

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

A Bill

SENATE BILL 66

5 By: Senators Dees, J. Petty
6

For An Act To Be Entitled

8 AN ACT CONCERNING MATERIAL HARMFUL TO MINORS; TO
9 CREATE THE PROTECTION OF MINORS FROM DISTRIBUTION OF
10 HARMFUL MATERIAL ACT; TO ESTABLISH LIABILITY FOR THE
11 PUBLICATION OR DISTRIBUTION OF MATERIAL HARMFUL TO
12 MINORS ON THE INTERNET; TO IMPOSE DUTIES ON
13 PUBLISHERS AND DISTRIBUTORS OF MATERIAL HARMFUL TO
14 MINORS; TO REQUIRE REASONABLE AGE VERIFICATION; TO
15 PROVIDE FOR INDIVIDUAL RIGHTS OF ACTION; TO ALLOW FOR
16 ATTORNEY'S FEES, COURT COSTS, AND PUNITIVE DAMAGES;
17 AND FOR OTHER PURPOSES.
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Subtitle

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21 TO CREATE THE PROTECTION OF MINORS FROM
22 DISTRIBUTION OF HARMFUL MATERIAL ACT; TO
23 ESTABLISH LIABILITY FOR THE PUBLICATION
24 OR DISTRIBUTION OF MATERIAL HARMFUL TO
25 MINORS ON THE INTERNET; AND TO REQUIRE
26 REASONABLE AGE VERIFICATION.
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29 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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31 SECTION 1. Arkansas Code Title 4, Chapter 88, is amended to add an
32 additional subchapter to read as follows:
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34 Subchapter 11 – Protection of Minors from Distribution of Harmful Material

35 Act
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1 4-88-1101. Title.

2 This subchapter shall be known and may be cited as the "Protection of
3 Minors from Distribution of Harmful Material Act".

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5 4-88-1102. Legislative findings and intent.

6 (a) The General Assembly finds that:

7 (1) Pornography is creating a public health crisis and is a
8 corroding influence on minors;

9 (2) Due to advances in technology, the widespread availability
10 of the internet, and limited age verification requirements, minors are
11 exposed to pornography at too early of an age;

12 (3) Pornography contributes to the hyper-sexualization of
13 minors; and

14 (4) Pornography may:

15 (A) Lead to:

16 (i) Low self-esteem;

17 (ii) Body image disorders;

18 (iii) An increase in problematic sexual activity at
19 younger ages;

20 (iv) Increased desire among minors to engage in
21 risky sexual behavior; and

22 (v) Difficulty in forming or maintaining positive,
23 intimate relationships;

24 (B) Impact brain development and function;

25 (C) Contribute to emotional and medical illnesses;

26 (D) Shape deviant sexual arousal; and

27 (E) Promote problematic or harmful sexual behaviors and
28 addiction.

29 (b) It is the intent of the General Assembly to provide a civil remedy
30 for damages against commercial entities that distribute material harmful to
31 minors.

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33 4-88-1103. Definitions.

34 As used in this subchapter:

35 (1) "Commercial entity" means a corporation, limited liability
36 company, partnership, limited partnership, sole proprietorship, or other

1 legally recognized entity;

2 (2) "Digitized identification card" means a data file available
3 on a mobile device that has connectivity to the internet through a state-
4 approved application that allows the mobile device to download the data file
5 from the Office of Driver Services that contains all of the data elements
6 visible on the face and back of a license or identification card and displays
7 the current status of the license or identification card, including valid,
8 expired, cancelled, suspended, revoked, active, or inactive;

9 (3) "Distribute" means to issue, sell, give, provide, deliver,
10 transfer, transmute, circulate, or disseminate by any means;

11 (4) "Internet" means the international computer network of both
12 federal and nonfederal interoperable packet switched data networks;

13 (5) "Material harmful to minors" means:

14 (A) Any material that the average person, applying
15 contemporary community standards, would find, taking the material as a whole
16 and with respect to minors, is designed to appeal to, or is designed to
17 pander to, prurient interest;

18 (B) Any of the following material that exploits, is
19 devoted to, or principally consists of descriptions of actual, simulated, or
20 animated displays or depictions of any of the following, in a manner patently
21 offensive with respect to minors:

