

SECOND REGULAR SESSION

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NOS. 1993, 1855, 1426 & 2157

102ND GENERAL ASSEMBLY

4014H.02C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 537, RSMo, by adding thereto one new section relating to civil liability for publishing or distributing material harmful to minors on the internet.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 537, RSMo, is amended by adding thereto one new section, to be
2 known as section 537.104, to read as follows:

537.104. 1. As used in this section, the following terms mean:

2 **(1) "Commercial entity", includes corporations, limited liability companies,**
3 **partnerships, limited partnerships, sole proprietorships, or other legally recognized**
4 **entities;**

5 **(2) "Distribute", to issue, sell, give, provide, deliver, transfer, transmute,**
6 **circulate, or disseminate by any means;**

7 **(3) "Internet", the international computer network of both federal and**
8 **nonfederal interoperable packet-switched data networks;**

9 **(4) "Material harmful to minors", all of the following:**

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

13 **(b) Any of the following material that exploits, is devoted to, or principally**
14 **consists of descriptions of actual, simulated, or animated display or depiction of any of**
15 **the following, in a manner patently offensive with respect to minors:**

16 **a. Pubic hair, anus, vulva, genitals, or nipple of the female breast;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

17 **b. Touching, caressing, or fondling of nipples, breasts, buttocks, anuses, or**
18 **genitals; or**

19 **c. Sexual intercourse, masturbation, sodomy, bestiality, oral copulation,**
20 **flagellation, excretory functions, exhibitions, or any other sexual act; and**

21 **(c) The material taken as a whole lacks serious literary, artistic, political, or**
22 **scientific value for minors;**

23 **(5) "Minor", any person under eighteen years of age;**

24 **(6) "News-gathering organization", any of the following:**

25 **(a) An employee of a newspaper, news publication, or news source, printed or on**
26 **an online or mobile platform, of current news and public interest, while operating as an**
27 **employee as provided in this paragraph, who can provide documentation of such**
28 **employment with the newspaper, news publication, or news source; or**

29 **(b) An employee of a radio broadcast station, television broadcast station, cable**
30 **television operator, or wire service while operating as an employee as provided in this**
31 **paragraph, who can provide documentation of such employment;**

32 **(7) "Publish", to communicate or make information available to another person**
33 **or entity on a publicly available internet website;**

34 **(8) "Reasonable age verification methods", include verifying that the person**
35 **seeking to access the material is eighteen years of age or older by using any of the**
36 **following methods:**

37 **(a) Provide a digitized identification card; or**

38 **(b) Require the person attempting to access the material to comply with a**
39 **commercial age verification system that verifies in one or more of the following ways:**

40 **a. Government-issued identification; or**

41 **b. Any commercially reasonable method that relies on public or private**
42 **transactional data to verify the person attempting to access the information is at least**
43 **eighteen years of age or older;**

44 **(9) "Substantial portion", more than thirty-three and one-third percent of total**
45 **material on a website that meets the definition of material harmful to minors;**

46 **(10) "Transactional data", a sequence of information that documents an**
47 **exchange, agreement, or transfer between an individual, commercial entity, or third**
48 **party used for the purpose of satisfying a request or event. Transactional data can**
49 **include, but is not limited to, records from mortgage, education, and employment**
50 **entities.**

51 **2. (1) Any commercial entity that knowingly or intentionally publishes or**
52 **distributes material harmful to minors on the internet from a website that contains a**
53 **substantial portion of such material shall be held liable if the entity fails to perform**

54 reasonable age verification methods to verify the age of individuals attempting to access
55 the material.

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

59 (3) (a) Any commercial entity that is found to have violated this section shall be
60 liable to an individual for damages resulting from a minor accessing the material. Such
61 damages shall include a minimum award of twenty thousand dollars for each violation
62 and court costs and reasonable attorney's fees as ordered by the court.

63 (b) A commercial entity that is found to have knowingly retained identifying
64 information of the individual after access has been granted to the individual shall be
65 liable to the individual for damages resulting from retaining the identifying
66 information. Such damages shall include a minimum award of twenty thousand
67 dollars for each violation and court costs and reasonable attorney's fees as ordered by
68 the court.

69 3. (1) The provisions of this section shall not apply to any bona fide news or
70 public interest broadcast, website video, report, or event and shall not be construed to
71 affect the rights of any news-gathering organizations.

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

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