

South Carolina General Assembly
125th Session, 2023-2024

Bill 3424

~~Indicates Matter Stricken~~

Indicates New Matter

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

AMENDED - NOT PRINTED BILL FOR THE HOUSE

Amt. No. 1A (LC-3424.PH0011H)

May 09, 2024

H. 3424

Introduced by Reps. T. Moore, Carter, McCravy, Lawson, Beach, Pope, Nutt, Oremus, Vaughan, Long, Haddon, Burns, Chumley, Kilmartin, Cromer, O'Neal, Yow, Gilliam, W. Newton, Guest, Schuessler, Moss, Magnuson, Harris, Pace, Brittain, Bailey, Robbins, Sessions, Ligon, Felder, B. L. Cox, Guffey, Bradley, Murphy, Brewer, Connell, Hiott, Mitchell, Hager, Erickson, B. J. Cox, Blackwell, Wooten, Ballentine, Hyde, Wheeler, Calhoon, M. M. Smith, Davis, B. Newton, Elliott, Forrest, Willis, Hixon, Taylor, J. E. Johnson, Chapman and Ott

S. Printed 05/09/24--H.

Read the first time January 10, 2023

A BILL

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ADDING SECTION 39-5-190 SO AS TO PROVIDE DEFINITIONS, TO PROVIDE THAT IT IS UNLAWFUL FOR AN OPERATOR TO MAKE A PORNOGRAPHIC WEBSITE AVAILABLE TO PERSONS UNDER THE AGE OF EIGHTEEN, TO PROVIDE THAT THE ATTORNEY GENERAL SHALL CREATE CERTAIN PROCEDURES, AND TO PROVIDE FOR A PRIVATE RIGHT OF ACTION.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 1, Title 37 of the S.C. Code is amended by adding:

Section 37-1-310. (A) As used in this section:

(1) "Child pornography" means any material depicting a person under the age of eighteen years doing or assisting in doing an act or thing constituting an offense pursuant to Chapter 15, Title 16 and involving any material, act, or thing that is obscene within the meaning of Section 16-15-305.

(2) "Child sexual exploitation" is defined as the term is used in Sections 16-15-395, 16-15-405, and 16-15-410.

(3) "Commercial entity" includes corporations, limited liability companies, partnerships, limited partnerships, sole proprietorships, or other legally recognized entities.

(4) "Digitized identification card" means a data file available on any mobile device which has connectivity to the Internet through a state-approved application that allows the mobile device to download the data file from a state agency or an authorized agent of a state agency that contains all of the data elements visible on the face and back of a license or identification card and displays the current status of the license or identification card.

(5) "Distribute" means to issue, sell, give, provide, deliver, transfer, transmit, circulate, or disseminate by any means.

(6) "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks.

(7) "Material harmful to minors" is defined as those terms are used in Section 16-15-375.

(8) "Obscene material" is defined as the term is used in Section 16-15-305.

(9) "Minor" is defined as the term is used in Section 16-15-375.

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

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

(b) an employee of a radio broadcast station, television broadcast station, cable television operator, or wire service while operating as an employee as provided in this subsection, who can provide documentation of such employment.

(11) "Publish" means to communicate or make information available to another person or entity on a publicly available Internet website.

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

(a) use of a digitized identification card as defined in this subsection;

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

(c) any commercially reasonable method that relies on public or private transactional data to verify the age of the person attempting to access the material.

(13) "Substantial portion" means more than thirty-three and one third percent of total material on a website, which meets the definition of "material harmful to minors" as defined in this section.

(14)(a) "Transactional data" means a sequence of information that documents an exchange, agreement, or transfer between an individual, commercial entity, or third party used for the purpose of satisfying a request or event.

(b) "Transactional data" includes records from mortgage, education, and employment entities.

(B)(1) Any commercial entity that knowingly and intentionally publishes or distributes obscene material, or material that depicts, describes, or promotes child pornography or child sexual exploitation, on the Internet may be held liable to an individual for nominal damages, actual damages, court costs, and reasonable attorney fees as ordered by the court.

(2) A commercial entity that has violated this section in a manner that satisfies the standards for imposition of punitive damages elsewhere provided by law may be held liable to an individual for punitive damages.

(3) Individual claims that satisfy the generally applicable standards for joinder or class action elsewhere provided by law or rules of court, as applicable, may combine their claims in a single action.

(C)(1) Beginning January 1, 2025, a commercial entity that knowingly and intentionally publishes or distributes material harmful to minors on the Internet from a website that contains a substantial portion of such material must be held liable if the entity fails to perform reasonable age verification methods to verify the age of an individual attempting to access the material.

(2) A commercial entity that is found to have violated this section is liable to the minor, by and through the minor's parent or legal guardian, for damages resulting from a minor's accessing the

material, including liability for nominal damages, actual damages, court costs, and reasonable attorney fees as ordered by the court.

(3) A commercial entity that has violated this section in a manner that satisfies the standards for imposition of punitive damages elsewhere provided by law may be held liable to the minor, by and through the minor's parent or legal guardian, for punitive damages.

(4) Individual claims that satisfy the generally applicable standards for joinder or class action elsewhere provided by law or rules of court, as applicable, may combine their claims in a single action.

(5) A commercial entity may not be held liable under this section for allowing access to its website if the entity uses reasonable age verification methods to verify that the individual attempting to access the material from its website is not a minor.

(6) A commercial entity or third party that uses reasonable age verification methods may not retain any identifying information of the individual after access has been granted to the material.

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

(8) This section does not apply to any bona fide news or public interest broadcast, website video, report, or event and may not be construed to affect the rights of a news-gathering organization, unless the organization's website contains a substantial portion of material harmful to minors.

(9) An Internet service provider, affiliate or subsidiary of an Internet service provider, search engine, or cloud service provider may not be held to have violated the provisions of this section solely for providing access or connection to or from a website or other information or content on the Internet, or a facility, system, or network not under that provider's control, including transmission, downloading, storing, or providing access, to the extent that such provider is not responsible for the creation of the content of the communication that constitutes material harmful to minors.

(D) The Attorney General may seek injunctive and other equitable relief against a commercial entity that fails to comply with the provisions of this section.

SECTION 2. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 3. This act takes effect upon approval by the Governor.

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