

HOUSE BILL 1311

E1, D3, P1

4lr2722
CF 4lr2724

By: **Delegate McComas**

Introduced and read first time: February 9, 2024

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Obscene Material – Device Filters**

3 FOR the purpose of requiring, beginning on a certain date, all devices activated in the State
4 to enable a certain filter to prevent minors from accessing obscene material;
5 prohibiting a certain person from deactivating the filter; providing that a
6 manufacturer of a device and certain persons are subject to civil and criminal
7 liability for certain conduct related to device filters; authorizing the Attorney
8 General to take certain actions against persons who violate this Act; authorizing
9 parents or legal guardians of minors who access obscene material to file a private
10 cause of action against a certain manufacturer; and generally relating to obscene
11 material and device filters.

12 BY repealing and reenacting, without amendments,
13 Article – Criminal Law
14 Section 11–203(a)(5) and (b)
15 Annotated Code of Maryland
16 (2021 Replacement Volume and 2023 Supplement)

17 BY adding to
18 Article – Criminal Law
19 Section 11–203.1
20 Annotated Code of Maryland
21 (2021 Replacement Volume and 2023 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
23 That the Laws of Maryland read as follows:

24 **Article – Criminal Law**

25 11–203.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) (5) "Obscene" means:

2 (i) that the average adult applying contemporary community
3 standards would find that the work, taken as a whole, appeals to the prurient interest;

4 (ii) that the work depicts sexual conduct specified in subsection (b)
5 of this section in a way that is patently offensive to prevailing standards in the adult
6 community as a whole with respect to what is suitable material; and

7 (iii) that the work, taken as a whole, lacks serious artistic,
8 educational, literary, political, or scientific value.

9 (b) (1) A person may not willfully or knowingly display or exhibit to a minor
10 an item:

11 (i) the cover or content of which is principally made up of an obscene
12 description or depiction of illicit sex; or

13 (ii) that consists of an obscene picture of a nude or partially nude
14 figure.

15 (2) A person may not willfully or knowingly engage in the business of
16 displaying, exhibiting, selling, showing, advertising for sale, or distributing to a minor an
17 item:

18 (i) the cover or content of which is principally made up of an obscene
19 description or depiction of illicit sex; or

20 (ii) that consists of an obscene picture of a nude or partially nude
21 figure.

22 (3) If a newsstand or other place of business is frequented by minors, the
23 owner, operator, franchisee, manager, or an employee with managerial responsibility may
24 not openly and knowingly display at the place of business an item whose sale, display,
25 exhibition, showing, or advertising is prohibited by paragraph (2) of this subsection.

26 **11-203.1.**

27 (A) (1) **IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
28 **INDICATED.**

29 (2) **"ACTIVATE" MEANS THE PROCESS OF POWERING ON A DEVICE**
30 **AND ASSOCIATING IT WITH A NEW USER ACCOUNT.**

31 (3) **"DEVICE" MEANS A TABLET OR A SMARTPHONE MANUFACTURED**
32 **ON OR AFTER JANUARY 1, 2025.**

1 (4) “DIGITAL IDENTIFICATION CARD” MEANS A DATA FILE AVAILABLE
2 ON ANY MOBILE DEVICE THAT HAS CONNECTIVITY TO THE INTERNET THROUGH A
3 STATE-APPROVED APPLICATION THAT ALLOWS THE MOBILE DEVICE TO DISPLAY:

4 (I) THE FACE AND BACK OF A LICENSE OR IDENTIFICATION
5 CARD; AND

6 (II) THE CURRENT STATUS OF THE LICENSE OR CARD.

7 (5) “FILTER” MEANS SOFTWARE INSTALLED ON A DEVICE THAT IS
8 CAPABLE OF PREVENTING THE DEVICE FROM ACCESSING OR DISPLAYING OBSCENE
9 MATERIAL THROUGH INTERNET BROWSERS OR SEARCH ENGINES.

