

VIRGINIA ACTS OF ASSEMBLY -- 2023 RECONVENED SESSION

CHAPTER 811

An Act to amend and reenact § 18.2-390 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 8.01-40.5, relating to civil liability for publishing or distributing material harmful to minors on the Internet.

[S 1515]

Approved May 12, 2023

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-390 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 8.01-40.5 as follows:

§ 8.01-40.5. Publishing or distributing material harmful to minors on the Internet.

A. For the purposes of this section:

"Interactive computer service" means the same as that term is defined in § 8.01-49.1.

"Material harmful to minors" means any description or representation of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when it (i) appeals to the prurient, shameful, or morbid interest of minors; (ii) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and (iii) is, when taken as a whole, lacking in serious literary, artistic, political, or scientific value for minors.

"Sexual conduct" means the same as that term is defined in § 18.2-390.

"Substantial portion" means more than 33 and one-third percent of total material on a website that meets the definition of material harmful to minors.

B. Any 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 such material shall, through the use of (i) a commercially available database that is regularly used by businesses or governmental entities for the purpose of age and identity verification or (ii) another commercially reasonable method of age and identity verification, verify that any person attempting to access such material harmful to minors is 18 years of age or older.

C. Any commercial entity that violates the provisions of this section shall be subject to civil liability for damages resulting from a minor's access to such material harmful to a minor and reasonable attorney fees and costs.

D. Nothing in this section shall be construed to impose an obligation or liability on a provider or user of an interactive computer service on the Internet.

§ 18.2-390. Definitions.

As used in this article:

(1) "Juvenile" means a person less than 18 years of age.

(2) "Nudity" means a state of undress so as to expose the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered or uncovered male genitals in a discernibly turgid state.

(3) "Sexual conduct" means actual or explicitly simulated acts of masturbation, ~~homosexuality~~, sexual intercourse, or physical contact in an act of apparent sexual stimulation or gratification with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such be female, breast.

(4) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(5) "Sadomasochistic abuse" means actual or explicitly simulated flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(6) "Harmful to juveniles" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it (a) predominantly appeals to the prurient, shameful or morbid interest of juveniles, (b) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for juveniles, and (c) is, when taken as a whole, lacking in serious literary, artistic, political or scientific value for juveniles.

(7) "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both (a) the character and content of any material described herein which is reasonably susceptible of examination by the defendant, and (b) the age of the juvenile, provided however, that an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such juvenile.

(8) "Video or computer game" means an object or device that stores recorded data or instructions,

receives data or instructions generated by a person who uses it, and, by processing the data or instructions, creates an interactive game capable of being played, viewed, or experienced on or through a computer, television gaming system, console, or other technology.