HOUSE BILL 2586

AN ACT

AMENDING TITLE 18, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 7; RELATING TO INTERNET WEBSITE LIABILITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 18, Arizona Revised Statutes, is amended by adding chapter 7, to read:

CHAPTER 7
PUBLISHERS AND DISTRIBUTORS OF MATERIAL HARMFUL TO MINORS

ARTICLE 1. GENERAL PROVISIONS

18-701. Age verification; publishers and distributors of material harmful to minors; civil liability; damages; definitions

A. A COMMERCIAL ENTITY THAT KNOWINGLY OR INTENTIONALLY Publishes or DISTRIBUTES MATERIAL HARMFUL TO MINORS ON THE INTERNET FROM A WEBSITE THAT CONTAINS A SUBSTANTIAL PORTION OF MATERIAL HARMFUL TO MINORS IS LIABLE FOR DAMAGES IN A CIVIL ACTION IF THE COMMERCIAL ENTITY DOES NOT PERFORM A REASONABLE AGE VERIFICATION METHOD TO VERIFY THE AGE OF AN INDIVIDUAL ATTEMPTING TO ACCESS THE MATERIAL HARMFUL TO MINORS.

B. A COMMERCIAL ENTITY OR THIRD PARTY THAT PERFORMS THE AGE VERIFICATION REQUIRED BY THIS SECTION MAY NOT RETAIN ANY OF THE INDIVIDUAL'S IDENTIFYING INFORMATION AFTER ACCESS IS GRANTED TO THE MATERIAL HARMFUL TO MINORS.

C. A COMMERCIAL ENTITY THAT VIOLATES SUBSECTION A OF THIS SECTION IS LIABLE TO AN INDIVIDUAL FOR THE DAMAGES THAT RESULT FROM A MINOR ACCESSING THE MATERIAL HARMFUL TO MINORS, INCLUDING COURT COSTS AND REASONABLE ATTORNEY FEES.

D. A COMMERCIAL ENTITY OR THIRD PARTY THAT KNOWINGLY RETAINS AN INDIVIDUAL'S IDENTIFYING INFORMATION AFTER ACCESS HAS BEEN GRANTED TO THE INDIVIDUAL IS LIABLE TO THE INDIVIDUAL FOR DAMAGES THAT RESULT FROM RETAINING THE INDIVIDUAL'S IDENTIFYING INFORMATION, INCLUDING COURT COSTS AND REASONABLE ATTORNEY FEES.

E. THIS SECTION DOES NOT APPLY TO A BONA FIDE NEWS OR PUBLIC INTEREST BROADCAST, WEBSITE VIDEO, REPORT OR EVENT AND DOES NOT AFFECT THE RIGHTS OF A NEWS-GATHERING ORGANIZATION.

F. AN INTERNET SERVICE PROVIDER, AFFILIATE OR SUBSIDIARY OF AN INTERNET SERVICE PROVIDER, SEARCH ENGINE OR CLOUD SERVICE PROVIDER DOES NOT VIOLATE THIS SECTION BY SOLELY 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 THE PROVIDER IS NOT RESPONSIBLE FOR THE CREATION OF THE CONTENT OF THE COMMUNICATION THAT CONSTITUTES MATERIAL HARMFUL TO MINORS.

G. FOR THE PURPOSES OF THIS SECTION:

1. "COMMERCIAL ENTITY" INCLUDES A CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP, LIMITED PARTNERSHIP OR SOLE PROPRIETORSHIP OR ANY OTHER LEGALLY RECOGNIZED ENTITY.

