

HOUSE BILL 295

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

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AN ACT

RELATING TO DECEPTIVE TRADE PRACTICES; ENACTING THE PROTECTION OF MINORS FROM DISTRIBUTION OF HARMFUL MATERIAL ACT; DEFINING TERMS; AUTHORIZING LIABILITY; CREATING A PRIVATE RIGHT OF ACTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Protection of Minors from Distribution of Harmful Material Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Protection of Minors from Distribution of Harmful Material Act:

A. "commercial entity" means a corporation, limited liability company, partnership, limited partnership, sole proprietorship, third-party vendor or other legally recognized entity;

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1 B. "material harmful to minors" means material
2 that:

3 (1) the average person, applying contemporary
4 community standards, would find, taking the material as a whole
5 and with respect to minors, is designed to appeal or pander to
6 prurient interest;

7 (2) exploits, is devoted to or principally
8 consists of descriptions of actual, simulated or animated
9 displays or depictions of any of the following, in a manner
10 patently offensive with respect to minors:

11 (a) the nipple of the female breast,
12 pubic hair, the anus, the vulva or genitals;

13 (b) touching, caressing or fondling of
14 nipples, breasts, buttocks, the anus or genitals; or

15 (c) sexual intercourse, masturbation,
16 sodomy, bestiality, oral copulation, flagellation, excretory
17 functions, exhibitions of a sexual act and any other sexual
18 act; and

19 (3) taken as a whole, lacks serious literary,
20 artistic, political and scientific value for minors;

21 C. "minor" means an individual under eighteen years
22 of age;

23 D. "newsgathering organization" means:

24 (1) a newspaper, news publication or news
25 source, printed or published on an online or mobile platform,

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1 of current news and public interest; or

2 (2) a radio broadcast station, television
3 broadcast station, cable television operator or wire service;
4 and

5 E. "reasonable age verification" means to confirm
6 that a person seeking to access published material that may
7 have a substantial portion of material harmful to minors is at
8 least eighteen years of age.

9 SECTION 3. [NEW MATERIAL] REASONABLE AGE VERIFICATION
10 METHODS.--

11 A. A commercial entity shall use a reasonable age
12 verification method before allowing access to a website on
13 which more than one-third of the content is material that is
14 harmful to minors.

15 B. Reasonable age verification methods include:

16 (1) providing a government-issued
17 identification; or

18 (2) any commercially reasonable age
19 verification method that holds an identity assurance level two
20 as defined by the national institute of standards and
21 technology.

22 C. If a commercial entity performs a reasonable age
23 verification, the commercial entity shall not retain any
24 identifying information of the individual after access to the
25 website has been granted.

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1 SECTION 4. [NEW MATERIAL] LIABILITY OF COMMERCIAL
2 ENTITIES.--

3 A. A commercial entity is liable for damages, court
4 costs and reasonable attorney fees for:

5 (1) failing to perform reasonable age
6 verification for persons attempting to access a website on
7 which more than one-third of the content is material harmful to
8 minors;

9 (2) damage resulting from a minor accessing
10 material harmful to minors; or

11 (3) retaining any identifying information on
12 individuals after performing a reasonable age verification.

13 B. The provisions of the Protection of Minors from
14 Distribution of Harmful Material Act do not:

15 (1) apply to a news or public interest
16 broadcast, website video, report or event;

17 (2) affect the rights of a newsgathering
18 organization or employees of newsgathering organizations when
19 acting within the scope of their employment; or

20 (3) apply to cloud service providers or
21 internet service providers to the extent that the cloud service
22 provider or internet service provider is not responsible for
23 the creation of the content that constitutes material harmful
24 to minors.

25 SECTION 5. [NEW MATERIAL] PRIVATE RIGHT OF ACTION.--A

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1 person claiming to be aggrieved by a violation of the
2 Protection of Minors from Distribution of Harmful Material Act
3 may maintain an action in district court for appropriate
4 relief, including damages and reasonable attorney fees.

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