

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA**

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FREE SPEECH COALITION, INC.;))	
DEEP CONNECTION))	
TECHNOLOGIES, INC.; JFF))	
PUBLICATIONS, LLC; BARRY))	
CHASE, ESQ.; and PHE, INC.,))	
))	
Plaintiffs,))	CASE NO.:
))	
v.))	
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ASHLEY MOODY, in her official))	
capacity as THE ATTORNEY))	
GENERAL OF THE STATE OF))	
FLORIDA,))	
))	
Defendant.))	
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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, by their undersigned attorneys, allege as follows:

INTRODUCTION

1. After numerous federal court decisions invalidating as unconstitutional state and federal laws seeking to regulate or ban the publication of material harmful to minors on the internet, the Florida Legislature has tried yet again. H.B. 3, codified as Fla. Stat. §§ 501.1737 et seq. (referred to herein as the “Verification Act” or “Act”), places substantial burdens on Plaintiff website

operators, content creators, and countless others who use the internet by requiring websites to age-verify every internet user before providing access to non-obscene content that meets the State’s murky definition of “material harmful to minors.” Specifically, and in relevant part, the Act subjects to liability any “commercial entity that knowingly and intentionally publishes or distributes material harmful to minors on a website or application, if the website or application contains a substantial portion of material harmful to minors” without first using “either anonymous age verification or standard age verification to verify that the age of a person attempting to access the material is 18 years of age or older and prevent access to the material by a person younger than 18 years of age.” *See* Act § (2). Both options must be offered to all users. *Id.*

2. The liability imposed on Plaintiffs is twofold. First, the Department of Legal Affairs, “as the enforcing authority, may bring an action against the commercial entity for an unfair or deceptive act or practice,” and in addition to other remedies, “may collect a civil penalty of up to \$50,000 per violation and reasonable attorney fees and court costs” from the entity—as well as punitive damages upon a showing of a “consistent pattern of conduct.” Act § (5)(a). Second, the commercial entity also is “liable to the minor for such

access”—including “up to \$10,000 in damages,” as well as court costs and attorneys’ fees. Act § (5)(c).

3. Pursuant to 18 U.S.C. § 2201 and 2202, and 42 U.S.C. § 1983 and 1988, this action seeks declaratory and injunctive relief to vindicate rights, privileges, and immunities secured by the Constitution and laws of the United States. The Act violates the First and Fourteenth Amendments to, and the Commerce and Supremacy Clauses of, the United States Constitution because it impermissibly burdens Plaintiffs’ exercise of their rights thereunder in myriad ways.
4. The Act violates the First Amendment in several respects. First, it imposes a content-based burden on protected speech that requires narrow tailoring and use of the least restrictive means to serve a compelling state interest, yet it captures a substantial quantity of protected speech in a dragnet manner without accomplishing its stated purpose of protecting minors from materials they may easily obtain from other sources and via other means. Second, compelling providers of online content to place an age-verification content wall over their entire websites unconstitutionally labels them as “adult businesses,” with all the negative implications and ramifications that follow. And third, by requiring the use of some particularized approval method as a

condition to providing protected expression, the Act operates as a presumptively-unconstitutional prior restraint on speech.

5. The Act violates the Fourteenth Amendment because it does not provide a person of ordinary intelligence with fair notice of the most basic features of the law. Specifically, it fails to identify with the necessary precision who is subject to the Act, what the Act prohibits, and what the Act requires for compliance. As a result, the Act is impermissibly vague, violating the procedural component of the Due Process Clause.
6. The Act significantly burdens interstate commerce by restricting the ability of providers of online content to communicate with Florida residents. This burden is clearly excessive in comparison to the limited local benefit provided by the Act and the availability of less restrictive alternative means of protecting children from erotic content.
7. Finally, by treating website operators as the publishers of material hosted on their websites but produced by other content providers, the Act stands in direct conflict with 47 U.S.C. § 230 (Section 230) and is therefore preempted by that supreme federal law.
8. This attempt to restrict access to online content is not novel. A quarter-century ago, the United States Supreme Court invalidated a federal law restricting internet communications deemed harmful to minors on First Amendment

grounds in *Reno v. ACLU*, 521 U.S. 844 (1997). It did so again just a few years later in *Ashcroft v. ACLU*, 542 U.S. 656 (2004). And in state after state, laws containing content-based restrictions on internet communications deemed harmful to minors have been held unconstitutional.¹

9. Despite this long legacy of constitutional invalidity, the Act was signed into law in March 2024 and bears an effective date of January 1, 2025. Now, website service providers (including Plaintiffs) are in the untenable position of abiding by the Act's terms and enduring the constitutional infringement, or violating them and risking ruinous liability from state and private actors alike.
10. As such, Plaintiffs seek to have the Act declared unconstitutional and void, and to have the Attorney General, as the head of the State's Department of Legal Affairs, enjoined from participating in its enforcement.

