

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas As Engrossed: S1/30/23 H2/9/23 H3/2/23 H3/7/23

94th General Assembly

A Bill

Regular Session, 2023

SENATE BILL 66

By: Senators Dees, J. Petty, J. Bryant

By: Representatives McAlindon, Bentley, K. Brown, C. Cooper, Crawford, Haak, Long, Lundstrum, McGrew, Rose

For An Act To Be Entitled

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

Subtitle

TO CREATE THE PROTECTION OF MINORS FROM DISTRIBUTION OF HARMFUL MATERIAL ACT; TO ESTABLISH LIABILITY FOR THE PUBLICATION OR DISTRIBUTION OF MATERIAL HARMFUL TO MINORS ON THE INTERNET; AND TO REQUIRE REASONABLE AGE VERIFICATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 4, Chapter 88, is amended to add an additional subchapter to read as follows:

Subchapter 11 – Protection of Minors from Distribution of Harmful Material



Act

4-88-1101. Title.

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

4-88-1102. Legislative findings and intent.

(a) The General Assembly finds that:

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

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

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

(4) Pornography may:

(A) Lead to:

(i) Low self-esteem;

(ii) Body image disorders;

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

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

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

(B) Impact brain development and function;

(C) Contribute to emotional and medical illnesses;

(D) Shape deviant sexual arousal; and

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

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

4-88-1103. Definitions.

As used in this subchapter:

(1)(A) "Commercial entity" means a corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legally recognized entity.

(B) "Commercial entity" includes a third party vendor;

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

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

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

(5) "Material harmful to minors" means:

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

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

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

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

(iii) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory functions, exhibitions of a sexual act and any other sexual act; and

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

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

(7) "News-gathering organization" means:

(A) An employee of a newspaper, news publication, or news source, printed or published on an online or mobile platform, of current news and public interest, while operating as an employee of a news-gathering organization, who can provide documentation of the employment with the newspaper, news publication, or news source; or

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

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

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

(10) "Substantial portion" means more than thirty-three and thirty-three hundredths percent (33.33%) of total material on a website which meets the definition of material that is harmful to minors as defined by this section; and

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

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

4-88-1104. Reasonable age verification methods.

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

(b) Reasonable age verification methods under subsection (a) of this section include providing:

(1) A digitized identification card, including a digital copy of a driver's license under § 27-16-601 et seq.;

(2) Government-issued identification; or

(3) Any commercially reasonable age verification method that holds an Identity Assurance Level 2 (IAL2).

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

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

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

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

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

(d) This section does not:

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

(2) Affect the rights of a news-gathering organization; or

(3) Apply to cloud service providers.

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

/s/Dees