

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 4867

By Delegates Chiarelli, Pinson, Coop-Gonzalez,
Mallow, Martin, Brooks, Kimble, Kelly, McGeehan,
and Young

[Introduced January 17, 2024; Referred 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 §61-8G-1 and §61-8G-2, all relating to creating liability for publishers and
 3 distributors of material harmful to minors; providing definitions; requiring a commercial
 4 entity that provides pornography and other materials defined as being harmful to minors as
 5 a substantial portion of the entity's content to verify the age of individuals accessing the
 6 material; establishing requirements and liability for the retention of data; imposing liability
 7 for publishers and distributors of material harmful to minors who fail to comply with
 8 verification requirements; and providing that an internet service provider or hosting entity is
 9 not liable for hosting or transmitting material harmful to minors to the extent that it is not the
 10 creator of the material.

Be it enacted by the Legislature of West Virginia: _

ARTICLE 8G. LIABILITY FOR PUBLISHERS AND DISTRIBUTORS OF MATERIAL
HARMFUL TO MINORS.

§61-8G-1 Definitions.

- 1 As used in this article:
- 2 (a) "Commercial entity" includes corporations, limited liability companies, partnerships,
 3 limited partnerships, sole proprietorships, or other legally recognized entities.
- 4 (b) "Digitized identification card" means a data file available on any mobile device which
 5 has connectivity to the Internet through a state-approved application that allows the mobile device
 6 to download the data file from a state agency or an authorized agent of a state agency that
 7 contains all of the data elements visible on the face and back of a license or identification card and
 8 displays the current status of the license or identification card.
- 9 (c) "Distribute" means to issue, sell, give, provide, deliver, transfer, transmute, circulate, or
 10 disseminate by any means.
- 11 (d) "Internet" means the international computer network of both federal and non-federal

12 interoperable packet switched data networks.

13 (e) "Material harmful to minors" is defined as all of the following:

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

17 (2) Material that exploits, is devoted to, or principally consists of descriptions of actual,
18 simulated, or animated display or depiction of any of the following, in a manner patently offensive
19 with respect to minors:

20 (A) Pubic hair, anus, vulva, genitals, or nipple of the female breast;

21 (B) Touching, caressing, or fondling of nipples, breasts, buttocks, anuses, or genitals; or

22 (C) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation,
23 excretory functions, exhibitions, or any other sexual act; and

24 (D) The material taken as a whole lacks serious literary, artistic, political, or scientific value
25 for minors.

26 (f) "Minor" means any person under 18 years old.

27 (g) "News-gathering organization" means any of the following:

28 (1) An employee of a newspaper, news publication, or news source, printed or on an
29 online or mobile platform, of current news and public interest, while operating as an employee as
30 provided in this subsection, who can provide documentation of such employment with the
31 newspaper, news publication, or news source; or

32 (2) An employee of a radio broadcast station, television broadcast station, cable television
33 operator, or wire service while operating as an employee as provided in this subsection, who can
34 provide documentation of such employment.

35 (h) "Publish" means to communicate or make information available to another person or
36 entity on a publicly available Internet website.

37 (i) "Reasonable age verification methods" means verifying that the person seeking to

38 access the material is 18 years old or older by using any of the following methods:

39 (1) Use of a digitized information card as defined in this section;

40 (2) Verification through an independent, third-party age verification service that compares
41 the personal information entered by the individual who is seeking access to the material that is
42 available from a commercially available database, or aggregate of databases, that is regularly
43 used by government agencies and businesses for the purpose of age and identity verification; or

44 (3) Any commercially reasonable method that relies on public or private transactional data
45 to verify the age of the person attempting to access the material.

46 (j) "Substantial portion" means more than 33-1/3% of total material on a website, which
47 meets the definition of "material harmful to minors" as defined in this section.

48 (k)(1) "Transactional data" means a sequence of information that documents an exchange,
49 agreement, or transfer between an individual, commercial entity, or third party used for the
50 purpose of satisfying a request or event.

51 (2) "Transactional data" includes records from mortgage, education, and employment
52 entities.

§61-8G-2 Liability for publishers and distributors -- Age verification -- Retention of data --

Exceptions.

1 (a) A commercial entity that knowingly and intentionally publishes or distributes material
2 harmful to minors on the Internet from a website that contains a substantial portion of such
3 material shall be held liable if the entity fails to perform reasonable age verification methods to
4 verify the age of an individual attempting to access the material.

5 (b) A commercial entity or third party that performs the required age verification shall not
6 retain any identifying information of the individual after access has been granted to the material.

7 (c) A commercial entity that is found to have violated this section shall be liable to an
8 individual for damages resulting from a minor's accessing the material, including court costs and
9 reasonable attorney fees as ordered by the court.

10 (d) A commercial entity that is found to have knowingly retained identifying information of
11 the individual after access has been granted to the individual shall be liable to the individual for
12 damages resulting from retaining the identifying information, including court costs and reasonable
13 attorney fees as ordered by the court.

14 (e) This section shall not apply to any bona fide news or public interest broadcast, website
15 video, report, or event and shall not be construed to affect the rights of a news-gathering
16 organization.

17 (f) No Internet service provider, affiliate or subsidiary of an Internet service provider, search
18 engine, or cloud service provider shall be held to have violated the provisions of this section solely
19 for providing access or connection to or from a website or other information or content on the
20 Internet, or a facility, system, or network not under that provider's control, including transmission,
21 downloading, storing, or providing access, to the extent that such provider is not responsible for
22 the creation of the content of the communication that constitutes material harmful to minors.

NOTE: The purpose of this bill is to create liability for publishers and distributors of material harmful to minors. The bill provides definitions. The bill requires any commercial entity that provides pornography and other materials defined as being harmful to minors as a substantial portion of the entity's content to verify the age of individuals accessing the material. The bill establishes requirements and liability for the retention of data. The bill imposes liability for publishers and distributors of material harmful to minors who fail to comply with verification requirements. Finally, the bill provides that an internet service provider or hosting entity is not liable for hosting or transmitting material harmful to minors to the extent that it is not the creator of the material.

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