JURISDICTION AND VENUE

¹See, e.g., *American Booksellers Foundation v. Sullivan*, 799 F. Supp. 2d 1078 (D. Alaska 2011) (Alaska); *American Booksellers Foundation v. Coakley*, 2010 WL 4273802 (D. Mass. 2010) (Mass.); *PSINet, Inc. v. Chapman*, 362 F.3d 227 (4th Cir. 2004) (Virginia); *American Booksellers Foundation v. Dean*, 342 F.3d 96 (2d Cir. 2003) (Vermont); *Cyberspace Communications, Inc. v. Engler*, 238 F.3d 420 (6th Cir. 2000) (Michigan); *ACLU v. Johnson*, 194 F.3d 1149 (10th Cir. 1999) (New Mexico); *ACLU v. Goddard*, Civ. 00- 0505 (D. Ariz. Aug. 11, 2004) (Arizona); *Southeast Booksellers v. Ass'n v. McMaster*, 282 F. Supp. 2d 389 (D.S.C. 2003) (South Carolina); *American Library Association v. Pataki*, 969 F. Supp. 160 (S.D.N.Y. 1997) (New York).

11. This case arises under the United States Constitution and the laws of the United States and presents a federal question within this Court's jurisdiction under Article III of the Constitution and 28 U.S.C. § 1331 and 28 U.S.C. § 1343(3). It seeks remedies under 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. §§ 1983 and 1988, and Rule 65. Fed. R. Civ. P.
12. Venue is proper in this district under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claim occurred in this district.

PARTIES

I. Plaintiffs

13. Plaintiff Free Speech Coalition, Inc. (FSC) is a not-for-profit trade association incorporated under the laws of California with its principal place of business in Canoga Park, CA. FSC assists film makers, producers, distributors, wholesalers, retailers, internet providers, performers, and other creative artists located throughout North America in the exercise of their First Amendment rights and in the vigorous defense of those rights against censorship. Founded in 1991, the Free Speech Coalition currently represents hundreds of businesses and individuals involved in the production, distribution, sale, and presentation of constitutionally-protected and non-obscene materials that are disseminated to consenting adults via the internet. Most of that material would fit within Florida's statutory definition of "material harmful to minors."

14. The Free Speech Coalition sues on its own behalf and on behalf of its members to vindicate its own constitutional rights, its members' constitutional rights, and those of the members' respective owners, officers, employees, and current and prospective readers, viewers, and customers.
15. Both FSC and its members are harmed by the Act as detailed in this Complaint. The requested declaratory and injunctive relief will, in whole or in part, redress those harms.
16. Plaintiff Deep Connection Technologies Inc. (DCT) is a business corporation organized under the laws of Delaware with its principal place of business in San Francisco, CA. DCT operates "O.school," a judgment-free online educational platform focused on sexual wellness. Andrea Barrica, O.school's founder and CEO, is a queer woman of color who has grown O.school to reach more than 25 million people globally and 4.2 million across the United States. O-school's mission is to help people worldwide improve their sexual health, power, and confidence. Previously, Barrica co-founded inDinero.com, the leading financial solution for growing startups, and served as a partner at 500 Startups, a global venture capital fund where she worked with hundreds of startup companies. Barrica was raised in a religious, conservative Filipino family that preached abstinence, and she received only fear-based sex education in public schools. Seeking support and information about sex and

sexuality, Barrica was unable to find reliable resources online, leading her to launch O.school in 2017 to change the way people learn about sexuality. She is the author of *Sextech Revolution: The Future of Sexual Wellness*, and she is a professional speaker, having presented for TED Unplugged, SXSW, the Women in Tech Festival, UN Women, Planned Parenthood, and others.

