

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3339

By Delegates Mazzocchi, Chiarelli, Longanacre,
Adkins, Hornby, Heckert, Street, Burkhammer, Fast,
and Clark

[Introduced February 08, 2023; Referred to the
Committee on Senior, Children, and Family Issues
then the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §55-7L-1, relating to material harmful to minors; providing for legislative intent;
3 defining terms; providing for liability for the publishing or distribution of material harmful to
4 minors on the internet through a private right of action together with damages, attorney
5 fees and costs; providing for reasonable age verification; providing for liability for unlawful
6 retention of personal identifying information together with liquidated damages, attorney
7 fees and costs; providing for exceptions; providing an effective date; and providing for
8 related matters.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 7L. PROTECTION OF MINORS FROM HARMFUL MATERIAL ON
INTERNET.**

**§55-7L-1. Protection of minors from harmful material on internet; purpose; defining terms;
establishing liability; providing exceptions; and setting effective date.**

1 (a) The provisions of this section are intended to provide a civil remedy against commercial
2 entities who distribute material harmful to minors. Due to advances in technology, the universal
3 availability of the internet; and absence of limited age verification requirements, minors are
4 exposed to pornography earlier in age. Pornography contributes to hyper-sexualization of teens
5 and pre-pubescent children and may lead to low self-esteem, body image disorders, an increase
6 in problematic sexual activity at younger ages, and increased desire among adolescents to
7 engage in risky sexual behavior. Pornography may also impact brain development and
8 functioning, contribute to emotional and medical illnesses; shape deviant sexual arousal, and lead
9 to difficulty in forming or maintaining positive, intimate relationships, as well as promoting
10 problematic or harmful sexual behaviors and addiction.

11 (b) For purposes of this section:

12 "Commercial entity" includes corporations, limited liability companies, partnerships, limited

13 partnerships, sole proprietorships, or other legally recognized entities.

14 "Distribute" means to issue, sell, give, provide, deliver, transfer, transmit, circulate, or
15 disseminate by any means.

16 "Internet" means the international computer network of both federal and non-federal
17 interoperable packet switched data networks.

18 "Material harmful to minors" is defined as all of the following:

19 Any material that the average person, applying contemporary community standards would
20 find, taking the material as a whole and with respect to minors, is designed to appeal, or designed
21 to pander to, the prurient interest.

22 Any of the following material that exploits, is devoted to, or principally consists of
23 descriptions of descriptions of actual, simulated, or animated display or depiction of any of the
24 following, in a manner patently offensive with respect to minors:

25 Pubic hair, anus, vulva, genitals, or nipple of the female breast.

26 Touching, caressing, or fondling of nipples, breasts, buttocks, anuses, or genitals.

27 Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation,
28 excretory functions, exhibition, or any sexual act.

29 The material taken as a whole lacks serious literary, artistic, political or scientific value.

30 "Minor" means any person under the age of eighteen years.

31 "News-gathering organization" means any of the following:

32 An employee of a newspaper, news publication, or news source, printed or on an online or
33 mobile platform, of current news and public interest, while operating as an employee as provided
34 in this subsection, who can provide documentation of such employment with the newspaper, news
35 publication, or news source.

36 An employee of a radio broadcast station, television broadcast station, cable television
37 operator, or wire service, who can provide documentation of such employment with a radio
38 broadcast station, television broadcast station, cable television operator, or wire service.

39 "Publish" means to communicate or make information available to another person or entity
40 on a publicly available internet website.

41 "Reasonable age verification methods" include verifying that the person seeking to access
42 the material is 18 years or older by using any of the following methods:

43 Provide a digitized identification card as defined in §17B-2-1 of this code.

44 Require the person attempting to access the material to comply with a commercial age
45 verification system that verifies in one or more of the following ways:

46 Government-issued identification.

47 Any commercially reasonable method that relies on public or private transactional data to
48 verify the age of the person attempting to access the material is at least 18 years of age or older.

49 "Substantial portion" means more than 33 and one-third percent of the total material on a
50 website meets the definition of "material harmful to minors" as defined by this section.

51 "Transactional data" means a sequence of information that documents an exchange,
52 agreement, or transfer between an individual, commercial entity, or third party used for the
53 purpose of satisfying a request or event. Transactional data can include, but is not limited to,
54 records of mortgage, education, and employment entities.

55 (c) Liability.

56 (1) Any commercial entity that knowingly and intentionally publishes or distributes material
57 harmful to minors on the internet from a website that contains a substantial portion of such material
58 shall be held liable if the entity fails to perform reasonable age verification methods to verify the
59 age of the individuals attempting to access the material.

60 (2) Any commercial entity or third party that performs the required age verification shall not
61 retain any identifying information of the individual after access has been granted to the material.

62 (A) Any commercial entity that is found to have violated subsection (c)(1) of this section
63 shall be liable to an individual for damages resulting from a minor's accessing the material,
64 including court costs and reasonable attorney fees as ordered by the court.

65 (B) Any commercial entity that is found to have knowingly retained identifying information
66 of the individual after the access has been granted to the individual shall be liable to the individual
67 for damages resulting from retention of the information in the amount of \$1,000 for each day the
68 information is unlawfully retained, together with court costs, and reasonable attorney fees and
69 costs to be determined by the court.

70 (d) Exceptions.

71 (1) This section shall not apply to any bona fide news or public interest broadcast, website
72 video, report, or event and shall not be construed to affect the rights of any news-gathering
73 organization.

74 (2) No internet service provider, or its affiliates or subsidiaries, search engine, or cloud
75 service provider shall be held to have violated the provisions of this section solely by providing
76 access or connection to or from a website or other information or content on the internet or a
77 facility, system, network not under that provider's control including transmission, downloading,
78 intermediate storage, access software, or other to the extent such provider is not responsible for
79 the creation of the content of the communication that constitutes material harmful to minors.

80 (e) This section becomes effective upon passage.

NOTE: The purpose of this bill is to combat the sexualization of children and to allow children in the State of West Virginia to avoid the detrimental effects, both during childhood and later into adulthood, caused by exposure to pornography through an age verification. This bill also ensures that any personal identifying information of adults is not retained upon age verification.

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