

The Senate Committee on Judiciary offered the following substitute to HB 910:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 39 of the Official Code of Georgia Annotated, relating to minors, so as to
2 create a civil remedy for damages against commercial entities that distribute material harmful
3 to minors without performing age verification methods; to provide for definitions; to provide
4 for reasonable age verification process requirements for commercial entities; to provide for
5 standards for liability; to provide for exceptions; to provide that age verification information
6 shall not be retained by commercial entities; to provide for the Attorney General's imposition
7 of fines; to provide for related matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Title 39 of the Official Code of Georgia Annotated, relating to minors, is amended in
11 Chapter 5, relating to online internet safety, by adding a new Code section to read as follows:

12 "39-5-5.

13 (a) As used in this Code section, the term:

14 (1) 'Commercial entity' means a corporation, limited liability company, partnership,
15 limited partnership, sole proprietorship, or other legally recognized entity.

16 (2) 'Digitized identification card' means a data file available on a mobile device with
17 connectivity to the internet that contains all of the data elements visible on the face and
18 back of a driver's license or identification card and displays the current status of the
19 driver's license or identification card as being valid, expired, cancelled, suspended,
20 revoked, active, or inactive.

21 (3) 'Distribute' means to issue, sell, give, provide, deliver, transfer, transmute, circulate,
22 or disseminate by any means.

23 (4) 'Material harmful to minors' means:

24 (A) Any material that the average person, applying contemporary community
25 standards, would find, taking the material as a whole and with respect to minors, is
26 designed to appeal to, or is designed to pander to, prurient interest;

27 (B) Any of the following materials that exploit, are devoted to, or principally consist
28 of descriptions of actual, simulated, or animated displays or depictions of any of the
29 following, in a manner patently offensive with respect to minors:

30 (i) Nipple of the female breast, pubic hair, anus, vulva, or genitals;

31 (ii) Touching, caressing, or fondling of nipples, breasts, buttocks, the anus, or
32 genitals; or

33 (iii) Any sexual act, including, but not limited to, sexual intercourse, masturbation,
34 sodomy, bestiality, oral copulation, flagellation, excretory functions, and exhibitions
35 of sexual acts; or

36 (C) The material taken as a whole lacks serious literary, artistic, political, or scientific
37 value for minors.

38 (5) 'Minor' means any individual under the age of 18 years.

39 (6) 'News-gathering organization' means:

40 (A) An employee of a newspaper, news publication, or news source, printed or
41 published on an online or mobile platform, while operating as an employee of a

42 news-gathering organization who can provide documentation of employment with the
43 newspaper, news publication, or news source; or

44 (B) An employee of a radio broadcast station, television broadcast station, cable
45 television operator, or wire service while operating as an employee of a news-gathering
46 organization who can provide documentation of employment.

47 (7) 'Publish' means to communicate or make information available to another person or
48 entity on a public website.

49 (8) 'Reasonable age verification' means to confirm that a person seeking to access
50 published material that may have a substantial portion of material that is harmful to
51 minors is at least 18 years of age.

52 (9) 'Substantial portion' means more than 33.33 percent of total material on a public
53 website which meets the definition of material that is harmful to minors as defined in this
54 Code section.

55 (b) Before allowing access to a public website that contains a substantial portion of
56 material that is harmful to minors, a commercial entity shall use a reasonable age
57 verification method, which may include, but not be limited to:

58 (1) The submission of a digitized identification card, including a digital copy of a driver's
59 license;

60 (2) The submission of government-issued identification; or

61 (3) Any commercially reasonable age verification method that meets or exceeds an
62 Identity Assurance Level 2 standard, as defined by the National Institute of Standards and
63 Technology.

64 (c)(1) A commercial entity that knowingly and intentionally publishes or distributes
65 material that is harmful to minors on a public website which contains a substantial portion
66 of material that is harmful to minors is liable if the commercial entity fails to perform
67 reasonable age verification of the individual attempting to access the material.

68 (2) A commercial entity that violates this Code section is liable to an individual for
69 damages resulting from a minor accessing material harmful to minors, including court
70 costs and reasonable attorneys' fees as ordered by the court.

71 (3) A commercial entity that violates this Code section shall be subject to a fine of up to
72 \$10,000.00 for each violation, the amount of which shall be determined by the superior
73 court in the county in which any affected minor resides. The Attorney General or
74 solicitor general or district attorney having jurisdiction shall institute proceedings to
75 impose such fine within one year of the violation. The issuance of a fine under this
76 paragraph shall not preclude any right of action.

77 (d)(1) When a commercial entity or third party performs a reasonable age verification,
78 the commercial entity shall not retain any identifying information after access to the
79 material has been granted.

80 (2) A commercial entity that is found to have knowingly retained identifying information
81 of an individual after access to the material has been granted is liable to such individual
82 for damages resulting from retaining the identifying information, including court costs
83 and reasonable attorney's fees as ordered by the court.

84 (e) This Code section shall not:

85 (1) Apply to a news or public interest broadcast, public website video, report, or event;

86 (2) Affect the rights of a news-gathering organization; or

87 (3) Apply to cloud service providers.

88 (f) An internet service provider and any affiliate, subsidiary, or search engine shall not be
89 considered to have violated this Code section solely by providing access or connection to
90 or from a public website or to other information or content on the internet or on a facility,
91 system, or network that is not under that internet service provider's control, to the extent
92 the internet service provider is not responsible for the creation of the content or the
93 communication that constitutes material that is harmful to minors."

94

SECTION 2.

95 All laws and parts of laws in conflict with this Act are repealed.