Barrica fears that O.school contains a “substantial portion” of content that meets the statutory definition of “material harmful to minors.”

17. As O.school provides critical sex education that it deems appropriate (and necessary) for older minors, DCT opposes any age-verification measure that would preclude those teens from accessing O.school’s content. DCT is confused as to what constitutes “reasonable age verification methods” under the Acts and concerned about the prohibitive cost of providing complying age verification protocols.
18. DCT is harmed by the Act as detailed in this Complaint. The requested declaratory and injunctive relief will, in whole or in part, alleviate those harms.
19. Plaintiff JFF Publications, LLC (JFF) is a limited liability company organized under the laws of Delaware with its principal place of business in Broward County, FL. It has one Member, a natural person who is a citizen of Florida. JFF operates an internet-based platform at the domain <JustFor.Fans> that

allows independent producers/performers of erotic audiovisual works to publish their content and provide access to fans on a subscription basis. Each producer/performer operates and maintains an individual JustFor.Fans channel, which may contain photographs or videos and permits the exchange of messages between producers/performers and fans. JFF developed and continues to enhance the software and features that drive the JustFor.Fans platform, it arranges third-party billing capabilities, and it otherwise maintains the platform. Although it develops and implements advertising and marketing plans for the platform, many of the independent producers/performers selling subscriptions on the platform implement their own marketing plans to drive customers to their specific JustFor.Fans channel. Most often, producers/performers maintain a social media presence through which they encourage their fans to purchase a subscription to their JustFor.Fans channel, sometimes providing a direct link to the JustFor.Fans platform.

20. JFF is confused about what constitutes a “website” (whether each performer channel, the JustFor.Fans platform, or even *other* platforms operated by JFF), confused as to what constitutes “reasonable age verification methods” under the Act and how a “substantial portion” of a “website’s” content is to be measured, and concerned about the prohibitive cost of providing complying age verification protocols. JFF must consider preventing access of

JustFor.Fans from IP addresses geolocated to Florida if the Act goes into effect.

21. JFF, as well as the performers it hosts and the ‘fans’ viewing those performers, are harmed by the Act as detailed in this Complaint. The requested declaratory and injunctive relief will, in whole or in part, alleviate those harms.
22. Plaintiff PHE, Inc. (PHE) is a North Carolina Corporation doing business as Adam and Eve, an award-winning sexual wellness retailer that owns and operates various online stores and franchises brick and mortar stores bearing its well-respected trademark. Through its online store at adameve.com, PHE markets, processes payments for, and fulfills orders for adult toys, lingerie, soaps, lubricants, candles, bath items, novelty items, and adult games. PHE also publishes educational articles relating to sexual health and wellness on adameve.com, sells adult videos from a second web domain devoted exclusively to DVD sales (adultmoviemart.com), streams erotic movies on a third (adameveplus.com), and promotes its brick-and-mortar franchise stores via a fourth site (adamevestores.com) that provides a separate page for each of its franchised stores to offer its own store-specific information. (For example, <www.adameve.com/store/united-states/florida/st-augustine> would send a user to the site for Adam and Eve’s St. Augustine store.)

23. Each of the websites described above contains some material that might qualify as “material harmful to minors” under the Act, but PHE cannot determine which (if any) are out of compliance because it does not know, for example, what constitutes “the material as a whole” or how it should measure the 33 1/3% threshold under which its “harmful to minors” offerings must remain vis-à-vis its other offerings.
24. PHE is harmed by the Act as detailed in this Complaint. The requested declaratory and injunctive relief will, in whole or in part, alleviate those harms.
25. Plaintiff Barry Chase, Esq. (Chase) is an honors graduate of Yale College and Harvard Law School and the founding partner of Chase Lawyers in Miami, FL. He is a member of the New York, Florida, and Washington, DC bars and is admitted in Florida state courts, the United States District Court for the Southern District of Florida, and the United States Supreme Court. He has long been a member of both the First Amendment Lawyers Association and the Free Speech Coalition.
26. Chase began his legal career with a large law firm in Washington, DC, focusing his practice on communications and First Amendment law and representing such media giants as CBS, the Times-Mirror Company, Capital Cities Communications, and Time, Inc. As part of his current entertainment

law practice, Chase represents operators of adult entertainment and erotic websites, which requires his access to clients' (and others') websites that contain a substantial portion of material that may be deemed "harmful to minors" under the Act.

