

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 5532**

By Delegate Young

[Introduced February 09, 2024; Referred to the  
Committee on Technology and Infrastructure then the  
Judiciary]

1 A BILL to amend the Code of West Virginia, 193, as amended by adding thereto a new article,  
 2 designated §49-12-1, §49-12-2, §49-12-3, §49-12-4, §49-12-5, §49-12-6, and §49-12-7,  
 3 §49-12-8, and §49-12-9, all related to creating the Safe For Kids Act; providing definitions;  
 4 prohibiting addictive feeds; creating time controls; creating age flags; ensuring  
 5 nondiscrimination; providing for rulemaking authority; providing the scope of the article;  
 6 providing for remedies if violations occur; and providing an effective date.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 12. SAFE FOR KIDS ACT.**

**§49-12-1. Definitions.**

1 For the purposes of this article, the following terms shall have the following meanings:

2 (1) "Addictive feed" shall mean a website, online service, online application, or mobile  
 3 application, or a portion thereof, in which multiple pieces of media generated or shared by users of  
 4 a website, online service, online application, or mobile application, either concurrently or  
 5 sequentially, are recommended, selected, or prioritized for display to a user based, in whole or in  
 6 part, on information associated with the user or the user's device, unless any of the following  
 7 conditions are met, alone or in combination with one another:

8 (A) The information is not persistently associated with the user or user's device, and does  
 9 not concern the user's previous interactions with media generated or shared by others;

10 (B) The information is user-selected privacy or accessibility settings, technical information  
 11 concerning the user's device, or device communications or signals concerning whether the user is  
 12 a minor;

13 (C) The user expressly and unambiguously requested the specific media or media by the  
 14 author, creator, or poster of the media, provided that the media is not recommended, selected, or  
 15 prioritized for display based, in whole or in part, on other information associated with the user or  
 16 the user's device that is not otherwise permissible under this subdivision;

17 (D) The media are direct, private communications; or

18 (E) the media recommended, selected, or prioritized for display is exclusively the next  
19 media in a pre-existing sequence from the same author, creator, poster, or source.

20 (2) "Addictive social media platform" shall mean a website, online service, online  
21 application, or mobile application, that offers or provides users an addictive feed that is not  
22 incidental to the provision of such website, online service, online application, or mobile application.

23 (3) "Covered minor" shall mean a user of a website, online service, online application, or  
24 mobile application in West Virginia when the operator has actual knowledge the user is a minor.

25 (4) "Covered user" shall mean a user of a website, online service, online application, or  
26 mobile application in West Virginia.

27 (5) "Media" shall mean text, an image, or a video.

28 (6) "Minor" shall mean an individual under the age of eighteen.

29 (7) "Operator" shall mean any person who operates or provides a website on the internet,  
30 an online service, an online application, or a mobile application.

31 (8) "Parent" shall mean parent or legal guardian.

32 (9) "User" shall mean a person not acting as an agent of an operator.

**§49-12-2.Prohibition of addictive feeds.**

1 (a) It shall be unlawful for the operator of an addictive social media platform to provide an  
2 addictive feed to a covered user unless:

3 (1) The operator has used commercially reasonable methods to determine that the  
4 covered user is not a covered minor; or

5 (2) The operator has obtained verifiable parental consent to provide an addictive feed to  
6 the covered user.

7 (b) Information collected for the purpose of determining a covered user's age under §49-  
8 12-2(a)(1) of this code shall not be used for any purpose other than age determination.

9 (c) Nothing in this section shall be construed as requiring the operator of an addictive social  
10 media platform to give a parent who grants verifiable parental consent any additional or

11 special access to or control over the data or accounts of their child.

12 (d) Nothing in this section shall be construed as preventing any action taken in good faith to  
13 restrict access to or availability of media that the operator of an addictive social media platform  
14 considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise  
15 objectionable, whether or not such material is constitutionally protected.

**§49-12-3. Time Controls.**

1 (a) It shall be unlawful for the operator of an addictive social media platform to, between the  
2 hours of 12 AM Eastern and 6 AM Eastern, send notifications concerning an addictive social  
3 media platform to a covered minor unless the operator has obtained verifiable parental consent to  
4 send such nighttime notifications.

5 (b) The operator of an addictive social media platform shall provide a mechanism through  
6 which the verified parent of a covered minor may:

7 (1) Prevent their child from accessing the addictive social media platform between the  
8 hours of 12 AM Eastern and 6 AM Eastern; and

9 (2) Limit their child's access to the addictive social media platform to a length of time per  
10 day specified by the verified parent.