10 (6) “INTERNET” MEANS THE GLOBAL INFORMATION SYSTEM THAT:

11 (I) IS LOGICALLY LINKED TOGETHER BY A GLOBALLY UNIQUE
12 ADDRESS SPACE BASED ON THE INTERNET PROTOCOL, OR ITS SUBSEQUENT
13 EXTENSIONS, THAT IS ABLE TO SUPPORT COMMUNICATIONS USING THE
14 TRANSMISSION CONTROL PROTOCOL OR INTERNET PROTOCOL SUITE, OR ITS
15 SUBSEQUENT EXTENSIONS, OR OTHER INTERNET PROTOCOL-COMPATIBLE
16 PROTOCOLS; AND

17 (II) PROVIDES, USES, OR MAKES ACCESSIBLE, EITHER
18 PUBLICLY OR PRIVATELY, HIGH-LEVEL SERVICES LAYERED ON COMMUNICATIONS
19 AND RELATED INFRASTRUCTURE.

20 (7) “MANUFACTURER” MEANS A PERSON OR COMPANY THAT:

21 (I) IS ENGAGED IN THE BUSINESS OF MANUFACTURING A
22 DEVICE;

23 (II) HOLDS THE PATENTS FOR THE DEVICE IT MANUFACTURES;
24 AND

25 (III) HAS A COMMERCIAL DESIGNATED REGISTERED AGENT IN
26 THE STATE.

27 (8) “MINOR” MEANS AN INDIVIDUAL UNDER THE AGE OF 18 YEARS
28 WHO IS NOT:

29 (I) EMANCIPATED;

1 (II) MARRIED; OR

2 (III) A MEMBER OF THE ARMED FORCES OF THE UNITED STATES.

3 (9) "OBSCENE" HAS THE MEANING STATED IN § 11-203 OF THIS
4 SUBTITLE.

5 (10) "REASONABLE AGE VERIFICATION" MEANS VERIFYING THAT THE
6 PARENT OR LEGAL GUARDIAN SEEKING TO ACCESS OBSCENE MATERIAL IS AT LEAST
7 18 YEARS OLD BY USING ANY OF THE FOLLOWING METHODS:

8 (I) USE OF A DIGITAL IDENTIFICATION CARD;

9 (II) VERIFICATION THROUGH AN INDEPENDENT, THIRD-PARTY
10 AGE VERIFICATION SERVICE THAT COMPARES THE PERSONAL INFORMATION
11 ENTERED BY THE INDIVIDUAL WHO IS SEEKING ACCESS TO THE MATERIAL TO THAT
12 WHICH IS AVAILABLE FROM A COMMERCIALY AVAILABLE DATABASE, OR
13 AGGREGATE OF DATABASES THAT IS REGULARLY USED BY BUSINESSES FOR THE
14 PURPOSE OF AGE AND IDENTITY VERIFICATION;

15 (III) USE OF BIOMETRIC AGE APPROXIMATION TECHNIQUES
16 THAT ESTIMATE AGE BASED ON A USER'S VOICE OR FACE; OR

17 (IV) ANY COMMERCIALY REASONABLE METHOD THAT RELIES
18 ON PUBLIC OR PRIVATE TRANSACTIONAL DATA TO VERIFY THE AGE OF THE PERSON
19 ATTEMPTING TO ACCESS THE MATERIAL.

20 (11) "SMARTPHONE" MEANS AN ELECTRONIC DEVICE THAT COMBINES
21 A CELL PHONE WITH A HAND-HELD COMPUTER, TYPICALLY OFFERING INTERNET
22 ACCESS THROUGH A BROWSER OR SEARCH ENGINE, DATA STORAGE, TEXT, AND
23 E-MAIL CAPABILITIES.

24 (12) "TABLET" MEANS AN INTERNET-READY DEVICE EQUIPPED WITH:

25 (I) AN OPERATING SYSTEM, TOUCHSCREEN DISPLAY, AND
26 RECHARGEABLE BATTERY; AND

27 (II) THE ABILITY TO SUPPORT ACCESS TO A CELLULAR
28 NETWORK.

