

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 236

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[Introduced January 9, 2020; referred
to the Select Committee on Children and Families;
and then to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §61-3F-1, §61-3F-2, and §61-3F-3, all relating to online privacy protection for
3 children; prohibiting the marketing or advertising of certain products or services to minors;
4 and requiring operators of website, online services or applications.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3F. ONLINE PRIVACY PROTECTION FOR CHILDREN.

§61-3F-1. Definitions.

1 The following definitions apply throughout this article:

2 “Internet Website, online service, online application, or mobile application directed to
3 minors” mean an Internet Website, online service, online application, or mobile application, or a
4 portion thereof, that is created for the purpose of reaching an audience that is predominately
5 comprised of minors, and is not intended for a more general audience comprised of adults:

6 Provided, That, an Internet Website, online service, online application, or mobile application, or a
7 portion thereof, may not be deemed to be directed at minors solely because it refers or links to an
8 Internet Website, online service, online application, or mobile application directed to minors by
9 using information location tools, including a directory, index, reference, pointer, or hypertext link.

10 “Marketing or advertising” means, in exchange for monetary compensation, to make a
11 communication to one or more individuals, or to arrange for the dissemination to the public of a
12 communication, about a product or service the primary purpose of which is to encourage
13 recipients of the communication to purchase or use the product or service.

14 “Minor” means a natural person under 18 years of age who resides in this state.

15 “Operator” means any person or entity that owns an Internet Website, online service,
16 online application, or mobile application. It does not include any third party that operates, hosts,
17 or manages, but does not own, an Internet Website, online service, online application, or mobile
18 application on the owner’s behalf or processes information on the owner’s behalf.

19 “Posted” means content or information that can be accessed by a user in addition to the

20 minor who posted the content or information, whether the user is a registered user or not, of the
21 Internet Website, online service, online application, or mobile application where the content or
22 information is posted.

§61-3F-2. Market or advertise a product or a service to minors.

1 (a) An operator of an Internet Website, online service, online application, or mobile
2 application directed to minors may not market or advertise a product or a service described in
3 subsection (f) of this section on its Internet Website, online service, online application, or mobile
4 application directed to minors.

5 (b) An operator of an Internet Website, online service, online application, or mobile
6 application:

7 (1) May not market or advertise a product or service described in subsection (f) of this
8 section to a minor who the operator has actual knowledge is using its Internet Website, online
9 service, online application, or mobile application and is a minor, if the marketing or advertising is
10 specifically directed to that minor based upon information specific to that minor, including, but not
11 limited to, the minor's profile, activity, address, or location sufficient to establish contact with a
12 minor, and excluding Internet Protocol (IP) address and product identification numbers for the
13 operation of a service.

14 (2) Shall be deemed to be in compliance with subdivision (1) if the operator takes
15 reasonable actions in good faith designed to avoid marketing or advertising under circumstances
16 prohibited under subdivision (1).

17 (c) An operator of an Internet Website, online service, online application, or mobile
18 application directed to minors or who has actual knowledge that a minor is using its Internet
19 Website, online service, online application, or mobile application, shall not knowingly use,
20 disclose, compile, or allow a third party to use, disclose, or compile, the personal information of a
21 minor with actual knowledge that the use, disclosure, or compilation is for the purpose of
22 marketing or advertising products or services to that minor for a product described in subsection

23 (f) of this section.

24 (d) This section may not be construed to require an operator of an Internet Website, online
25 service, online application, or mobile application to collect or retain age information about users.

26 (e) (1) With respect to marketing or advertising provided by an advertising service, the
27 operator of an Internet Website, online service, online application, or mobile application directed
28 to minors shall be deemed to be in compliance with subsection (a) if the operator notifies the
29 advertising service, in the manner required by the advertising service, that the site, service, or
30 application is directed to minors.

31 (2) If an advertising service is notified, in the manner required by the advertising service,
32 that an Internet Website, online service, online application, or mobile application is directed to
33 minors pursuant to subdivision (1), the advertising service may not market or advertise a product
34 or service on the operator's Internet Website, online service, online application, or mobile
35 application that is described in subsection (f) of this section.