11 (c) Nothing in this section shall be construed as requiring the operator of an addictive social  
12 media platform to give a parent any additional or special access to or control over the data or  
13 accounts of their child.

**§49-12-4. Age flags.**

1 For the purposes of this article, the operator of an addictive social medial platform shall  
2 treat a user as a minor if the user's device communicates or signals that the user is or shall be  
3 treated as a minor, including through a browser plug-in or privacy setting, device setting, or other  
4 mechanism.

**§49-12-5. Nondiscrimination.**

1 An operator of an addictive social media platform shall not withhold, degrade, lower the

2 quality, or increase the price of any product, service, or feature, other than as required by this  
3 article, to a covered user due to the operator not being permitted to provide an addictive feed to  
4 such covered user under subdivision one of section fifteen hundred one of this article or not being  
5 permitted to provide such covered user access to or send notifications concerning an addictive  
6 social media platform between the hours of 12 AM Eastern and 6 AM Eastern under section fifteen  
7 hundred two of this article.

**§49-12-6. Rulemaking authority.**

1 The attorney general may promulgate such rules and regulations as are necessary to  
2 effectuate and enforce the provisions of this article.

**§49-12-7. Scope.**

1 (a) This article shall apply to conduct that occurs in whole or in part in West Virginia. For  
2 purposes of this article, conduct takes place wholly outside of West Virginia if the addictive social  
3 media platform is accessed by a user who is physically located outside of West Virginia.

4 (b) Nothing in this article shall be construed to impose liability for commercial activities or  
5 actions by operators subject to 15 U.S.C. §6501 that is inconsistent with the treatment of such  
6 activities or actions under 15 U.S.C. §6502.

**§49-12-8. Remedies.**

1 (a) Whenever it appears to the attorney general, either upon complaint or otherwise, that  
2 any person, within or outside the state, has engaged in or is about to engage in any of the acts or  
3 practices stated to be unlawful in this article, the attorney general may bring an action or special  
4 proceeding in the name and on behalf of the people of the state of West Virginia to enjoin any  
5 violation of this article, to obtain restitution of any moneys or property obtained directly or indirectly  
6 by any such violation, to obtain disgorgement of any profits or gains obtained directly or indirectly  
7 by any such violation, including but not limited to the destruction of unlawfully obtained data and  
8 algorithms trained on such data, to obtain damages caused directly or indirectly by any such  
9 violation, to obtain civil penalties of up to five thousand dollars per violation, and to obtain any such

10 other and further relief as the court may deem proper, including preliminary relief.

11 (b) Any covered user, or the parent of a covered minor may bring an action for a violation of  
12 section fifteen hundred one or section fifteen hundred two of this article, to obtain:

13 (1) Damages of up to \$5,000 per covered user per incident or actual damages, whichever  
14 is greater;

15 (2) Injunctive or declaratory relief; or

16 (3) Any other relief the court deems proper, or any combination of these.

17 (c) Actions brought pursuant to this section may be brought on a class- wide basis.

18 (d) The court shall award reasonable attorneys' fees to a prevailing plaintiff.

19 (e) Prior to bringing any action for a violation of §49-12-2 of this code, a covered user shall  
20 provide the business thirty days' written notice identifying the specific provisions of this article the  
21 covered user alleges have been or are being violated. In the event a cure is possible, if within the  
22 thirty days the business cures the noticed violation and provides the covered user an express  
23 written statement that the violations have been cured and that no further violations shall occur, no  
24 action for individual statutory damages or class-wide statutory damages may be initiated against  
25 the business. No notice shall be required prior to an individual consumer initiating an action solely  
26 for actual pecuniary damages suffered as a result of the alleged violations of this article. If a  
27 business continues to violate this article in breach of an express written statement provided to the  
28 covered user pursuant to this section, the covered user may initiate an action against the business  
29 to enforce the written statement and may pursue statutory damages for each breach of the  
30 express written statement, as well as any other violation of the article that postdates the written  
31 statement.

**§49-12-9. Effective Date.**

1 This bill shall become effective on July 1, 2024.

NOTE: The purpose of this bill is to create the Safe For Kids Act, provide definitions, prohibit addictive feeds, create time controls, create age flags, ensure nondiscrimination, provide for rulemaking authority, provide the scope of the article, and provide for remedies if

violations occur.

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