

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 236
103RD GENERAL ASSEMBLY

0209H.04C

JOSEPH ENGLER, 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, with an emergency clause.

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 material available to another person or**
33 **entity on a publicly available internet website;**

34 **(8) "Reasonable age-verification methods", any commercially available database**
35 **that is regularly used by businesses or governmental entities for the purpose of age and**
36 **identity verification, or any other commercially reasonable method of age and identity**
37 **verification.**

38 **2. (1) Any commercial entity for which it is in the regular course of trade or**
39 **business to publish or distribute in this state a website in which thirty-three percent or**
40 **more of total material on the website is material harmful to minors shall be held liable if**
41 **the entity fails to perform reasonable age-verification methods to verify the age of**
42 **individuals attempting to access the material.**

43 **(2) The age-verification provider shall not retain any identifying information of**
44 **the individual after access has been granted or denied to the material.**

45 **(3) (a) Any commercial entity that is found to have violated this section shall be**
46 **liable to an individual for damages resulting from a minor accessing the material,**
47 **including court costs and reasonable attorney's fees as ordered by the court.**

48 **(b) A commercial entity that is found to have knowingly retained identifying**
49 **information of the individual after access has been granted to the individual shall be**
50 **liable to the individual for damages resulting from retaining the identifying**
51 **information, including court costs and reasonable attorney's fees as ordered by the**
52 **court.**

53 **3. (1) The provisions of this section shall not apply to any bona fide news or**
54 **public interest broadcast, website video, report, or event and shall not be construed to**
55 **affect the rights of any news-gathering organizations.**

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

 Section B. Because immediate action is necessary to protect the safety of children,
2 section A of this act is deemed necessary for the immediate preservation of the public health,
3 welfare, peace, and safety, and is hereby declared to be an emergency act within the meaning
4 of the constitution, and section A of this act shall be in full force and effect upon its passage
5 and approval.

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