



ARIZONA STATE SENATE
Fifty-Sixth Legislature, Second Regular Session

VETOED
FACT SHEET FOR H.B. 2586

harmful website content; age verification.

Purpose

Deems, as liable for damages, a commercial entity that distributes a substantial portion of material harmful to minors on a website for violating the age verification requirement and an entity or third party that retains an individual's identifying information, as prescribed.

Background

It is unlawful for a person, with knowledge of the item's character, to: 1) recklessly furnish, present, provide, make available, give, lend, show, advertise or distribute to a minor any item that is harmful to minors, excluding the transmission or sending of items over the internet; or 2) intentionally or knowingly transmit or send to a minor by means of electronic mail, personal messaging or any other direct internet communication an item that is harmful to minors when the person knows, or believes at the time, that a minor will receive the item, excluding posting material on an internet web site, bulletin board or newsgroup or sending material via mailing list or listserv that is not administered by the sender. A violation of either offense is a class 4 felony and a failure to report a violation is a class 6 felony (A.R.S. §§ [13-3506](#) and [13-3506.01](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

1. Deems, as liable for damages in a civil action, a commercial entity that:
 - a) knowingly or intentionally publishes or distributes material harmful to minors on the internet from a website that contains a substantial portion of such material; and
 - b) fails to perform a reasonable age verification method to verify the age of an individual attempting to access the material harmful to minors.
2. Determines that a *substantial portion* is more than 33.33 percent of the total material on a website.
3. Deems a commercial entity that violates the age verification requirement liable to an individual for damages resulting from a minor accessing the material harmful to minors, including court costs and reasonable attorney fees.
4. Prohibits a commercial entity or third party that performs the age verification from retaining any of the individual's identifying information after access to the material harmful to minors is granted.

5. Deems a commercial entity or third party that knowingly retains an individual's identifying information after access has been granted to the individual liable to that individual for damages that result from retaining the individual's identifying information, including court costs and reasonable attorney fees.
6. States that the prescribed prohibition and liabilities do not:
 - a) apply to a bona fide news or public interest broadcast, website video, report or event; or
 - b) affect the rights of a news-gathering organization.
7. Specifies that an internet service provider, affiliate or subsidiary of an internet service provider, search engine or cloud service provider does not violate the prescribed prohibition and liabilities 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.
8. Defines a *reasonable age verification method* as a process to verify that an individual seeking to access the material harmful to minors is 18 years old or older by:
 - a) verification through an independent, third-party age verification service that:
 - i. compares the personal information entered by an individual that is available from a commercially available database or aggregate of databases; and
 - ii. is regularly used by government agencies and businesses to verify an individual's age and identity; or
 - b) any commercially reasonable method that relies on public or private transactional data to verify the age of an individual.
9. Defines *material harmful to minor* as any material that:
 - a) 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) when taken as a whole, lacks serious literary, artistic, political or scientific value for minors; and
 - c) 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; or
 - iii. sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory functions, exhibitions or any other sexual act.
10. Defines a *commercial entity* as including a corporation, limited liability company, partnership, limited partnership or sole proprietorship or any other legally recognized entity.
11. Defines *distribute* as issuing, selling, giving, providing, delivering, transferring, transmuting, circulating or disseminating by any means.

12. Defines a *news-gathering organization* as an employee of:

- a) 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 who can provide documentation of the employment; or
- b) a radio broadcast station, television broadcast station, cable television operator or wire service while operating as an employee who can provide documentation of the employment.

13. Defines terms.

14. Makes conforming changes.

15. Becomes effective on the general effective date.

Governor's Veto Message

The Governor indicates in her [veto message](#) that H.B. 2586 conflicts with settled case law and that children's online safety is a pressing issue for parents and the state requiring a bipartisan solution that works within the bounds of the First Amendment.

House Action

Senate Action

JUD	1/31/24	DP	4-3-2-0	TTMC	3/11/24	DP	4-3-0
3 rd Read	2/28/24		32-27-0-0-1	3 rd Read	4/1/24		16-12-2

Vetoed by the Governor 4/8/24

Prepared by Senate Research
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KJA/slp