

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5226

By Delegate W. Clark

[Introduced January 26, 2024; Referred to the
Committee on Technology and Infrastructure then the
Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new chapter,
 2 designated §49A-1-101, §49A-1-102, §49A-1-103, §49A-1-104, §49A-1-105, §49A-1-106,
 3 §49A-2-201, §49A-3-301, §49A-4-401, §49A-5-501, §49A-6-601, and §49A-7-701, all
 4 relating to protecting minors on social media and other Internet uses, listing requirements
 5 for social media usage, providing definitions, rule-making authority, prohibiting data
 6 collection on certain accounts, prohibiting certain advertising and redirection of accounts
 7 and directed content, providing for parental access to social media of minors, limiting
 8 access of accounts for minors and granting parental access and options, providing for
 9 investigative and enforcement powers to the Attorney General for violations, providing for
 10 private rights of action, prohibiting waiver, and providing severability.

Be it enacted by the Legislature of West Virginia:

CHAPTER 49A. CHILD ONLINE PROTECTION AND LIABILITY.

ARTICLE 1. MINOR CHILDREN'S ACCESS TO SOCIAL MEDIA.

§49A-1-101. Definitions.

1 As used in this chapter:

2 (a) "Account holder" means a person who has, or opens, an account or profile to use a
 3 social media company's platform.

4 (b) "Addiction" means use of a social media platform that:

5 (1) Indicates the user's substantial preoccupation or obsession with, or the user's
 6 substantial difficulty to cease or reduce use of, the social media platform; and

7 (2) Causes physical, mental, emotional, developmental, or material harms to the user.

8 (c) "Secretary" means the Secretary of the West Virginia Department of Human Services.

9 (d) "Department" means the Department of Human Services.

10 (e) "Interactive computer service" means an information service, information system, or
 11 information access software provider that:

12 (1) Provides or enables computer access by multiple users to a computer server; and

13 (2) Provides access to the Internet.

14 (f) "Interactive computer service" further includes:

15 (1) A web service;

16 (2) A web system;

17 (3) A website;

18 (4) A web application; or

19 (5) A web portal.

20 (g) "Minor" means an individual who is under the age of 18 and:

21 (1) Has not been emancipated pursuant to §49-4-115 of this code; or

22 (2) Has not been married.

23 (h) "Post" means content that an account holder makes available on a social media
24 platform for other account holders or users to view.

25 (i) "Reasonable age verification methods" means verifying that the person seeking to
26 access the material is 18 years old or older by using any of the following methods:

27 (1) Use of a "digitized identification card" defined as a data file available on any mobile
28 device which has connectivity to the Internet through a state-approved application that allows the
29 mobile device to download the data file from a state agency or an authorized agent of a state
30 agency that contains all of the data elements visible on the face and back of a license or
31 identification card and displays the current status of the license or identification card.

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

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

38 (j) "Social media company" means a person or entity that:

39 (1) Provides a social media platform that has at least 5,000,000 account holders
40 worldwide; and

41 (2) Is an interactive computer service.

42 (k) "Social media platform" means an online forum that a social media company makes
43 available for an account holder to create a profile, upload posts, view the posts of other account
44 holders, and interact with other account holders or users.

45 (1) "Social media platform" does not include an online service, website, or application:

46 (A) Where the predominant or exclusive function is electronic mail;

47 (B) Direct messaging consisting of text, photos, or videos that are sent between devices by
48 electronic means, where messages are shared between the sender and the recipient, only visible
49 to the sender and the recipient, and are not posted publicly;

50 (C) A streaming service that provides only licensed media in a continuous flow from the
51 service, website, or application to the end user, and does not obtain a license to the media from a
52 user or account holder by agreement to its terms of service;

53 (D) News, sports, entertainment, or other content that is preselected by the provider and
54 not user generated, and any chat, comment, or interactive functionality that is provided incidental
55 to, directly related to, or dependent upon provision of the content;

56 (E) Online shopping or e-commerce, if the interaction with other users or account holders is
57 generally limited to:

58 (i) The ability to upload a post and comment on reviews;

59 (ii) The ability to display lists or collections of goods for sale or wish lists; and

60 (iii) Other functions that are focused on online shopping or e-commerce rather than
61 interaction between users or account holders;

62 (F) Interactive gaming, virtual gaming, or an online service, that allows the creation and
63 uploading of content for the purpose of interactive gaming, edutainment, or associated

64 entertainment, and the communication related to that content;

65 (G) Photo editing that has an associated photo hosting service, if the interaction with other
66 users or account holders is generally limited to liking or commenting;

