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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FOURTH SESSION

H. F. No. 1434

A bill for an act

relating to consumer protection; requiring age verification for websites with material harmful to minors; providing for enforcement by the attorney general; creating a private right of action; proposing coding for new law in Minnesota Statutes, chapter 325F.

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

Section 1. **[325F.1791] AGE VERIFICATION FOR INTERNET CONTENT HARMFUL TO MINORS.**

Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have the meanings given.

(b) "Commercial entity" means a corporation, partnership, limited liability company, limited liability partnership, limited partnership, sole proprietorship, or any other for-profit organization.

(c) "Host" means to provide the technology and resources necessary to store and maintain the electronic files and applications associated with a website on a computer server, in order for the website to be accessible via the Internet. For purposes of this section, an Internet service provider does not host a website.

(d) "Identifying information" means information that is linked or reasonably linkable to an identified or identifiable natural person.

(e) "Interactive computer service" means an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including (1) a service or system that provides access to the Internet, and (2) a system operated or service offered by a library or educational institution.

(f) "Intimate part" means the genitals, pubic area, or anus of an individual. If the individual is female, intimate parts includes a partially or fully exposed nipple.

(g) "Material harmful to minors" means a text, sound recording, image, video, or similar representation or depiction that:

(1) the average person, applying contemporary community standards and evaluating the material (i) as a whole, and (ii) with respect to minors, would determine is designed to appeal to or pander to the prurient interest;

(2) in a manner patently offensive with respect to minors, exploits, is devoted to, or principally consists of a representation or description of an actual, simulated, or animated display or depiction of an intimate part, sexual contact, sexual penetration, bestiality, sadomasochistic abuse, excretory function, exhibition, or other sexual act; and

(3) taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

(h) "Sexual contact" means the intentional touching of an intimate part or intentional touching with seminal fluid or sperm onto another person's body.

(i) "Sexual penetration" means any of the following acts:

(1) sexual intercourse, cunnilingus, fellatio, or anal intercourse; or

(2) any intrusion, however slight, into the genital or anal openings of an individual by another's body part or an object used by another for this purpose.

(j) "Shares or distributes" means to display or present material or make material available for download, with or without consideration.

Subd. 2. **Age verification required.** (a) A commercial entity who knowingly (1) shares or distributes material that is harmful to minors on a website where the material appears on 25 percent or more of the web pages viewed on the website in any calendar month, or (2) hosts a website that meets the criteria under clause (1) must verify that an individual who is a resident of Minnesota or who is located in Minnesota at the time of the attempted access is 18 years of age or older.

(b) A commercial entity violates this section if the commercial entity allows an individual to access a website identified under paragraph (a) without verifying that the individual is 18 years of age or older. Age verification must be conducted through the use of:

(1) a commercially available database that is regularly used by businesses or governmental entities to verify age and identity; or

(2) any other commercially reasonable method to verify age and identity approved by the commissioner of commerce.

(c) The commissioner of commerce may review and approve reliable methods to verify age and identity used to comply with this section. The commissioner's approval under this paragraph is not subject to the rulemaking provisions of chapter 14, and section 14.386 does not apply.

Subd. 3. **Data privacy.** (a) A commercial entity that performs the age verification required by subdivision 2 must not retain any identifying information submitted by an individual to verify age.

(b) A commercial entity that knowingly retains identifying information of an individual in violation of paragraph (a) is liable to the individual for damages resulting from the retention, including reasonable attorney fees and costs as ordered by the court.

Subd. 4. **Enforcement; civil penalties.** (a) A person who accesses a website without verifying the person's age in violation of this section may report the violation to the attorney general. Upon receipt of a report made under this paragraph, the attorney general must investigate and may bring a civil enforcement action and recover the relief provided in section 8.31. Each instance that a website is accessed in violation of this section constitutes a separate violation.

(b) The parent or legal guardian of a minor who accesses a website without verifying the minor's age in violation of this section may bring a civil action against the commercial entity that violated this section to recover damages, together with costs and disbursements, including reasonable attorney fees, and receive other equitable relief determined by the court. In addition to any other damages and relief awarded, a commercial entity that violates this section may be liable for a civil penalty of not more than $25,000 per violation.

Subd. 5. **Limitations.** This section does not impose an obligation or liability on an Internet service provider or the user of an interactive computer service.