



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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This fiscal impact statement is produced in compliance with the South Carolina Code of Laws and House and Senate rules. The focus of the analysis is on governmental expenditure and revenue impacts and may not provide a comprehensive summary of the legislation.

Bill Number: S. 0591 Introduced on March 2, 2023
Author: Shealy
Subject: Children's Default to Safety Act
Requestor: Senate Family and Veterans Services
RFA Analyst(s): Gardner
Impact Date: March 21, 2023

Fiscal Impact Summary

This bill creates Article 3 under the South Carolina Children's Code and enacts the Youth Protection from Internet Pornography Act, which adds provisions to ensure the protection of children from unfiltered devices, such as smartphones and tablets, and creates a number of new offenses.

Judicial, the Office of the Attorney General, the Commission on Prosecution Coordination, and Commission on Indigent Defense report that the bill will have no expenditure impact, as all agencies intend to manage any increase in caseloads resulting from implementation of the bill using existing staff and appropriations.

This may result in an increase in the fines and fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. Therefore, the Revenue and Fiscal Affairs Office (RFA) anticipates this bill may result in an undetermined impact to General Fund revenue, Other Funds revenue, and local revenue due to the increase in fines and fees collections in court.

Explanation of Fiscal Impact

Introduced on March 2, 2023

State Expenditure

This bill creates Article 3 under the South Carolina Children's Code and enacts the Youth Protection from Internet Pornography Act, which adds provisions to ensure the protection of children from unfiltered devices and creates a number of new offenses.

Beginning January 1, 2024, manufacturers of smart phones and tablets must ensure these devices automatically enable and passcode protect a filter preventing a user from accessing or downloading material that is harmful to minors and prevents a user without the passcode from deactivating or modifying the filter. A manufacturer that is non-compliant with these provisions is subject to civil and criminal liability if one of its devices fails to enable the required pornography filter and results in a minor accessing harmful material.

The bill also grants certain powers to the Attorney General, who may issue a temporary restraining order or a preliminary or permanent injunction against a person who violates these provisions. Convictions for such an offense are punishable by a civil penalty of up to \$5,000 per violation, not to exceed a total of \$50,000 in aggregate, and allow the Attorney General to assess from the defendant reasonable expenses, investigative costs, and attorney's fees. The bill also authorizes the Attorney General to issue subpoenas to any person, conduct hearings, and seek revocation of a manufacturer's business license or certificate. Manufacturers found guilty of violating the provisions of this section will be considered to have committed a separate violation for each device manufactured on or after January 1, 2024.

In addition, the bill enables a parent or legal guardian of a minor who accesses harmful smart phone or tablet content to bring a private cause of action against a non-compliant manufacturer or against any person who is not the child's parent or guardian and has provided a passcode to remove a device's filter. Such parent or legal guardian may recover actual damages or liquidated damages in the amount of \$50,000 for each violation; punitive damages when the violation is found to be knowing and willful; nominal damages; attorney's fees; and other relief the court deems appropriate, such as court costs and expenses. Class action lawsuits may be brought against a non-compliant manufacturer for knowing and willful violations.

The bill also creates the misdemeanor offense of providing the passcode required to remove a pornography filter on a smart phone or tablet when the device is in the possession of a minor. This offense becomes effective January 1, 2024, and is punishable by a fine not to exceed \$5,000 for a first offense and a fine not to exceed \$50,000 for a second offense. For repeat offenders, the court may order a term of imprisonment not to exceed one year.

Further, the bill makes it unlawful for a person over eighteen years of age to knowingly and willfully provide a passcode to remove the pornography filter on an internet accessible device in the possession of a minor unless he is the minor's parent or legal guardian.

Since this bill creates new offenses, there are no data available to estimate the number of cases that may be heard by the courts within the next fiscal year. However, Judicial, the Office of the Attorney General, the Commission on Prosecution Coordination, and Commission on Indigent Defense plan to use existing staff and appropriations to manage any increase in caseloads that may occur. Therefore, the implementation of this bill will have no expenditure impact.

State Revenue

This bill creates a number of new offenses punishable by fines, which are distributed in part to the General Fund and Other Funds. However, the number of convictions for these offenses that may occur within the next fiscal year is unknown. Therefore, RFA anticipates that implementation of the bill will result in an undetermined increase of General Fund and Other Funds revenue.

Local Expenditure

This bill creates a number of new offenses punishable by fines, which are distributed in part to local and municipal government funds. However, the number of convictions for these offenses

that may occur within the next fiscal year is unknown. Therefore, RFA anticipates that implementation of the bill will result in an undetermined increase of local and municipal government funds revenue.

Local Revenue

N/A



Frank A. Rainwater, Executive Director