29 (B) BEGINNING ON JANUARY 1, 2025, ALL DEVICES ACTIVATED IN THE
30 STATE SHALL:

1 **(1) DETERMINE THE AGE OF THE USER DURING ACTIVATION AND**
2 **ACCOUNT SET-UP;**

3 **(2) ENABLE AN EXISTING FILTER FOR MINOR USERS, WHEREIN THE**
4 **FILTER SHALL BE SET TO THE ON POSITION WHEN THE USER IS A MINOR;**

5 **(3) PREVENT A MINOR FROM ACCESSING OBSCENE MATERIAL**
6 **THROUGH ALL INTERNET BROWSERS OR SEARCH ENGINES ON THE DEVICE VIA:**

7 **(I) MOBILE DATA NETWORKS;**

8 **(II) WIRED INTERNET NETWORKS; AND**

9 **(III) WIRELESS INTERNET NETWORKS;**

10 **(4) NOTIFY THE MINOR USER OF THE DEVICE WHEN THE FILTER**
11 **BLOCKS THE DEVICE FROM ACCESSING A WEBSITE;**

12 **(5) ALLOW PARENTS OR LEGAL GUARDIANS OF MINOR USERS TO**
13 **DISABLE THE FILTER OR UNBLOCK A WEBSITE AFTER PROVIDING REASONABLE AGE**
14 **VERIFICATION; AND**

15 **(6) ALLOW PARENTS OR LEGAL GUARDIANS OF MINOR USERS TO**
16 **RE-ACTIVATE THE FILTER AT ANY TIME.**

17 **(C) A PERSON, OTHER THAN A PARENT OR LEGAL GUARDIAN, MAY NOT**
18 **DEACTIVATE OR UNINSTALL THE FILTER REQUIRED UNDER SUBSECTION (B) OF THIS**
19 **SECTION FOR A MINOR UNDER THE CARE AND CONTROL OF THE PARENT OR**
20 **GUARDIAN.**

21 **(D) (1) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION,**
22 **BEGINNING JANUARY 1, 2025, A MANUFACTURER OF A DEVICE SHALL BE SUBJECT**
23 **TO CIVIL AND CRIMINAL LIABILITY IF:**

24 **(I) A DEVICE IS ACTIVATED IN THE STATE;**

25 **(II) THE DEVICE DOES NOT, ON ACTIVATION, ENABLE A FILTER**
26 **THAT COMPLIES WITH THE REQUIREMENTS UNDER SUBSECTION (B) OF THIS**
27 **SECTION; AND**

28 **(III) A MINOR ACCESSES OBSCENE MATERIAL ON THE DEVICE.**

1 **(2) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, THIS**
2 **SECTION DOES NOT APPLY TO A MANUFACTURER THAT MAKES A GOOD FAITH**
3 **EFFORT TO PROVIDE A DEVICE THAT, ON ACTIVATION OF THE DEVICE IN THE STATE,**
4 **AUTOMATICALLY ENABLES A GENERALLY ACCEPTED AND COMMERCIALY**
5 **REASONABLE FILTER THAT BLOCKS OBSCENE MATERIAL ON ALL INTERNET**
6 **BROWSERS OR SEARCH ENGINES ACCESSED ON THE DEVICE IN ACCORDANCE WITH**
7 **THIS SECTION.**

8 **(3) THIS SECTION MAY NOT BE CONSTRUED TO CREATE A CAUSE OF**
9 **ACTION AGAINST THE RETAILER OF A DEVICE.**

10 **(E) (1) EXCEPT FOR A MINOR'S PARENT OR LEGAL GUARDIAN, ANY**
11 **PERSON IS CIVILLY LIABLE FOR DISABLING THE FILTER ON A DEVICE IN THE**
12 **POSSESSION OF THE MINOR IF THE MINOR ACCESSES OBSCENE MATERIAL.**

13 **(2) (I) BEGINNING ON JANUARY 1, 2025, EXCEPT FOR A PARENT**
14 **OR LEGAL GUARDIAN, A PERSON MAY NOT DISABLE THE FILTER ON A DEVICE IN THE**
15 **POSSESSION OF A MINOR.**

16 **(II) A PERSON WHO VIOLATES THIS PARAGRAPH IS SUBJECT TO:**

17 **1. FOR A FIRST OFFENSE, A FINE NOT EXCEEDING**
18 **\$5,000;**

19 **2. FOR A SECOND OR SUBSEQUENT OFFENSE,**
20 **IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING \$50,000.**