27. Obtaining that access requires Chase to verify his identity upon each visit to an Act-compliant website, which is a hindrance to his ready admission, repugnant to his core values of privacy and freedom from government interference in protected expression, and the source of concern that his sensitive identity information may be subject to data leaks. Obtaining access to websites that block Florida residents rather than impose costly age verification protocols will prove difficult or impossible, again hindering Chase's ability to responsibly represent his adult-industry clients.
28. Chase is harmed by the Act as detailed in this Complaint. The requested declaratory and injunctive relief will, in whole or in part, alleviate that harm.

II. Defendant

29. Defendant Ashley Moody is a person within the meaning of Section 1983 of Title 42 of the United States Code. She currently serves as the Attorney General (AG) for the State of Florida and, as such, as the "head of the Department of Legal Affairs." Fla. Stat. § 20.11. In her capacity as Attorney General, she is directed by statute to "perform the duties prescribed by the

Constitution of this state and also perform such other duties appropriate to [her] office as may from time to time be required of the Attorney General by law or by resolution of the Legislature.” Fla. Stat. § 16.01(2). Among those “other duties,” the Florida Legislature has tasked the Department of Legal Affairs with enforcing the Act. *See* Act § (5)(a) (“Any violation . . . is deemed an unfair and deceptive trade practice actionable . . . solely by the department on behalf of a resident minor against a commercial entity.”); Act § (1)(c) (“‘Department’ means the Department of Legal Affairs.”).

30. AG Moody is sued for prospective relief concerning her future exercise of the foregoing powers and duties in order to prevent her subjecting the Plaintiffs and others to a deprivation of rights, privileges, or immunities secured to them by the Constitution and laws of the United States. Plaintiffs seek a declaration of the constitutional invalidity of the Act and an injunction precluding the Attorney General from participating in the enforcement of the Act in any manner.

FACTS

I. Communication Over the Internet

31. The internet is a decentralized, global medium of communication that links people, institutions, corporations, and governments around the world. It is a giant computer network that interconnects innumerable smaller groups of

linked computer networks and individual computers. The internet connects an estimated 5.39 billion people (or 68% of the world's population), and in Florida, it is estimated that 74.6% of residents are internet users.²

32. Because the internet merely links together numerous individual computers and computer networks, no single entity or group of entities controls the material made available on the internet or limits the ability of others to access such materials. Rather, the range of digital information available to internet users is individually created, maintained, controlled, and located on millions of separate individual computers around the world.
33. The internet presents extremely low entry barriers to anyone who wishes to provide or distribute information or gain access to it. Unlike television, cable, radio, newspapers, magazines or books, the internet provides the average citizen and business, whether large or small, with an affordable means for communicating with, accessing, and posting content to a worldwide audience “with a voice that resonates farther than it could from any soapbox.” *Reno*, 521 U.S. at 870. Although the majority of the information on the internet does not depict or describe nudity or sexual activity, such material is indeed widely available on the internet.

² See <http://www.internetworldstats.com/stats.htm>;
<https://www.statista.com/statistics/184691/internet-usage-in-the-us-by-state/>.

34. An Internet Protocol (IP) address is a unique address that identifies a connection to a device on the internet or a local network, much like a telephone number is used to connect a telephone to other telephones. In essence, an IP address is the identifier that allows information to be sent between devices on a network. Internet Service Providers (ISPs) and telecommunications companies control blocks of IP addresses, and the location of an internet connection can be roughly determined according to the geo-location those companies assigned the IP address associated with a connection.
35. A Virtual Private Network (VPN) functions as an intermediary between an individual computer and the targeted server. It hides the user's actual public IP address and instead "tunnels" traffic between the user's device and a remote server. Setting up a VPN is free and simple, and doing so permits users to hide their location while browsing the web.

II. The Act

36. In the Spring of 2024, the Florida Legislature enacted, and Governor Ron DeSantis signed into law, H.B. 3 (the "Verification Act" or "Act"), effective as of January 1, 2025, and codified into law as Fla. Stat. §§ 501.1737 et seq. A copy of the Act is attached as Exhibit "A" to this Complaint.
37. The operative provisions of the Act read as follows:

A commercial entity that knowingly and intentionally publishes or distributes material harmful to minors on a website or application, if the website or application contains a substantial portion of material harmful to minors, must use either anonymous age verification or standard age verification to verify that the age of a person attempting to access the material is 18 years of age or older and prevent access to the material by a person younger than 18 years of age.