36 (f) The marketing and advertising restrictions described in subsections (a) and (b) shall
37 apply to the following products and services as they are defined under state law:

38 (1) Alcoholic beverages;

39 (2) Aerosol container of paint that is capable of defacing property;

40 (3) Etching cream that is capable of defacing property;

41 (4) Any tobacco, cigarette, or cigarette papers, or blunt wraps, or any other preparation of
42 tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of
43 tobacco, products prepared from tobacco, or any controlled substance;

44 (5) Any cannabis, cannabis product, cannabis business, or any instrument or
45 paraphernalia that is designed for the smoking or ingestion of cannabis or cannabis products.

46 (6) Fireworks;

47 (7) Tanning in an ultraviolet tanning device;

48 (8) Dietary supplement products containing ephedrine group alkaloids;

- 49 (9) Tickets or shares in a lottery game;
- 50 (10) Salvia divinorum or Salvinorin A, (a psychoactive plant from the mint family) or any
- 51 substance or material containing Salvia divinorum or Salvinorin A;
- 52 (11) Body branding;
- 53 (12) Permanent tattoo;
- 54 (13) Drug paraphernalia;
- 55 (14) Electronic cigarette or electronic nicotine delivery system;
- 56 (15) Obscene matter; or
- 57 (16) Dangerous weapons.

58 (g) The marketing and advertising restrictions described in subsection (a), (b), and (c) do
 59 not apply to the incidental placement of products or services embedded in content if the content
 60 is not distributed by or at the direction of the operator primarily for the purposes of marketing and
 61 advertising of the products or services described in subsection (f).

§61-3F-3. Requirement for operators of website, online services or applications.

1 (a) An operator of an Internet Website, online service, online application, or mobile
 2 application directed to minors or an operator of an Internet Website, online service, online
 3 application, or mobile application that has actual knowledge that a minor is using its Internet
 4 Website, online service, online application, or mobile application shall do all of the following:

5 (1) Permit a minor who is a registered user of the operator’s Internet Website, online
 6 service, online application, or mobile application to remove or, if the operator prefers, to request
 7 and obtain removal of, content or information posted on the operator’s Internet Website, online
 8 service, online application, or mobile application by the user.

9 (2) Provide notice to a minor who is a registered user of the operator’s Internet Website,
 10 online service, online application, or mobile application that the minor may remove or, if the
 11 operator prefers, request and obtain removal of, content or information posted on the operator’s
 12 Internet Website, online service, online application, or mobile application by the registered user.

13 (3) Provide clear instructions to a minor who is a registered user of the operator's Internet
14 Website, online service, online application, or mobile application on how the user may remove or,
15 if the operator prefers, request and obtain the removal of content or information posted on the
16 operator's Internet Website, online service, online application, or mobile application.

17 (4) Provide notice to a minor who is a registered user of the operator's Internet Website,
18 online service, online application, or mobile application that the removal described under
19 subdivision (1) does not ensure complete or comprehensive removal of the content or information
20 posted on the operator's Internet Website, online service, online application, or mobile application
21 by the registered user.

22 (b) An operator or a third party is not required to erase or otherwise eliminate, or to enable
23 erasure or elimination of, content or information in any of the following circumstances:

24 (1) Any other provision of federal or state law requires the operator or third party to
25 maintain the content or information.

26 (2) The content or information was stored on or posted to the operator's Internet Website,
27 online service, online application, or mobile application by a third party other than the minor, who
28 is a registered user, including any content or information posted by the registered user that was
29 stored, republished, or reposted by the third party.

30 (3) The operator anonymizes the content or information posted by the minor who is a
31 registered user, so that the minor who is a registered user cannot be individually identified.

32 (4) The minor does not follow the instructions provided to the minor pursuant to subdivision
33 (3) of subsection (a) on how the registered user may request and obtain the removal of content
34 or information posted on the operator's Internet Website, online service, online application, or
35 mobile application by the registered user.

