

# Age Verification for Websites Containing Obscene and Indecent Material

**Adam Candeub**, Center for Renewing America  
**Clare Morell**, Ethics and Public Policy Center

## AN ACT

TO REQUIRE AGE-VERIFICATION BY WEBSITES CONTAINING MATERIAL HARMFUL TO MINORS

## TITLE I – GENERAL

---

### Section 1. Short Title.

This Act may be cited as the “Age Verification for Websites Containing Obscene and Indecent Material”

### Section 2. Purpose.

The purpose of this legislation is to prevent the mental, emotional, physical, and developmental harm to minors in this State by requiring covered platforms to adopt and operate reasonable age verification measures to ensure that users accessing the platform are not minors.

### Section 3. Definitions.

For the purposes of this act, the following terms shall be defined as follows:

- (1) “Child Pornography” —shall have the meaning as set forth in section 2256 of title 18, United States Code.
- (2) “Covered platform” means an entity—
  - (A) that is a website;
  - (B) for which it is in the regular course of the trade or business of the entity to create, host, or make available content that meets the definition of material harmful to minors under paragraph (6);
  - (C) that is provided by the entity, a user, or other information content provider, with the objective of earning a profit; and,
  - (D) includes an entity described in subparagraph (B) regardless of whether:
    - (i) the entity earns a profit on the activities described in subparagraph (B); or
    - (ii) creating, hosting, or making available content that meets the definition of material harmful to minors under paragraph (6) is the sole source of income or principal business of the entity.

(3) “Indecent” means any image, video, audio recording, audio-video file, film, written material, document, software, data file, scripting language, computer code, game, virtual-reality technology, interactive and non-interactive streaming service, interactive and non-interactive streaming software, and downloadable application that following regulations set forth by the Federal Communications Commission, 47 CFR § 73.3999:

- (A) the average person, applying contemporary community standards, would find to be generally harmful to minors;
- (B) Depicts, describes, exposes, or presents, in a patently offensive way, sexual conduct specifically defined by applicable state law; or
- (C) Taken as a whole, lacks serious literary, scientific, or artistic value for purpose of the education of minors.

(4) “Interactive computer service” shall have the meaning as set forth in Title 47 of the United States Code, Section 230(f).

(5) “Information content provider” shall have the meaning as set forth in Title 47 of the United States Code, Section 230(f).

(6) “Material harmful to minors” means any picture, image, graphic image file, film, videotape, or other visual depiction, that is

- (A) obscene;
- (B) indecent; or
- (C) child pornography.

(7) “Minor” means any individual under the age of XX (18) as defined by the laws of the State of [X].

(8) “Obscene” means any image, video, audio recording, audio-video file, film, written material, document, software, data file, scripting language, computer code, game, virtual-reality technology, interactive and non-interactive streaming service, interactive and non-interactive streaming software, and downloadable application that following Miller v. California, 413 U.S. 15 (1973):

- (A) the average person, applying contemporary community standards, would find appeals to the prurient interest;
- (B) depicts, describes, exposes, or presents, in a patently offensive way, sexual conduct specifically defined by applicable state law; and
- (C) taken as a whole, lacks serious literary, scientific, or artistic value.

(9) “Reasonable age verification measures” include:

- (A) State Issued Driver(s)(Operator) License;
- (B) State Issued Identification (non-drivers);
- (C) Digital Identification;
- (D) Government Identification cards;
- (E) Military Identification cards;
- (F) Credit Cards, except: cards that do not require the individual in ownership of the account to be eighteen (18) years of age or older;

- (G) Debit Cards, except: cards that do not require the individual in ownership of the account to be eighteen (18) years of age or older;
- (H) Bank Account Information; or
- (I) Any other commercially reasonable means or method that reliably and accurately can determine a user of a covered platform is a minor and prevent access by minors to the content on a covered platform.

## **TITLE II – PROVISIONS**

---

### **Section 4. Application.**

Any covered platform that publishes or distributes material harmful to minors on the internet shall be held liable if the platform fails to perform reasonable age verification methods to verify the age of individuals attempting to access the material and prevents access by minors to the material. Any covered platform or third party that performs the required age verification shall not retain any identifying information of the individual after access has been granted to the material. Any covered platform that is found to have violated this chapter shall be liable to an individual for damages, including those defined in this Chapter and court costs and reasonable attorney fees. A covered platform that is found to have knowingly retained identifying information of the individual after access has been granted to the individual shall be liable to the individual for damages for retaining the identifying information, including court costs and reasonable attorney fees.

### **Section 5. Geographic Applicability of Chapter.**

This chapter applies only with a respect to a minor:

- (1) who is a permanent resident in this state;
- (2) who has resided in this state for more than a year; or
- (3) who has been sojourning in this state for at least 31 consecutive days.

### **Section 6. Severability.**

Anyone in violation of this act shall be held liable for civil damages in the amount of \$10,000 per each image sent to a minor

(a) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this chapter, and every application of the provisions in this chapter, are severable from each other.