2. "DISTRIBUTE" MEANS TO ISSUE, SELL, GIVE, PROVIDE, DELIVER, TRANSFER, TRANSMUTE, CIRCULATE OR DISSEMINATE BY ANY MEANS.
3. "INTERNET" HAS THE SAME MEANING PRESCRIBED IN SECTION 18-541.
4. "MATERIAL HARMFUL TO MINORS" MEANS ALL OF THE FOLLOWING:
   (a) ANY MATERIAL THAT THE AVERAGE PERSON, APPLYING CONTEMPORARY COMMUNITY STANDARDS, WOULD FIND, TAKING THE MATERIAL AS A WHOLE AND WITH RESPECT TO MINORS, IS DESIGNED TO APPEAL TO, OR IS DESIGNED TO PANDER TO, THE PRURIENT INTEREST.
   (b) MATERIAL THAT EXPLOITS, IS DEVOTED TO OR PRINCIPALLY CONSISTS OF DESCRIPTIONS OF ACTUAL, SIMULATED OR ANIMATED DISPLAY OR DEPICTION OF ANY OF THE FOLLOWING, IN A MANNER PATENTLY OFFENSIVE WITH RESPECT TO MINORS:
      (i) PUBIC HAIR, AN ANUS, A VULVA, GENITALS OR A FEMALE BREAST'S NIPPLE.
      (ii) TOUCHING, CARESSING OR FONDLING OF NIPPLES, BREASTS, BUTTOCKS, ANUSES OR GENITALS.
      (iii) SEXUAL INTERCOURSE, MASTURBATION, SODOMY, BESTIALITY, ORAL COPULATION, FLAGELLATION, EXCRETORY FUNCTIONS, EXHIBITIONS OR ANY OTHER SEXUAL ACT.
   (c) THE MATERIAL TAKEN AS A WHOLE LACKS SERIOUS LITERARY, ARTISTIC, POLITICAL OR SCIENTIFIC VALUE FOR MINORS.
5. "NEWS-GATHERING ORGANIZATION" MEANS EITHER 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 SUBDIVISION WHO CAN PROVIDE DOCUMENTATION OF THE EMPLOYMENT.
   (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 SUBDIVISION WHO CAN PROVIDE DOCUMENTATION OF THE EMPLOYMENT.
6. "PUBLISH" MEANS TO COMMUNICATE OR MAKE INFORMATION AVAILABLE TO ANOTHER PERSON OR ENTITY ON A PUBLICLY AVAILABLE INTERNET WEBSITE.
7. "REASONABLE AGE VERIFICATION METHOD" MEANS A PROCESS TO VERIFY THAT AN INDIVIDUAL SEEKING TO ACCESS THE MATERIAL HARMFUL TO MINORS IS EIGHTEEN YEARS OF AGE OR OLDER BY USING ANY OF THE FOLLOWING METHODS:
   (a) VERIFICATION THROUGH AN INDEPENDENT, THIRD-PARTY AGE VERIFICATION SERVICE THAT MEETS BOTH OF THE FOLLOWING:
      (i) COMPARES THE PERSONAL INFORMATION ENTERED BY THE INDIVIDUAL WHO IS SEEKING ACCESS TO THE MATERIAL HARMFUL TO MINORS THAT IS AVAILABLE FROM A COMMERCIALY AVAILABLE DATABASE OR AGGREGATE OF DATABASES.
      (ii) IS REGULARLY USED BY GOVERNMENT AGENCIES AND BUSINESSES TO VERIFY AN INDIVIDUAL'S AGE AND IDENTITY.
   (b) ANY COMMERCIALY REASONABLE METHOD THAT RELIES ON PUBLIC OR PRIVATE TRANSACTIONAL DATA TO VERIFY THE AGE OF THE INDIVIDUAL WHO IS ATTEMPTING TO ACCESS THE MATERIAL HARMFUL TO MINORS.
8. "SUBSTANTIAL PORTION" MEANS MORE THAN THIRTY-THREE AND ONE-THIRD PERCENT OF THE TOTAL MATERIAL ON THE INTERNET WEBSITE IS MATERIAL HARMFUL TO MINORS.

9. "TRANSACTIONAL DATA":
   (a) MEANS A SEQUENCE OF INFORMATION THAT DOCUMENTS AN EXCHANGE, AGREEMENT OR TRANSFER BETWEEN AN INDIVIDUAL, COMMERCIAL ENTITY OR THIRD PARTY THAT IS USED TO SATISFY A REQUEST OR EVENT.
   (b) INCLUDES RECORDS FROM MORTGAGE, EDUCATION AND EMPLOYMENT ENTITIES.