Act § (2).

38. Violation of subsection (2) above is “deemed an unfair and deceptive trade practice actionable under part II of this chapter solely by the department [of Legal Affairs] on behalf of a resident minor against a commercial entity” and may include, “[i]n addition to any other remedy under part II of this chapter, . . . a civil penalty of up to \$50,000 per violation and reasonable attorney fees and court costs”—as well as punitive damages when failure to comply demonstrates a “consistent pattern of conduct of the commercial entity.” Act § (5)(a). So, too, is any such entity “liable to the minor for such access”—which liability includes “up to \$10,000 in damages,” as well as “court costs and reasonable attorney fees.” Act § (5)(c).
39. “Material harmful to minors” includes “any material” that
1. The average person applying contemporary community standards would find, taken as a whole, appeals to the prurient interest;
 2. Depicts or describes, in a patently offensive way, sexual conduct as specifically defined in [another Florida statute], and

3. When taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

Act § (1)(e).

40. The Act applies only to sites that “contain[] a *substantial portion* of material harmful to minors,” defined as “more than 33.3 percent of total material on a website or application.” Act § (1)(j).
41. Commercial entities whose content offerings meet the one-third threshold may find safe harbor from liability by imposing both “anonymous age verification” and “standard age verification.” Anonymous age verification is limited to “a commercially reasonable method used by a government agency or a business for the purpose of age verification which is conducted by a nongovernmental, independent third party organized under the laws of a state of the United States.” Qualifying providers of such services must be based in the United States and not owned or controlled by a foreign company. More importantly, they “may not retain personal identifying information,” nor use it for any other purpose, and must protect it from disclosure “through reasonable security procedures and practices appropriate to the nature of the personal information.” Act § (1)(a) (defining “anonymous age verification and cross-referencing Fla. Stat. § 501.1738). Standard age verification means simply “any commercially reasonable method of age verification approved by the commercial entity.” Act § (1)(i). “Commercially reasonable” is not defined.

III. The Impact of the Act

42. To comply with the Verification Act, commercial websites providing materials that might meet the vague statutory definition of “material harmful to minors” may respond in one of three ways: by (1) attempting to divert all web traffic from Florida IP addresses, thus precluding *all* online visitors from this State; (2) contracting (at great expense) the services of age-verification operators to verify visitors to their site; or (3) declining to abide by the terms of the Act, thus risking AG enforcement actions and private lawsuits. It is a Hobson’s Choice they should not have to make.

A. The Impact on Older Minors

43. By defining “material harmful to minors” to include that which lacks serious literary, artistic, political, or scientific value *for minors*, the Florida Legislature has painted all minors, regardless of age or maturity, with a single brush. But there is a broad range of material that has serious value for at least some 16- and 17-year-olds which might legitimately be considered “harmful” to a 10-year-old—like that concerning the risk of sexually-transmitted diseases, sexual health, and the enjoyment of sex (in a state where 17-year-old minors may get married with parental consent).

44. The Act fails to explicitly exclude material appropriate for older minors from the “material harmful to minors” for which access is conditioned upon proof

of majority. Requiring persons who publish such material on the internet to place it behind an age-verification wall infringes upon the constitutional rights of both older minors (who are denied access to constitutionally-protected material), and the commercial entities that publish or distribute such material.

B. The Impact on All Minors

45. Requiring age verification to access a website whose content offerings include a “substantial portion” of “material harmful to minors” means denying those minors access to websites whose content offerings are overwhelmingly *not* classified as “material harmful to minors.” The Act aims to preclude *all* minors from accessing even those websites offering content, almost two-thirds of which is plainly *not* violative of the already vague and overbroad standard defining “material harmful to minors.” The constitutional requirement that material be “taken as a whole” is not faithfully applied when the Act subjects to that scrutiny only the most salacious 33.3% of “total material on a website” rather than the *entire* website.