36 (5) The minor has received compensation or other consideration for providing the content.

37 (c) This section may not be construed to limit the authority of a law-enforcement agency
38 to obtain any content or information from an operator as authorized by law or pursuant to an order

39 of a court of competent jurisdiction.

40 (d) An operator shall be deemed compliant with this section if:

41 (1) It renders the content or information posted by the minor user no longer visible to other
42 users of the service and the public even if the content or information remains on the operator's
43 servers in some form.

44 (2) Despite making the original posting by the minor user invisible, it remains visible
45 because a third party has copied the posting or reposted the content or information posted by the
46 minor.

47 (e) This section may not be construed to require an operator of an Internet Website, online
48 service, online application, or mobile application to collect age information about users.

49 (a) An operator of an Internet Website, online service, online application, or mobile
50 application directed to minors or an operator of an Internet Website, online service, online
51 application, or mobile application that has actual knowledge that a minor is using its Internet
52 Website, online service, online application, or mobile application shall do all of the following:

53 (1) Permit a minor who is a registered user of the operator's Internet Website, online
54 service, online application, or mobile application to remove or, if the operator prefers, to request
55 and obtain removal of, content or information posted on the operator's Internet Website, online
56 service, online application, or mobile application by the user.

57 (2) Provide notice to a minor who is a registered user of the operator's Internet Website,
58 online service, online application, or mobile application that the minor may remove or, if the
59 operator prefers, request and obtain removal of, content or information posted on the operator's
60 Internet Website, online service, online application, or mobile application by the registered user.

61 (3) Provide clear instructions to a minor who is a registered user of the operator's Internet
62 Website, online service, online application, or mobile application on how the user may remove or,
63 if the operator prefers, request and obtain the removal of content or information posted on the
64 operator's Internet Website, online service, online application, or mobile application.

65 (4) Provide notice to a minor who is a registered user of the operator's Internet Website,
66 online service, online application, or mobile application that the removal described under
67 subdivision (1) does not ensure complete or comprehensive removal of the content or information
68 posted on the operator's Internet Website, online service, online application, or mobile application
69 by the registered user.

70 (b) An operator or a third party is not required to erase or otherwise eliminate, or to enable
71 erasure or elimination of, content or information in any of the following circumstances:

72 (1) Any other provision of federal or state law requires the operator or third party to
73 maintain the content or information.

74 (2) The content or information was stored on or posted to the operator's Internet Website,
75 online service, online application, or mobile application by a third party other than the minor, who
76 is a registered user, including any content or information posted by the registered user that was
77 stored, republished, or reposted by the third party.

78 (3) The operator anonymizes the content or information posted by the minor who is a
79 registered user, so that the minor who is a registered user cannot be individually identified.

80 (4) The minor does not follow the instructions provided to the minor pursuant to subdivision
81 (3) of subsection (a) on how the registered user may request and obtain the removal of content
82 or information posted on the operator's Internet Website, online service, online application, or
83 mobile application by the registered user.

84 (5) The minor has received compensation or other consideration for providing the content.

85 (c) This section may not be construed to limit the authority of a law-enforcement agency
86 to obtain any content or information from an operator as authorized by law or pursuant to an order
87 of a court of competent jurisdiction.

88 (d) An operator shall be deemed compliant with this section if:

89 (1) It renders the content or information posted by the minor user no longer visible to other
90 users of the service and the public even if the content or information remains on the operator's

91 servers in some form.

92 (2) Despite making the original posting by the minor user invisible, it remains visible
93 because a third party has copied the posting or reposted the content or information posted by the
94 minor.

95 (e) This section may not be construed to require an operator of an Internet Website, online
96 service, online application, or mobile application to collect age information about users.

NOTE: The purpose of this bill is to prohibit online service companies from marketing a variety of products and services to minors when such products and services can only be purchased by a person 18 years of age or older. The bill also prohibits the collection of personal data of minors that would be shared with third parties for the purpose of advertising or marketing these same types of products and services.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.