67 (H) A professional creative network for showcasing and discovering artistic content, if the
68 content is required to be non-pornographic;

69 (I) Single-purpose community groups for public safety if:

70 (i) The interaction with other users or account holders is generally limited to that single
71 purpose; and

72 (ii) The community group has guidelines or policies against illegal content;

73 (J) Providing career development opportunities, including professional networking, job
74 skills, learning certifications, and job posting and application services;

75 (K) Business to business software;

76 (L) A teleconferencing or videoconferencing service that allows reception and transmission
77 of audio and video signals for real time communication;

78 (M) Cloud storage;

79 (N) Shared document collaboration;

80 (O) Cloud computing services, which may include cloud storage and shared document
81 collaboration;

82 (P) Providing access to or interacting with data visualization platforms, libraries, or hubs;

83 (Q) To permit comments on a digital news website, if the news content is posted only by the
84 provider of the digital news website;

85 (R) Providing or obtaining technical support for a platform, product, or service;

86 (S) Academic or scholarly research; or

87 (T) Genealogical research;

88 (2) "Social media platform" does not include an online service, website, or application:

89 where:

90 (A) The majority of the content that is posted or created is posted or created by the provider
91 of the online service, website, or application; and

92 (B) The ability to chat, comment, or interact with other users is directly related to the
93 provider's content;

94 (3) "Social media platform" does not include an online service, website, or application that
95 is a classified ad service that only permits the sale of goods and prohibits the solicitation of
96 personal services; or that is used by and under the direction of an educational entity, including:

97 (A) A learning management system;

98 (B) A student engagement program; and

99 (C) A subject or skill-specific program.

100 (l) "User" means a person who has access to view all, or some of, the posts on a social
101 media platform, but is not an account holder.

102 (m) "West Virginia account holder" means a person who is a West Virginia resident and an
103 account holder. "West Virginia account holder" includes a West Virginia minor account holder.

104 (n) "West Virginia minor account holder" means a West Virginia account holder who is a
105 minor.

106 (o) "West Virginia resident" means an individual who currently resides in West Virginia.

§49A-1-102. Age requirements for use of social media platform; parental consent.

1 (a) Beginning July 1, 2025, a social media company may not permit a West Virginia
2 resident who is a minor to be an account holder on the social media company's social media
3 platform unless the West Virginia resident has the express consent of a parent or guardian.

4 (b) Notwithstanding any provision of this chapter, a social media company may not permit a
5 West Virginia resident who is a minor to hold or open an account on a social media platform if the
6 minor is ineligible to hold or open an account under any other provision of state or federal law.

7 (c) Beginning July 1, 2025, a social media company shall verify by means of a reasonable
8 age verification method the age of an existing or new West Virginia account holder and, if the

9 existing or new account holder is a minor, confirm that a minor has consent as required under
10 Subsection (a) of this section of the code:

11 (1) For a new account, at the time the West Virginia resident opens the account; or

12 (2) For a West Virginia account holder who has not provided age verification as required
13 under this section, within 14 calendar days of the West Virginia account holder's attempt to access
14 the account.

15 (d) If a West Virginia account holder fails to meet the verification requirements of this
16 section within the required time period, the social media company shall deny access to the
17 account:

18 (1) Upon the expiration of the time period; and

19 (2) Until all verification requirements are met.

§49A-1-103. Rule-making authority.

1 (a) The Secretary of the Department of Human Services is authorized to propose rules for
2 legislative approval necessary to implement this article in accordance with §29A-3-1 et seq. of this
3 code.

4 (b) The rules:

5 (1) Shall establish processes or means by which a social media company may meet the
6 age verification requirements of this article;

7 (2) Shall establish requirements for providing confirmation of the receipt of any information
8 provided by a person seeking to verify age under this article;

9 (3) Shall establish processes or means to confirm that a parent or guardian has provided
10 consent for the minor to open or use an account as required under this article;

11 (4) Shall establish requirements for retaining, protecting, and securely disposing of any
12 information obtained by a social media company or its agent as a result of compliance with the
13 requirements of this article;

14 (5) Shall require that information obtained by a social media company or its agent in order

15 to comply with the requirements of this article are only retained for the purpose of compliance and
16 may not be used for any other purpose;

17 (6) Shall require, if the department permits, an agent to process verification requirements
18 required by this article and that the agent have its principal place of business in the United States
19 of America.

§49A-1-104. Prohibition on data collection for certain accounts; prohibition on advertising;
use of information; search results; directed content.

