

HOUSE BILL No. 2301

By Committee on Federal and State Affairs

2-6

1 AN ACT regarding internet material harmful to minors; requiring age
2 verification for access; establishing a civil cause of action for actual
3 and punitive damages, attorney fees and costs for persons harmed.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. It is a legislative finding that pornography is creating a
7 public health crisis and having a corroding influence on minors. Due to
8 advances in technology, the universal availability of the internet and
9 limited age verification requirements, minors are exposed to pornography
10 at an early age. Pornography contributes to the hyper-sexualization of
11 teens and prepubescent children and may lead to low self-esteem, body
12 image disorders, an increase in problematic sexual activity at younger ages
13 and increased desire among adolescents to engage in risky sexual behavior.
14 Pornography may also impact brain development and functioning,
15 contribute to emotional and medical illnesses, shape deviant sexual arousal
16 and lead to difficulty in forming or maintaining positive, intimate
17 relationships, as well as promoting problematic or harmful sexual
18 behaviors and addiction.

19 Sec. 2. (a) Any commercial entity that knowingly and intentionally
20 publishes or distributes material harmful to minors on the internet from a
21 website that contains a substantial portion of pornographic material shall
22 be held liable if the entity fails to perform reasonable age verification
23 methods to verify the age of individuals attempting to access the material.

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

27 (c) (1) Any commercial entity that is found to have violated this act
28 shall be liable to an individual harmed by such action for damages
29 resulting from a minor's accessing the material, including actual damages,
30 punitive damages, court costs and reasonable attorney fees as ordered by
31 the court.

32 (2) A commercial entity that is found to have knowingly retained
33 identifying information of the individual after access has been granted to
34 the individual shall be liable to the individual for damages resulting from
35 retaining the identifying information, including court costs and reasonable
36 attorney fees as ordered by the court.

1 (d) (1) This act shall not apply to any news or public interest
2 broadcast, website video, report or event and shall not be construed to
3 affect the rights of any news-gathering organizations.

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

13 Sec. 3. For purposes of this act:

14 (a) "Commercial entity" means corporations, limited liability
15 companies, partnerships, limited partnerships, sole proprietorships or other
16 commercial entities.

17 (b) "Distribute" means to issue, sell, give, provide, deliver, transfer,
18 transmute, circulate or disseminate by any means.

19 (c) "Internet" means the international computer network of both
20 federal and non-federal interoperable packet switched data networks.

21 (d) "Material harmful to minors" means:

22 (1) Any material that the average person, applying contemporary
23 community standards, would find, taking the material as a whole and with
24 respect to minors, is designed to appeal to, or is designed to pander to, the
25 prurient interest;

26 (2) any of the following material taken as a whole that lacks serious
27 literary, artistic, political or scientific value for minors, that exploits, is
28 devoted to or principally consists of descriptions of actual, simulated or
29 animated display or depiction of any of the following, in a manner patently
30 offensive with respect to minors:

31 (A) Pubic hair, anus, vulva, genitals or nipple of the female breast;

32 (B) touching, caressing or fondling of nipples, breasts, buttocks,
33 anuses or genitals; or

34 (C) sexual intercourse, masturbation, sodomy, bestiality, oral
35 copulation, flagellation, excretory functions, exhibitions or any other
36 sexual act.

37 (e) "Minor" means any person under 18 years of age.

38 (f) "News-gathering organization" means any of the following:

39 (1) An employee of a newspaper, news publication or news source,
40 printed or on an online or mobile platform, of current news and public
41 interest, while operating as an employee as provided in this paragraph,
42 who can provide documentation of such employment with the newspaper,
43 news publication, or news source.

1 (2) An employee of a radio broadcast station, television broadcast
2 station, cable television operator or wire service while operating as an
3 employee as provided in this paragraph who can provide documentation of
4 such employment.

5 (g) "Publish" means to communicate or make information available
6 to another person or entity on a publicly available internet website.

7 (h) "Reasonable age verification methods" includes verifying that the
8 person seeking to access the material is 18 years of age or older by
9 requiring the person attempting to access the material to comply with a
10 commercial age verification system that verifies in one or more of the
11 following ways:

12 (1) Government-issued identification; or

13 (2) any commercially reasonable method that relies on public or
14 private transactional data to verify the age of the person attempting to
15 access the information is at least 18 years of age or older.

16 (i) "Substantial portion" means more than one-third of total material
17 on a website that meets the definition of "material harmful to minors" as
18 defined by this act.

19 (j) "Transactional data" means a sequence of information that
20 documents an exchange, agreement or transfer between an individual,
21 commercial entity or third party used for the purpose of satisfying a
22 request or event. "Transactional data" can include, but is not limited to,
23 records from mortgage, education and employment entities.

24 Sec. 4. This act shall take effect and be in force from and after its
25 publication in the statute book.