21 **(F) (1) IF THE ATTORNEY GENERAL HAS REASON TO BELIEVE THAT A**
22 **PERSON VIOLATED OR IS VIOLATING THIS SECTION, THE ATTORNEY GENERAL,**
23 **ACTING IN PUBLIC INTEREST, MAY FILE A CIVIL CAUSE OF ACTION IN THE NAME OF**
24 **THE STATE AGAINST THE PERSON TO:**

25 **(I) ENJOIN ANY ACTION THAT CONSTITUTES A VIOLATION OF**
26 **THIS SECTION BY THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER OR**
27 **PRELIMINARY OR PERMANENT INJUNCTION;**

28 **(II) RECOVER FROM THE ALLEGED VIOLATOR A CIVIL PENALTY**
29 **NOT EXCEEDING \$5,000 PER VIOLATION, AND NOT EXCEEDING \$50,000 IN**
30 **AGGREGATE, AS DETERMINED BY THE COURT;**

31 **(III) RECOVER FROM THE ALLEGED VIOLATOR THE ATTORNEY**
32 **GENERAL'S REASONABLE EXPENSES, INVESTIGATIVE COSTS, AND ATTORNEY'S**
33 **FEES; OR**

1 (IV) OBTAIN OTHER APPROPRIATE RELIEF.

2 (2) THE ATTORNEY GENERAL MAY ISSUE SUBPOENAS TO ANY
3 PERSON AND CONDUCT HEARINGS IN AID OF ANY INVESTIGATION OR INQUIRY IN
4 ADDITION TO OTHER POWERS CONFERRED ON THE ATTORNEY GENERAL BY THIS
5 SECTION.

6 (3) THE ATTORNEY GENERAL MAY SEEK THE REVOCATION OF ANY
7 LICENSE OR CERTIFICATE AUTHORIZING A MANUFACTURER TO ENGAGE IN
8 BUSINESS IN THE STATE.

9 (4) FOR PURPOSES OF ASSESSING A PENALTY UNDER THIS SECTION,
10 A MANUFACTURER IS CONSIDERED TO HAVE COMMITTED A SEPARATE VIOLATION
11 FOR EACH DEVICE MANUFACTURED ON OR AFTER JANUARY 1, 2025, THAT VIOLATES
12 THE PROVISIONS OF THIS SECTION.

13 (G) (1) ANY PARENT OR LEGAL GUARDIAN OF A MINOR WHO ACCESSES
14 OBSCENE MATERIAL IN VIOLATION OF THIS SECTION MAY FILE A PRIVATE CAUSE OF
15 ACTION IN A COURT OF COMPETENT JURISDICTION AGAINST A MANUFACTURER WHO
16 FAILS TO COMPLY WITH THIS SECTION.

17 (2) A PREVAILING PLAINTIFF MAY RECOVER:

18 (I) ACTUAL DAMAGES;

19 (II) IN THE DISCRETION OF THE COURT WHERE ACTUAL
20 DAMAGES ARE DIFFICULT TO ASCERTAIN DUE TO THE NATURE OF THE INJURY,
21 LIQUIDATED DAMAGES IN THE AMOUNT OF \$50,000 FOR EACH VIOLATION;

22 (III) WHEN THE VIOLATION IS FOUND TO BE KNOWING AND
23 WILLFUL, PUNITIVE DAMAGES IN AN AMOUNT DETERMINED BY THE COURT;

24 (IV) NOMINAL DAMAGES;

25 (V) OTHER RELIEF AS THE COURT DEEMS APPROPRIATE,
26 INCLUDING REASONABLE COURT COSTS AND EXPENSES; AND

27 (VI) REASONABLE ATTORNEY'S FEES.

28 (3) THIS SECTION MAY NOT BE CONSTRUED TO PRECLUDE THE
29 BRINGING OF A CLASS ACTION LAWSUIT AGAINST A MANUFACTURER WHEN ITS
30 CONDUCT IN VIOLATION OF THIS SECTION IS KNOWING AND WILLFUL.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2024.