1 Beginning July 1, 2025, a social media company, for a social media platform account held
2 by a West Virginia minor account holder:

3 (a) Shall prohibit direct messaging between the account and any other user that is not
4 linked to the account through friending;

5 (b) May not show the account in search results for any user that is not linked to the account
6 through friending;

7 (c) Shall prohibit the display of any advertising in the account;

8 (d) Shall not collect or use any personal information from the posts, content, messages,
9 text, or usage activities of the account other than information that is necessary to comply with, and
10 to verify compliance with, state or federal law, which information includes a parent or guardian's
11 name, a birth date, and any other information required to be submitted under this article; and

12 (e) Shall prohibit the use of targeted or suggested groups, services, products, posts,
13 accounts, or users in the account.

§49A-1-105. Parental access to social media account.

1 Beginning July 1, 2025, a social media company shall at any time thereafter provide a
2 parent or guardian who has given parental consent for a West Virginia minor account holder under
3 §49A-2-102 of this code, with a password or other means for the parent or guardian to access the
4 account, which shall allow the parent or guardian to view:

5 (a) All posts the West Virginia minor account holder makes under the social media platform

6 account; and

7 (b) All responses and messages sent to or by the West Virginia minor account holder in the
8 social media platform account.

§49A-1-106. Limited hours of access for minors; parental access and options.

1 (a) Beginning July 1, 2025, a social media company shall prohibit a West Virginia minor
2 account holder from having access to the West Virginia minor account holder's account during the
3 hours of 10:30 p.m. to 6:30 a.m., unless the access is modified according to another requirement
4 of this section.

5 (b) Time of day under this section shall be calculated based on the Internet protocol
6 address being used by the West Virginia minor account holder at the time of attempting access.

7 (c) A social media company shall provide options for a parent or guardian with access to an
8 account under §49A-2-105 of this code to:

9 (1) Change or eliminate the time-of-day restriction described in subsection (a) of this
10 section; and

11 (2) Set a limit on the number of hours per day that a West Virginia minor account holder
12 may use the account.

13 (d) A social media company shall not permit a West Virginia minor account holder to
14 change or bypass restrictions on access as required by this section.

15 (e) Notwithstanding any provision of this section, a social media company shall permit a
16 parent or guardian with access to an account under §49A-2-105 of this code to access the account
17 without time restrictions.

ARTICLE 2. ENFORCEMENT.

§49A-2-201. Investigative powers of the Attorney General.

1 (a) The Attorney General shall receive consumer complaints alleging a violation of §49A-1-
2 101, et seq. of this code.

3 (b) A person may file a consumer complaint that alleges a violation under §49A-1-101, et

4 seq. of this code with the Attorney General.

5 (c) The Attorney General shall investigate a consumer complaint to determine whether a
6 violation of §49A-1-101, et seq. of this code occurred.

ARTICLE 3. PRIVATE RIGHT OF ACTION FOR VIOLATION OF THIS ACT.

§49A-3-301. Private right of action.

1 (a) Beginning July 1, 2025, a person may bring an action against a person that does not
2 comply with a requirement of §49A-1-101, et seq. of this code

3 (b) A suit filed under the authority of this section shall be filed in the circuit court for the
4 circuit in which a person bringing the action resides.

5 (c) If a court finds that a person has violated a provision of §49A-1-101, et seq. of this code,
6 the person who brings an action under this section is entitled to:

7 (1) An award of reasonable attorney fees and court costs; and

8 (2) An amount equal to the greater of:

9 (A) \$2,500 per each incident of violation; or

10 (B) Actual damages for financial, physical, and emotional harm incurred by the person
11 bringing the action, if the court determines that the harm is a direct consequence of the violation or
12 violations.

ARTICLE 4. SOCIAL MEDIA DESIGN.

§49A-4-401. Social Media Design.

1 (a) Beginning July 1, 2025, the Attorney General shall administer and enforce the
2 provisions of this article and may audit the records of a social media company in order to
3 determine compliance with the requirements of this section or to investigate a complaint, including
4 a random sample of a social media company's records and other audit methods.

5 (b) Beginning July 1, 2025, a social media company shall not use a practice, design, or
6 feature on the company's social media platform that the social media company knows, or which by

7 the exercise of reasonable care should know, causes a West Virginia minor account holder to have
8 an addiction to the social media platform.

9 (c) Beginning July 1, 2025, and subject to subsection (3) of this section, a social media
10 company is subject to:

11 (1) A civil penalty of \$250,000 for each practice, design, or feature shown to have caused
12 addiction; and

13 (2) A civil penalty of up to \$2,500 for each West Virginia minor account holder who is shown
14 to have been exposed to the practice, design, or feature found to have caused addiction.

