



2023-2024 General Assembly

HOUSE BILL 8: Various Statutory Changes, Sec. 3.20: Age Verification for Access to Material Harmful to Minors

Committee:		Date:	December 14, 2023
Introduced by:		Prepared by:	Susan Sitze Staff Attorney
Analysis of:	Sec. 3.20 of S.L. 2023-132		

OVERVIEW: Section 3.20 of S.L. 2023-132 enacts the "Pornography Age Verification Act" (PAVE Act) which requires commercial entities that publish or distribute material harmful to minors on internet websites to use a commercial age verification system and creates a civil cause of action against entities that fail to comply with the requirements of the Act.

This section becomes effective January 1, 2024, and applies to websites accessed on or after that date.

CURRENT LAW: G.S. 14-190.13 defines "harmful to minors" as the quality of any material (defined as a picture, drawing, video recording, film, or other visual depiction or representation not consisting entirely of written words) or performance that depicts sexually explicit nudity or sexual activity that, taken as a whole, has the following characteristics:

- When applying the contemporary community standards, the average adult would find that it has a predominant tendency to appeal to the prurient interest of minors in sex.
- When applying the contemporary community standards, the average adult would find that the depiction of sexually explicit nudity or sexual activity in the material or performance is patently offensive to prevailing standards in the adult community concerning what is suitable for minors.
- The material or performance lacks serious literary, artistic, political, or scientific value for minors.

G.S. 14-190.14 makes it a Class 2 misdemeanor for a person having custody, control, or supervision of a commercial establishment who knows the character or content of the material to display material harmful to minors by displaying material harmful to minors at an establishment that is open to view by minors as part of the invited general public. G.S. 14-190.15 makes it a Class 1 misdemeanor to disseminate material harmful to minors by selling, furnishing, presenting, or distributing the material to a minor or allowing a minor to review or peruse the material. It is also a Class 1 misdemeanor to exhibit a harmful live performance to a minor.

BILL ANALYSIS: Section 3.20 of this act enacts the "Pornography Age Verification Enforcement Act" or PAVE Act, requiring commercial entities that publish or distribute material harmful to minors on internet websites to verify that a person seeking to access the material is 18 by requiring the person to comply with a commercial age verification system. The commercial entities and any third-party providing age verification services are prohibited from retaining any identifying information of an individual after access has been granted to the material.

Section 3.20 creates a cause of action against commercial entities and third-party age verification service providers for the following:

- A parent or guardian whose minor was allowed to access the material harmful to minors.

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- Any person whose identifying information is retained in violation of the PAVE Act.

A court can award any of the following types of relief in the civil action:

- An injunction to enjoin continued violation of the PAVE Act.
- Compensatory and punitive damages.
- All costs, expenses, and fees related to the civil suit investigation and proceedings associated with the violation, including attorney's fees.

The PAVE Act does not apply to any news gathering organization or create liability for any internet service provider to the extent that the provider is not responsible for the creation of the content of the communication that constitutes material harmful to minors.

EFFECTIVE DATE: This section becomes effective January 1, 2024, and applies to websites accessed on or after that date.