

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2024 REGULAR SESSION
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Amend printed copy of **HB 278/GA**

On page 19, after line 20, insert the following:

"➔Section 12. The General Assembly hereby finds and declares that:

(1) Pornography is creating a public health crisis and having a corroding influence on minors;

(2) Due to advances in technology, the universal availability of the internet, and limited age verification requirements, minors are being exposed to pornography earlier in age;

(3) Pornography contributes to the hyper-sexualization 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;

(4) Pornography may also impact brain development and functioning, contribute to emotional and medical illnesses, shape deviate sexual arousal, and lead to difficulty in forming or maintaining positive, intimate relationships, as well as harmful sexual behaviors and addiction; and

(5) It is in the interest of the people of the Commonwealth of Kentucky to protect minors from being able to access obscene or erotic matter through the internet or other digital networks.

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 436 IS CREATED TO READ AS FOLLOWS:

Amendment No. SFA 3

Rep. Sen. Gex Williams

Committee Amendment _____

Signed: _____

Floor Amendment _____

LRD Drafter: _____

Adopted: _____

Date: _____

Rejected: _____

Doc. ID: XXXX

Not for Filing

As used in Sections 13 to 18 of this Act:

- (1) "Age verification" means verifying that the person seeking access to the matter is eighteen (18) years old or older, through any of the following methods:
- (a) State-issued form of identification, including but not limited to an operator's license or personal identification card issued under KRS Chapter 186 that establishes age;
 - (b) Identification issued by any agency of the United States government that establishes age; or
 - (c) Any commercially reasonable method of identification that relies on public or private transactional data to verify that the person attempting to access the matter is at least eighteen (18) years of age or older;
- (2) "Covered platform" means an entity that:
- (a) Is a website; and
 - (b) Is in the regular course of trade or business to create, host, or make available content that meets the definition of matter harmful to minors under subsection (8) of this section, with the objective of earning a profit, regardless of whether:
 - 1. The entity actually earns a profit on the activities described in this paragraph;
 - or
 - 2. Creating, hosting, or making available content that meets the definition of matter harmful to minors under subsection (8) of this section is the sole source of income or principal business of the entity;
- (3) "Distribute" means to issue, sell, give, provide, deliver, transfer, transmit, circulate, or disseminate by any means, with or without consideration;
- (4) "Information content provider" has the same meaning as in 47 U.S.C. sec. 230(f)(3);
- (5) "Interactive computer service" has the same meaning as in 47 U.S.C. sec. 230(f)(2);

- (6) "Internet" has the same meaning as in 47 U.S.C. sec. 230(f)(1);
- (7) "Matter" has the same meaning as in KRS 531.010;
- (8) "Matter harmful to minors" means:
- (a) Any matter that the average person, applying contemporary community standards, and taking the matter as a whole with respect to minors, would find is designed to appeal to, or pander to, the prurient interest;
- (b) Any matter that 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:
1. Pubic area, anus, vulva, genitals, or nipple of the female breast;
 2. Touching, caressing, or fondling of buttocks, anuses, pubic areas, genitals, or nipples of the female breast; or
 3. Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory functions, exhibitions, or any other sexual act; and
- (c) The matter taken as a whole lacks serious literary, artistic, political, or scientific value for minors;
- (9) "Minor" means any person under the age of eighteen (18) years;
- (10) "Publish" means to communicate or make information available to another person or entity on the internet; and
- (11) "Transactional data" means a sequence of information that documents an exchange, agreement, or transfer between an individual, commercial entity, or third party used for the purpose of satisfying a request or event, including but not limited to records from mortgage, utility, and education entities or other reliable document that establishes age.

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 436 IS CREATED TO READ
AS FOLLOWS:

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- (1) Any covered platform that knowingly and intentionally publishes or distributes material on the internet, more than one-third (1/3) of which is matter harmful to minors, and fails to perform age verification, either by itself or through a third party, of individuals attempting to access the matter shall be liable as provided in this section.
- (2) Any person injured by a violation of this section, or a parent or legal guardian on behalf of any minor injured by a violation of this section, may bring a civil action against the covered platform to recover:
- (a) Damages of ten thousand dollars (\$10,000) per instance that the covered platform failed to perform age verification to restrict the minor's access to matter harmful to minors; and
- (b) Actual damages, court costs, and reasonable attorney's fees.
- (3) This section shall only apply to a minor who:
- (a) Is a permanent resident of this state;
- (b) Has resided in this state for more than one (1) year; or
- (c) Has been sojourning in this state for a period of at least thirty-one (31) consecutive days.