C. The Impact on Adults

46. The Act demands that, as a condition of access to constitutionally protected content, an adult must provide a digital proof of identity to adult content websites that are doubtlessly capable of tracking specific searches and views of some of the most sensitive, personal, and private contents a human being

might search for. And although the Act requires that third-party providers of “anonymous age verification” services may not retain personal identifying information and must otherwise protect it “from unauthorized or illegal access, destruction, use, modification, or disclosure,” these protections are woefully inadequate in that they (1) do not provide users a cause of action should their personal information be used, released, or hacked, and (2) require only “reasonable security procedures and practices *appropriate to the nature of the personal information*”—not appropriate to the nature *of the use* of that information. Releasing one’s photo, name, and address without additional context is one thing; releasing the same and connecting that person to the adult websites that he has accessed is entirely another. It can—and in some cases, *will*—lead to significant humiliation, harassment, and familial, social, and professional consequences. As recent high-profile data leaks have revealed, no web users are safe, and hackers are often able to exploit the slightest cracks in a website’s security—however “reasonable” those security procedures and practices may be. The inevitable result is that at least some portion of Florida adults will feel the Act’s chill and forego accessing this constitutionally-protected material.

D. The Impact on Non-Pornographic Websites

47. Because of the Act’s vagueness, cautious operators of even *non*-pornographic websites must place an age-verification content wall over their entire websites if they wish to continue communicating with Florida audiences without risking ruinous liability. Doing so labels them an “adult business”—resulting not only in declining internet traffic, but social stigma, lost ad revenue, and exclusion from public or private programs or curricula. If they are a website that processes payments, they may lose the ability to accept VISA, Mastercard, Amex, and other major credit cards and be forced to use third-party billing companies that charge fees up to 15% of the purchase price, rather than the 3-5% typically charged by credit card companies. They also may face difficulty purchasing business liability insurance and hiring employees.
48. Some of the Supreme Court’s leading First Amendment precedents have established the principle that the government may not compel persons to speak a particular message. *See Wooley v. Maynard*, 430 U.S. 705 (1977) (requiring motorists to display state’s “live free or die” motto on license plate found to violate First Amendment); *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557 (1995) (finding First Amendment violation where parade organizers were forced to accept groups espousing contrary messages). That principle is simply incompatible with the

requirement of commercial entities that find themselves on the margins of the Act's reach.

E. The Ineffectiveness of the Act and the Effectiveness of Alternative Means

49. While placing overwhelming burdens on certain providers of content online, the Act will fail to accomplish its goal of protecting Florida's minors. Because the Act requires age-verification in order to access only those websites that offer "material harmful to minors" as a "substantial portion" of their total content (defined as one-third or more), minors will face no impediment to obtaining such material from websites watered down—either incidentally or purposefully in order to avoid the consequences of the Act—with *other* content unoffensive to the sensibilities of the Florida Legislature. Whether "content" percentages are measured in bytes of material, discrete web pages, seconds of video, words of a sexual nature, or some other metric, and whether they include linked material, is entirely unclear. What *is* clear is that—given enough non-"harmful" material on a single site—even the providers of material that *is* "harmful to minors" under any definition earn a pass under the Act.

50. Through the one-third "substantial portion" threshold, Florida appears to be the latest state to seek to exempt social media companies and search engines from the reach of its age-verification law. Ironically, however, it is these same

sites that are most likely to provide a minor’s first exposures to sexually explicit content. As a pair of researchers recently reported, “a higher proportion of 16- and 17-year-olds in the United Kingdom have been exposed to sexually explicit videos or pictures on social media (63%) and search engines (51%) than on dedicated pornographic websites (47%).”³

51. Minors also have other routes to obtaining “material harmful to minors” over the internet, including by: (1) pursuing such content published by persons and entities in other countries beyond the jurisdiction of Florida’s state or federal courts; (2) resorting to the dark web via a Tor browser to obtain material far more harmful than what is available from popular adult websites; and (3) using a VPN to create an encrypted connection between the device and a remote server operated by the VPN service in another state or country. Studies show that nearly *half* of 16- and 17-year-olds have used a VPN or Tor browser and another 23% know what they are.⁴

52. At the same time, in pursuit of its goal of protecting minors from erotic content online, the Florida Legislature could have pursued alternative means

³ See Thurman, Neil J. and Obster, Fabian, “The Regulation of Internet Pornography: What a Survey of Under-18s Tells Us About the Necessity for and Potential Efficacy of Emerging Legislative Approaches,” POLICY & INTERNET (May 15, 2021), *available at* SSRN: <https://ssrn.com/abstract=3846713>.