15 (3) A social media company shall not be subject to a civil penalty for violating this section if
16 the social media company, as an affirmative defense, demonstrates that the social media
17 company:

18 (A) Instituted and maintained a program of at least quarterly audits of the social media
19 company's practices, designs, and features to detect practices, designs, or features that have the
20 potential to cause or contribute to the addiction of a minor user; and

21 (B) Corrected, within 30 days of the completion of an audit described in subsection (a) of
22 this section, any practice, design, or feature discovered by the audit to present more than a de
23 minimus risk of violating this section.

24 (d) In a court action by the Attorney General to enforce this section, the court may, in
25 addition to a civil penalty:

26 (1) Declare that the act or practice violates a provision of this section;

27 (2) Issue an injunction for a violation of this section;

28 (3) Award actual damages to an injured purchaser or consumer; and

29 (4) Award any other relief that the court deems reasonable and necessary.

30 (e) Nothing in this section may be construed to impose liability for a social media company
31 for any of the following:

32 (1) Content that is generated by an account holder, or uploaded to or shared on the

33 platform by an account holder, that may be encountered by another account holder;

34 (2) Passively displaying content that is created entirely by a third party;

35 (3) Information or content for which the social media company was not, in whole or in part,
36 responsible for creating or developing; or

37 (4) Any conduct by a social media company involving a West Virginia minor account holder
38 who would otherwise be protected by federal or West Virginia law.

39 (f) If a court of competent jurisdiction grants judgment or injunctive relief to the Attorney
40 General, the court shall award the Attorney General:

41 (1) Reasonable attorney fees;

42 (2) Court costs; and

43 (3) Investigative fees.

44 (g) Nothing in this section may be construed to negate or limit a cause of action that may
45 have existed or exists against a social media company under the law as it existed before the
46 effective date of this section.

ARTICLE 5. HARM TO A MINOR BY A SOCIAL MEDIA COMPANY; PRIVATE RIGHT

OF ACTION.

§49A-5-501. Harm to a Minor by a Social Media Company; private Right of Action.

1 (a) Beginning July 1, 2025, a person may bring an action under this section against a social
2 media company to recover damages incurred after July 1, 2025, by a West Virginia minor account
3 holder for any addiction, financial, physical, or emotional harm suffered as a consequence of using
4 or having an account on the social media company's social media platform.

5 (b) A suit filed under the authority of this section shall be filed in the circuit court for the
6 circuit in which the West Virginia minor account holder resides.

7 (c) Notwithstanding subsection (d), if a court finds that a West Virginia minor account
8 holder has been harmed as a consequence of using or having an account on the social media

9 company's social media platform, the minor seeking relief under this section is entitled to:

10 (1) An award of reasonable attorney fees and court costs; and

11 (2) An amount equal to the greater of:

12 (A) \$2,500 per each incident of harm; or

13 (B) Actual damages for addiction, financial, physical, and emotional harm incurred by the
14 person bringing the action, if the court determines that the harm is a direct consequence of the
15 violation or violations of this article.

16 (d) If a West Virginia minor account holder seeking recovery of damages under this section
17 is under the age of 16, there shall be a rebuttable presumption that the harm actually occurred and
18 that the harm was a caused as a consequence of using or having an account on the social media
19 company's social media platform.

ARTICLE 6. WAIVER PROHIBITED.

§49A-6-601. Waiver prohibited.

1 A waiver or limitation, or a purported waiver or limitation, of any of the following is void as
2 unlawful, is against public policy, and a court or arbitrator may not enforce or give effect to the
3 waiver, notwithstanding any contract or choice-of-law provision in a contract:

4 (a) A protection or requirement provided under this chapter;

5 (b) The right to cooperate with the Department or Attorney General or to file a complaint
6 with the Attorney General;

7 (c) The right to a private right of action as provided under this article; or

8 (d) The right to recover actual damages, statutory damages, civil penalties, costs, or fees
9 as allowed by this chapter.

ARTICLE 7. SEVERABILITY.

§49A-7-701. Severability.

1 If any provision of this chapter or the application of any provision to any person or

- 2 circumstance is held invalid by a final decision of a court of competent jurisdiction, the remainder
3 of this chapter shall be given effect without the invalid provision or application. The provisions of
4 this chapter are severable.

NOTE: The purpose of this bill is to protect minors on social media and other Internet uses, listing requirements for social media usage, prohibit data collection on certain accounts, prohibit certain advertising, redirection of accounts, prohibit certain directed content, provide for parental access to social media of minors, limit access of accounts for minors and grant parental access and options, provide for investigative and enforcement powers to the Attorney General for violations, and provide for private rights of action.

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