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 436 IS CREATED TO READ AS FOLLOWS:

- (1) Any covered platform or third party that performs the age verification required under Section 14 of this Act shall not retain any identifying information of the individual after access has been granted to the matter.
- (2) A covered platform or third party that is found to have knowingly retained identifying information of the individual after access has been granted to the matter shall be liable to the individual for:
- (a) Damages of one thousand dollars (\$1,000) for each twenty-four (24) hour period

that the information is retained; and

(b) Actual damages, court costs, and reasonable attorney's fees.

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 436 IS CREATED TO READ
AS FOLLOWS:

(1) Any party filing a civil action under Section 14 or 15 of this Act shall:

(a) Bring the action in:

1. The Circuit Court of the county where the alleged violation occurred;
2. The Circuit Court of the county in which the person bringing the action resides; or
3. Franklin Circuit Court; and

(b) Have the right to a jury trial, and the jury shall decide both liability and damages.

(2) An individual may bring an action under Section 14 or 15 of this Act regardless of whether another court has declared any provision of Sections 13 to 18 of this Act unconstitutional, unless that court decision is binding upon the court in which the action is brought.

(3) Nonmutual issue preclusion and nonmutual claim preclusion shall not be defenses to an action brought under Section 14 or 15 of this Act.

(4) Notwithstanding any other law:

(a) The requirements of Sections 13 to 18 of this Act shall be enforced exclusively through private civil actions; and

(b) Direct or indirect enforcement of Sections 13 to 18 of this Act shall not be taken or threatened by:

1. The Commonwealth of Kentucky;
2. A political subdivision of the Commonwealth;
3. The Attorney General;

4. A Commonwealth's attorney or county attorney; or
5. An executive or administrative officer or employee of the Commonwealth in his or her official capacity;
against any person or entity, in any manner whatsoever.

➔SECTION 17. A NEW SECTION OF KRS CHAPTER 436 IS CREATED TO READ AS FOLLOWS:

(1) Nothing in Sections 13 to 18 of this Act shall be construed to impose liability on:

- (a) An internet service provider, or its affiliates or subsidiaries;
- (b) A general purpose search engine; or
- (c) A cloud service provider;

when acting in its capacity as a provider of those services to the extent the provider is not responsible for the creation of the content of the communication that constitutes matter harmful to minors.

(2) Nothing in Sections 13 to 18 of this Act shall be construed to limit or bar any cause of action or preclude the imposition of sanctions or penalties, including criminal penalties, that would otherwise be available under state or federal law.

(3) Compliance with Sections 13 to 18 of this Act shall not excuse any person from any other legal duties or preclude any person from any other legal remedies.

(4) Sections 13 to 18 of this Act shall 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, including but not limited to 47 U.S.C. sec. 230.

(5) The provisions of Sections 13 to 18 of this Act shall not apply in cases to the extent the provisions would violate the Commerce Clause of the Constitution of the United States.

➔SECTION 18. A NEW SECTION OF KRS CHAPTER 436 IS CREATED TO READ AS FOLLOWS:

- (1) A waiver, purported waiver, or estoppel of a person's right to bring a civil action under Section 14 or 15 of this Act, or of any remedy or any other protection provided by Sections 13 to 18 of this Act, shall be void and unenforceable as against public policy, and a court or arbitrator shall not enforce or give effect to any waiver or estoppel, notwithstanding any choice-of-law or other provision in any contract or other agreement.**
- (2) The waiver and estoppel prohibition under subsection (1) of this section:**
- (a) Shall not apply to contractual waivers to the extent any application of the prohibition would impair the obligation of contract in violation of the Constitution of Kentucky or the Constitution of the United States;**
- (b) Is a public policy limitation on contractual and other waivers or estoppels; and**
- (c) Shall be enforced to the full extent permitted by the Constitution of Kentucky and the Constitution of the United States.**
- (3) Any contract, agreement, or arrangement made or entered in violation of Sections 13 to 18 of this Act shall be void and unenforceable as against public policy.**

➔Section 19. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable."