

SENATE BILL NO. 544

INTRODUCED BY W. CURDY, J. FULLER, M. FOX, J. SMALL, C. POPE, W. SALES, P. FLOWERS, B. GILLESPIE, J. ELLSWORTH, K. BOGNER, T. SMITH, T. VERMEIRE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING INTERNET LAWS RELATED TO MATERIAL HARMFUL TO MINORS; PROVIDING FOR LIABILITY FOR THE PUBLISHING OR DISTRIBUTION OF MATERIAL HARMFUL TO MINORS ON THE INTERNET; PROVIDING FOR REASONABLE AGE VERIFICATION; PROVIDING FOR INDIVIDUAL RIGHTS OF ACTION; PROVIDING FOR ATTORNEY FEES, COURT COSTS, AND PUNITIVE DAMAGES; PROVIDING FOR EXCEPTIONS; REQUIRING A REPORT BY THE DEPARTMENT OF JUSTICE FOR ENFORCEMENT ACTIVITY; PROVIDING FOR A FEE; PROVIDING DEFINITIONS; AND PROVIDING A DELAYED EFFECTIVE DATE."

WHEREAS, pornography is creating a public health crisis and having a corroding influence on minors; and

WHEREAS, due to advances in technology, the universal availability of the internet, and limited age verification requirements, minors are exposed to pornography earlier in age; and

WHEREAS, pornography contributes to the hypersexualization of teens and prepubescent children and may lead to low self-esteem, body image disorders, an increase in problematic sexual activity at younger ages, and increased desire among adolescents to engage in risky sexual behavior; and

WHEREAS, pornography may also impact brain development and functioning, contribute to emotional and medical illnesses, shape deviant sexual arousal, and lead to difficulty in forming or maintaining positive, intimate relationships, as well as promoting problematic or harmful sexual behaviors and addiction; and

WHEREAS, the provisions of this act are intended to provide a civil remedy for damages against commercial entities who distribute material harmful to minors

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Publishing and distribution of material harmful to minors -- age

1 **verification -- requirements -- penalties -- exceptions -- reporting -- definitions.** (1) A commercial entity
 2 that knowingly and intentionally publishes or distributes material harmful to minors on the internet from a
 3 website that contains a substantial portion of the material must be held liable if the entity fails to perform
 4 reasonable age verification methods to verify the age of individuals attempting to access the material.

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

7 (3) (a) A commercial entity that is found to have violated this section must be liable to an individual
 8 for damages resulting from a minor accessing the material, including court costs and reasonable attorney fees
 9 as ordered by the court.

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

14 (4) This section may not apply to any bona fide news or public interest broadcast, website video,
 15 report, or event and may not be construed to affect the rights of any news-gathering organizations.

16 (5) An internet service provider or its affiliates or subsidiaries, a search engine, or a cloud service
 17 provider may not be held to have violated the provisions of this section solely for providing access or
 18 connection to or from a website or other information or content on the internet or a facility, system, or network
 19 not under that provider's control, including transmission, downloading, intermediate storage, access software,
 20 or other forms of access or storage to the extent the provider is not responsible for the creation of the content of
 21 the communication that constitutes material harmful to minors.

22 (6) The department shall provide an annual report of enforcement actions taken under this section.
 23 The department shall provide an internet version of the report free of charge to the public and shall charge a fee
 24 for paper copies that is commensurate with the cost of printing the report.

25 (7) For the purposes of this section:

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

28 (b) "Distribute" means to issue, sell, give, provide, deliver, transfer, transmute, circulate, or

1 disseminate by any means.

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

4 (d) "Material harmful to minors" is defined as all of the following:

5 (i) any material that the average person, applying contemporary community standards, would find,
6 taking the material as a whole and with respect to minors, is designed to appeal to, or is designed to pander to,
7 the prurient interest;

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

11 (A) pubic hair, anus, vulva, genitals, or nipple of the female breast;

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

13 (C) sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory
14 functions, exhibitions, or any other sexual act; and

15 (iii) the material taken as a whole lacks serious literary, artistic, political, or scientific value for
16 minors.

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

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

19 (i) an employee of a newspaper, news publication, or news source, printed or on an online or
20 mobile platform, of current news and public interest, while operating as an employee as provided in this
21 subsection (7)(f)(i), who can provide documentation of employment with the newspaper, news publication, or
22 news source; and

23 (ii) an employee of a radio broadcast station, television broadcast station, cable television
24 operator, or wire service, while operating as an employee as provided in this subsection (7)(f)(ii), who can
25 provide documentation of employment.

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

28 (h) "Reasonable age verification methods" include verifying that the person seeking to access the

1 material is 18 years of age or older by using any of the following methods:

2 (i) providing a digitized identification card; or

3 (ii) requiring the person attempting to access the material to comply with a commercial age

4 verification system that verifies in one or more of the following ways:

5 (A) government-issued identification; or

6 (B) any commercially reasonable method that relies on public or private transactional data to verify

7 the age of the person attempting to access the information is at least 18 years of age or older.

8 (i) "Substantial portion" means more than 33 1/3% of total material on a website, which meets the
9 definition of "material harmful to minors" as defined by this section.

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

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15 **NEW SECTION. Section 2. Codification instruction.** [Section 1] is intended to be codified as an
16 integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [section 1].

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18 **NEW SECTION. Section 3. Effective date.** [This act] is effective January 1, 2024.

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