

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

2 94th General Assembly

A Bill

3 Regular Session, 2023

SENATE BILL 66

4

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

6 *By: Representatives McAlindon, Bentley, K. Brown, C. Cooper, Crawford, Haak, Long, Lundstrum,*

7 *McGrew, Rose*

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For An Act To Be Entitled

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

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Subtitle

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

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

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

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36 Subchapter 11 – Protection of Minors from Distribution of Harmful Material



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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26 4-88-1104. Reasonable age verification methods.

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

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

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

34 (2) Government-issued identification; or

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

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

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

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

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

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

23 (d) This section does not:

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

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

27 (3) Apply to cloud service providers.

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

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/s/Dees

APPROVED: 4/11/23