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HOUSE OF REPRESENTATIVES  
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 265

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO CIVIL LIABILITY AND CIVIL PENALTY FOR PUBLISHING OR DISTRUBITON OF MATERIAL HARMFUL TO MINORS ON THE INTERNET.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 12, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1207C. Publishing or distributing material harmful to minors on the Internet

(a) For the purposes of this section:

(1) “Commercial entity” means corporations, limited liability companies, partnerships, limited partnerships, sole proprietorships, or other legally recognized entities.

(2) “Interactive computer service” means the same as the terms “Internet” or “Internet, website, online or cloud computing service, online application or mobile application” as those terms are defined at § 1202C of this title, except such service or materials do not have to be directed to children or targeted or intended to reach an audience that is composed predominantly of children.

(3) “Material harmful to minors” means any description or representation of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when it (i) appeals to the prurient, shameful, or morbid interest of minors, (ii) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and (iii) is, when taken as a whole, lacking in serious literary, artistic, political, or scientific value for minors.

(b) Any commercial entity that knowingly or intentionally publishes or distributes material harmful to minors on the Internet from a website that contains a substantial portion of such material shall through the use of (i) a commercially available database that is regularly used by businesses or governmental entities for the purpose of age and identity verification or (ii) another commercially reasonable method of age and identity verification, verify that any person attempting to access such material harmful to minors is 18 years of age or older.

21           (c) Any commercial entity that violates the provisions of this section shall be subject to a civil penalty of \$250 per  
22 violation and civil liability for damages resulting from a minor's access to such material harmful to a minor and reasonable  
23 attorney fees and costs.

24           (d) Nothing in this section shall be construed to impose liability on a provider or user of an interactive computer  
25 service on the Internet.

26           (e) Jurisdiction of actions under this section shall be in Superior Court.

27           (f) An action under this section may be brought by the Attorney General or any person, parent, or guardian of any  
28 person whose age was not verified.

#### SYNOPSIS

This act requires a commercial entity that knowingly or intentionally provides pornography and other materials defined as harmful to minors to verify the age of individuals accessing the material.

Civil liability and a civil penalty are imposed on commercial entities that fail to comply with verification requirements.

Additionally, an internet provider or user of an interactive computer service on the internet is not subject to liability.

This act is modeled after similar laws in Virginia, Utah, and Louisiana.