

HOUSE BILL NO. 5009

September 14, 2023, Introduced by Rep. Paquette and referred to the Committee on Energy, Communications, and Technology.

A bill to regulate material harmful to minors; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act may be cited as the "material harmful to
2 minors regulation act".

3 Sec. 2. As used in this act:

4 (a) "Commercial entity" includes a corporation, limited
5 liability company, partnership, limited partnership, sole
6 proprietorship, or other legally recognized entity.

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

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

6 (d) "Material harmful to minors" means all of the following:

7 (i) Material that the average person, applying contemporary
8 community standards, would find, taking the material as a whole and
9 with respect to minors, is designed to appeal to, or is designed to
10 pander to, the prurient interest.

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

15 (A) Pubic hair, anus, vulva, genitals, or nipple of the female
16 breast.

17 (B) Touching, caressing, or fondling of nipples, breasts,
18 buttocks, anuses, or genitals.

19 (C) Sexual intercourse, masturbation, sodomy, bestiality, oral
20 copulation, flagellation, excretory functions, exhibitions, or any
21 other sexual act.

22 (iii) Material that taken as a whole lacks serious literary,
23 artistic, political, or scientific value for minors.

24 (e) "Minor" means an individual who is less than 18 years of
25 age.

26 (f) "News-gathering organization" means either of the
27 following:

28 (i) An employee of a newspaper, news publication, or news
29 source, printed or on an online or mobile platform, of current news

1 and public interest, while operating as an employee, who can
2 provide documentation of employment with the newspaper, news
3 publication, or news source.

4 (ii) An employee of a radio broadcast station, television
5 broadcast station, cable television operator, or wire service while
6 operating as an employee, who can provide documentation of
7 employment with the broadcast station, television broadcast
8 station, cable television operator, or wire service.

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

12 (h) "Reasonable age verification methods" includes verifying
13 that an individual seeking to access material harmful to minors is
14 18 years of age or older by using either of the following methods:

15 (i) Providing a digitized identification card.

16 (ii) Requiring the individual to comply with a commercial age
17 verification system that verifies an individual's age in 1 or more
18 of the following ways:

19 (A) By reviewing a government-issued identification.

20 (B) By using a commercially reasonable method that relies on
21 public or private transactional data to verify the age of the
22 individual.

23 (i) "Substantial portion" means that more than 33.33% of the
24 total material on a website is material harmful to minors.

25 (j) "Transactional data" means a sequence of information that
26 documents an exchange, agreement, or transfer between an
27 individual, commercial entity, or third-party used for the purpose
28 of satisfying a request or event. Transactional data may include,
29 but is not limited to, records from mortgage, education, and

1 employment entities.

2 Sec. 3. (1) A commercial entity that knowingly and
3 intentionally publishes or distributes material harmful to minors
4 on the internet from a website that contains a substantial portion
5 of material harmful to minors shall not allow an individual to
6 access the material that is harmful to minors unless the commercial
7 entity performs reasonable age verification methods to verify that
8 the individual is 18 years of age or older.

9 (2) A commercial entity or third-party that performs the
10 required age verification under subsection (1) shall not retain any
11 identifying information of the individual after access has been
12 granted to the material harmful to minors.

13 (3) A commercial entity that violates this act may be liable
14 in a civil action for damages resulting from a minor's accessing
15 the material harmful to minors, including court costs and
16 reasonable attorney fees as ordered by the court.

17 (4) A commercial entity that is found to have knowingly
18 retained identifying information of an individual after access of
19 the material harmful to minors has been granted to the individual
20 may be liable in a civil action for damages resulting from
21 retaining the identifying information of the individual, including
22 court costs and reasonable attorney fees as ordered by the court.

23 Sec. 5. (1) This act does not apply to a bona fide news or
24 public interest broadcast, website video, report, or event and does
25 not affect the rights of a news-gathering organization.

26 (2) An internet service provider, or its affiliates or
27 subsidiaries, search engine, or cloud service provider does not
28 violate this act solely for providing access or connection to or
29 from a website or other information or content on the internet or a

1 facility, system, or network not under that provider's control
2 including transmission, downloading, intermediate storage, access
3 software, or other to the extent that the provider is not
4 responsible for the creation of the content of the communication
5 that constitutes material harmful to minors.