

**House File 489 - Introduced**

HOUSE FILE 489

BY HAYES

**A BILL FOR**

1 An Act relating to civil liability for commercial entities who  
2 publish or distribute material harmful to minors on the  
3 internet, and providing penalties.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 235G.1 Definitions.

2 As used in this chapter, unless context otherwise requires:

3 1. "*Commercial entity*" includes corporations, limited  
4 liability companies, partnerships, limited partnerships, sole  
5 proprietorships, or other legally recognized entities.

6 2. "*Distribute*" means to issue, sell, give, provide,  
7 deliver, transfer, transmute, circulate, or disseminate by any  
8 means.

9 3. "*Material harmful to minors*" means all of the following:

10 a. Any material that the average person, applying  
11 contemporary community standards would find, taking the  
12 material as a whole and with respect to minors, is designed to  
13 appeal to, or is designed to pander to, the prurient interest.

14 b. Any material that exploits, is devoted to, or principally  
15 consists of descriptions of actual, simulated, or animated  
16 displays or depictions of any of the following, in a manner  
17 patently offensive with respect to minors:

18 (1) Pubic hair, anus, vulva, genitals, or nipple of the  
19 female breast.

20 (2) Touching, caressing, or fondling of nipples, breasts,  
21 buttocks, anuses, or genitals.

22 (3) Sexual intercourse, masturbation, sodomy, bestiality,  
23 oral copulation, flagellation, excretory functions,  
24 exhibitions, or any other sexual act.

25 c. The material taken as a whole lacks serious literary,  
26 artistic, political, or scientific value for minors.

27 4. "*Minor*" means a person under the age of eighteen.

28 5. "*News-gathering organization*" means any of the following:

29 a. An employee of a newspaper, news publication, or news  
30 source, printed or on an online or mobile platform, of current  
31 news and public interest, while operating as an employee, who  
32 can provide documentation of such employment.

33 b. An employee of a radio broadcast station, television  
34 broadcast station, cable television operator, or wire service  
35 while operating as an employee, who can provide documentation

1 of such employment.

2 6. "*Publish*" means to communicate or make information  
3 available to another person or entity on a publicly available  
4 internet website.

5 7. "*Reasonable age verification methods*" means verifying that  
6 the person seeking to access the material is eighteen years of  
7 age or older by any of the following methods:

8 a. Providing a digitized identification card or mobile  
9 identification.

10 b. Requiring the person attempting to access the material to  
11 comply with a commercial age verification system that verifies  
12 the material through one or more of the following:

13 (1) Government-issued identification.

14 (2) Any commercially reasonable method that relies on  
15 public or private transactional data to verify that the age of  
16 the person attempting to access the information is at least  
17 eighteen years of age or older.

18 8. "*Substantial portion*" means more than thirty-three  
19 and one-third percent of total material on a website that  
20 constitutes material harmful to minors.

21 9. "*Transactional data*" means a sequence of information  
22 that documents an exchange, agreement, or transfer between  
23 an individual, commercial entity, or third party used for  
24 the purpose of satisfying a request or event. "*Transactional*  
25 *data*" may include but is not limited to records from mortgage,  
26 education, and employment entities.

27 Sec. 2. NEW SECTION. 235G.2 **Civil liability for publishers**  
28 **and distributors of material harmful to minors.**

29 1. a. Any commercial entity that knowingly and  
30 intentionally publishes or distributes material harmful  
31 to minors on the internet from a website that contains  
32 a substantial portion of such material shall be held  
33 civilly liable if the entity fails to perform reasonable  
34 age verification methods to verify the age of individuals  
35 attempting to access the material.

1     *b.* Any commercial entity or third party that performs the  
2 required age verification shall not retain any identifying  
3 information about the individual after access has been granted  
4 to the material.

5     *c.* (1) Any commercial entity that is found to have violated  
6 this section shall be civilly liable to an individual for  
7 damages resulting from a minor's accessing the material,  
8 including court costs and reasonable attorney fees as ordered  
9 by the court.

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

16    2. *a.* This section shall not apply to any bona fide  
17 news or public interest broadcast, website video, report, or  
18 event and shall not be construed to affect the rights of any  
19 news-gathering organizations.

20    *b.* An internet service provider, or its affiliates or  
21 subsidiaries, a search engine, or a cloud service provider  
22 shall not be in violation of the provisions of this section  
23 solely for providing access or a connection to or from a  
24 website or other information or content on the internet  
25 or to or from a facility, system, or network not under  
26 that provider's control to the extent such provider is  
27 not responsible for the creation of the content of the  
28 communication that constitutes material harmful to minors.

29    Sec. 3. NEW SECTION. 235G.3 Civil remedy — parent or legal  
30 guardian.

31    1. A parent or legal guardian of a minor may institute a  
32 civil action for damages in the amount of seventy-five thousand  
33 dollars for each violation of section 235G.2.

34    2. A court shall award the prevailing party in an action  
35 under this section court costs, reasonable attorney fees, and

1 expert witness fees.

2

EXPLANATION

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The inclusion of this explanation does not constitute agreement with  
4 the explanation's substance by the members of the general assembly.

5

This bill relates to civil liability for commercial entities  
6 who publish or distribute material harmful to minors on the  
7 internet.

8

The bill provides any commercial entity that knowingly  
9 and intentionally publishes or distributes material harmful  
10 to minors on the internet from a website that contains  
11 a substantial portion of such material shall be held  
12 civilly liable if the entity fails to perform reasonable  
13 age verification methods to verify the age of individuals  
14 attempting to access the material. Any commercial entity that  
15 is found in violation shall be civilly liable to an individual  
16 for damages resulting from a minor's accessing the material,  
17 including court costs and reasonable attorney fees as ordered  
18 by the court.

19 The bill provides that a commercial entity or third party  
20 that performs the required age verification shall not retain  
21 any identifying information of the individual after access has  
22 been granted to the material. A commercial entity that is  
23 found to have knowingly retained identifying information of  
24 the individual after access has been granted to the individual  
25 shall be civilly liable to the individual for damages resulting  
26 from retaining the identifying information, including court  
27 costs and reasonable attorney fees as ordered by the court.

28 The bill provides that the requirements do not apply to  
29 any bona fide news or public interest broadcast, website  
30 video, report, or event and shall not be construed to affect  
31 the rights of any news-gathering organizations. No internet  
32 service provider, search engine, or cloud service provider  
33 shall be held to have violated the provisions of the bill to  
34 the extent such provider is not responsible for the creation  
35 of the content of the communication that constitutes material

1 harmful to minors.

2     The bill provides a civil remedy for a parent or legal  
3 guardian of a minor for damages in the amount of \$75,000 for  
4 each violation, and the prevailing party shall be awarded court  
5 costs, reasonable attorney fees, and expert witness fees.

6     The bill provides definitions for "commercial entity",  
7 "distribute", "material harmful to minors", "minor",  
8 "news-gathering organization", "publish", "reasonable  
9 age verification methods", "substantial portion", and  
10 "transactional data".