in 2025, information as specified in the bill
35 for the immediately preceding two consecutive calendar years.

1 Beginning July 1, 2025, and at each subsequent five-year
2 interval, the general assembly must adjust the dollar amount
3 of the civil penalty provided for in the bill, based on the
4 change in the annual consumer price index for the most recent
5 five-year period ending on December 31 of the immediately
6 preceding calendar year, and rounded to the nearest \$5
7 increment. The attorney general shall publish the dollar
8 amount of the adjusted penalty and the date of the next
9 scheduled adjustment on the attorney general's internet site.