22 (i) Nipple of the female breast, pubic hair, anus,
23 vulva, or genitals;

24 (ii) Touching, caressing, or fondling of nipples,
25 breasts, buttocks, the anus, or genitals; or

26 (iii) Sexual intercourse, masturbation, sodomy,
27 bestiality, oral copulation, flagellation, excretory functions, exhibitions
28 of sexual acts, or any other sexual act; or

29 (C) The material taken as a whole lacks serious literary,
30 artistic, political, or scientific value for minors;

31 (6) "Minor" means an individual under eighteen (18) years of
32 age;

33 (7) "News-gathering organization" means:

34 (A) An employee of a newspaper, news publication, or news
35 source, printed or published on an online or mobile platform, of current news
36 and public interest, while operating as an employee of a news-gathering

1 organization, who can provide documentation of the employment with the
2 newspaper, news publication, or news source; or

3 (B) An employee of a radio broadcast station, television
4 broadcast station, cable television operator, or wire service while operating
5 as an employee of a news-gathering organization, who can provide
6 documentation of the employment;

7 (8) "Publish" means to communicate or make information available
8 to another person or entity on a publicly available website;

9 (9) "Reasonable age verification" means to confirm that a person
10 seeking to access published material that may have a substantial portion of
11 material that may be harmful to minors is at least eighteen (18) years of
12 age;

13 (10) "Substantial portion" means more than twenty-three and one-
14 third percent (23.33%) of total material on a website that may be material
15 harmful to minors; and

16 (11)(A) "Transactional data" means a sequence of information
17 that documents an exchange, agreement, or transfer between an individual,
18 commercial entity, or a third party used for the purpose of satisfying a
19 request or event.

20 (B) "Transactional data" includes without limitation
21 records from mortgage, education, and employment entities.

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23 4-88-1104. Reasonable age verification methods.

24 (a) A commercial entity shall use a reasonable age verification method
25 before allowing access to a website that contains a substantial portion of
26 material that may be harmful to minors.

27 (b) Reasonable age verification methods include:

28 (1) Providing a digitized identification card; and

29 (2) Requiring an individual attempting to access the material to
30 comply with a commercial age verification system that verifies at least one
31 (1) of the following:

32 (A) Government-issued identification; or

33 (B) Any commercially reasonable method that relies on
34 public or private transactional data to verify that the individual attempting
35 to access the material is at least eighteen (18) years of age or older.

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1 4-88-1105. Liability for publishers and distributors of material
2 harmful to minors.

3 (a)(1) A commercial entity that knowingly and intentionally publishes
4 or distributes material that may be harmful to minors on the internet from a
5 website that contains a substantial portion of material that may be harmful
6 to minors is liable if the commercial entity fails to perform reasonable age
7 verification to verify the age of the individual attempting to access the
8 material.

9 (2) If a commercial entity or third party performs a reasonable
10 age verification, the commercial entity shall not retain any identifying
11 information of the individual after access to the material has been granted.

12 (b) A commercial entity that violates this subchapter is liable to an
13 individual for damages resulting from a minor accessing the material harmful
14 to minors, including court costs and reasonable attorney's fees as ordered by
15 the court.

16 (c) A commercial entity that is found to have knowingly retained
17 identifying information of an individual after access to the material has
18 been granted is liable to the individual for damages resulting from retaining
19 the identifying information, including court costs and reasonable attorney's
20 fees as ordered by the court.

21 (d) This section does not:

22 (1) Apply to a news or public interest broadcast, website video,
23 report, or event; or

24 (2) Affect the rights of a news-gathering organization.

25 (e) An internet service provider, or any of its affiliates or
26 subsidiaries, search engines, or cloud service providers shall not violate
27 this subchapter solely by providing access or connection to or from a website
28 or other information or content on the internet or a facility, system, or
29 network that is not under that internet service provider's control, including
30 transmission, downloading, intermediate storage, access software, or other
31 service that provides access or connectivity, to the extent the internet
32 service provider is not responsible for the creation of the content or the
33 communication that constitutes material that may be harmful to minors.

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