(b) If any application of any provision in this chapter to any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this chapter shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds that a substantial amount of the provision's applications are unconstitutional, judged in relation to the provision's plainly legitimate sweep, the applications that do not

violate the constitution of this state and the constitution and laws of the United States shall be severed from the remaining applications and shall remain in force, and the provision shall be interpreted, as a matter of state law, as if the provision contained explicit language limiting its application to the persons, group of persons, or circumstances for which the statute's application does not violate the constitution of this state and the constitution and laws of the United States.

(c) If any court declares or finds a provision of this chapter facially unconstitutional, when discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating the constitution of this state and the constitution and laws of the United States, those applications shall be severed from all remaining applications of the provision, and the provision shall be interpreted by every state and federal court, as a matter of state law, as if the provision contained explicit language limiting its application to the persons, group of persons, or circumstances for which the provision's application will not violate the constitution of this state and the constitution and laws of the United States.

(d) The legislature further declares that it would have enacted this chapter, and each constitutional provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this chapter, irrespective of the fact that any discrete provision, section, subsection, sentence, clause, phrase, or word, or applications of this chapter, were to be declared unconstitutional or severed from the remainder of the chapter's provisions and applications.

(e) If any provision of this chapter is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force.

(f) No court may decline to enforce the severability requirements of Subsections (a), (b), (c), (d), and (e) on the ground that severance would rewrite the statute or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state official from enforcing a statutory provision is never rewriting the statute, as the statute continues to contain the exact same words as it did before the court's decision. A judicial injunction or declaration of unconstitutionality:

- (1) is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the constitution of this state or the constitution or laws of the United States;
- (2) is not a formal amendment of the language in a statute; and
- (3) no more rewrites a statute than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

#### **Section 7. Limitation On Effect Of Chapter.**

(a) This chapter shall not apply to any internet service provider, or its affiliates or subsidiaries, general purpose search engine, or cloud service provider.

(b) This chapter does not subject a covered platform to any cause of action or liability to the extent it is protected from causes of action or liability by federal law.

(c) Compliance with this chapter shall not excuse any person from any other legal duties or relieve any person from any other legal remedies.

(d) No violation of this chapter may be used to justify or trigger the enforcement of any other law or any type of adverse consequence under any other law, except as provided in this chapter; provided, that this section does not preclude the enforcement of any other law or regulation against conduct that is independently prohibited by such other law or regulation and that would remain prohibited by such other law or regulation in the absence of this chapter.

(e) This chapter's prohibitions do not apply in cases to the extent they would violate the doctrine on the dormant Commerce Clause enunciated by the Supreme Court of the United States.

### **Section 8. Waiver And Estoppel Prohibited.**

(a) A waiver, purported waiver, or estoppel of a person's right to bring a civil action under this chapter, or of any remedy or any other protection provided by this chapter, is void as unlawful and against public policy, and a court or arbitrator may not enforce or give effect to such a waiver or estoppel, notwithstanding any choice-of-law or other provision in any contract or other agreement.

(b) The waiver and estoppel prohibition described by Subsection (a) shall not apply to contractual waivers to the extent any such application of the prohibition would impair the obligation of contract in violation of the constitution of this state or of the United States.

(c) The waiver and estoppel prohibition described by Subsection (a) is a public-policy limitation on contractual and other waivers or estoppels of the highest importance and interest to this state, and this state is exercising and enforcing this prohibition to the full extent permitted by the constitutions of this state and the United States.

### **Section 9. Remedies.**

(a) Any parent or legal guardian of a minor may bring a civil action sounding in tort against any covered platform for violating this chapter with respect to the minor. The plaintiff shall recover damages with respect to each such minor in an amount of \$5,000 per instance that the covered platform failed to perform reasonable age verification methods to restrict a minor's access to material harmful to minors. Each instance shall constitute a separate violation.

(b) Any individual may bring a civil action sounding in tort against a covered platform for knowingly retaining identifying information of such individual after access to the material harmful for minors has been granted to the individual.

(c) If a defendant is found liable in any civil action under this chapter, the plaintiff may recover costs and reasonable and necessary attorney's fees.

(d) A user may bring an action under this section regardless of whether another court has declared any provision of this chapter unconstitutional unless that court decision is binding on the court in which the action is brought.

(e) Nonmutual issue preclusion and nonmutual claim preclusion are not defenses to an action brought under this section.

(f) Notwithstanding any other law:

(1) the requirements of this chapter shall be enforced exclusively through the private civil actions described in this section; and

(2) no direct or indirect enforcement of this chapter may be taken or threatened by the state, a political subdivision, a district attorney, or an executive or administrative officer or employee of this state against any person or entity, in any manner whatsoever, except as provided in this section.

### **Section 10. Jury Trial.**

(a) In any action brought under this chapter, the plaintiff shall have the right to a jury trial.

(b) In any jury trial brought under this chapter, the jury shall decide both guilt and any damages.

**Section 11. Void Arrangements.**

Any contract, agreement, or other arrangement made or entered in violation of this chapter shall be contrary to law and public policy and shall be void and unenforceable.

**Section 12.**

Chapter XX, as added by this Act, applies only to an action taken on or after the effective date of this Act.

**Section 13.**

This Act takes effect on the \_\_\_\_ day after the last day of the legislative session.

## ENDORSEMENTS

---