⁴ See *id.*

that are at least as effective as the Verification Act and entirely free of its unreasonable burdens to speech.

53. The two major personal computer operating systems (Microsoft and Apple) and most web browsers (including Google Chrome, Mozilla Firefox, Microsoft Edge, and Apple’s Safari) already come preconfigured with parental control features, and more advanced features are available via additional software—either for purchase (*e.g.*, from Bark and NetNanny) or for free download (*e.g.*, from Questodio and FamilyKeeper). These features enable parents to block access to sexually explicit materials on the Web, prevent minors from giving personal information to strangers by e-mail or in chat rooms, limit a child’s screentime, and maintain a log of all online activity on a home computer. Parents may also use screening software to block messages containing certain words, rely on tracking and monitoring software to follow a child’s digital footprints, or restrict and observe a child’s use of the internet merely by placing a computer in a public space within the home.
54. The State could have encouraged use of these “less restrictive means” in numerous ways, including through an education campaign targeted at parents, a subsidy for purchase of the most protective software, or legislation requiring all new devices to come equipped with parental controls that parents may

adjust to their preferences. Instead, they opted for rigid censorship, removing parents from the equation entirely.

55. Over twenty years ago, the United States Supreme Court recognized that even the parental filtering programs available at the time were less restrictive and certainly more effective than government-imposed age-verification. *See Ashcroft v. ACLU*, 542 U.S. 656, 666 (2002). That conclusion applies doubly today.

F. Vagueness and Overbreadth

56. Because many of the statutory terms are vague and overbroad, the Act further restricts and chills the speech of online content providers, including that of Plaintiffs herein, and restricts the availability of certain material to those entitled and wishing to receive it. The Act is riddled with vague words, phrases, and requirements, including the following.
57. The phrase “substantial portion,” defined as one-third or more of the “total amount of data available on a website,” is vague insofar as it fails to explain how “total material” is calculated and what metric is used to measure. Gigabytes? Character count? Number of images? Video runtime? And what about linked material? May a website avoid the problem altogether by providing a link to all the anodyne content in the local public library?

58. The terms “commercial entity” and “website” lack the requisite precision demanded by the First Amendment. Because a “commercial entity” includes every “legally recognized entity” from the largest corporation down to the smallest “sole proprietorship,” the Act (intentionally or otherwise) requires individual performers to implement their own age-verification protocols, even when “publishing” or “distributing” their content on another company’s platform. At best, this is an inefficient and cost-prohibitive way of effecting the State’s interest. At worst, it is impossible where performers and content providers do not control the computer code upon which the platforms are built.
59. Compounding the problem is the lack of precision as to what constitutes a “website” in the first place. In its simplest form, a website *can* mean a series of connected pages under a single domain name. Often, however, webpages have more complicated structures, sometimes involving multiple domain names or subdomains, links to separate but related businesses, or links to third-party content living on different servers. In failing to define “website,” the Act likely captures far more speech than intended, and certainly more than is constitutional.
60. The statutory safe harbors for those using some “commercially reasonable method” to verify a user’s age (whether by “standard” or “anonymous” age

verification) offers no guideposts whatsoever, as “commercially reasonable” is a vague term that is neither defined by the Act nor understood within the industry.

G. The Prior Restraint (and Statutory Severability)

61. The Act effectively requires that, before a covered commercial website may disseminate any constitutionally protected expression to a consenting adult requesting it, the website must affirmatively offer both “anonymous age verification or standard age verification” options to users on pain of express statutory liability. The requirement thus imposes a classic prior restraint on speech.
62. Prior restraints are not unconstitutional *per se*, but they come to the courts bearing “a heavy presumption against [their] constitutional validity.” *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963). Prior restraints arising from a government pre-approval requirement are presumptively unconstitutional because they pose the danger that any discretion exercised in connection with the approval process may become an instrument of content-based censorship that will impose a serious chill upon the willingness of affected speakers to speak. Government may not require this sort of pre-approval process unless the discretion involved in administering it—both substantive and procedural—is tightly constrained to avoid the inherent censorship dangers.

63. With respect to those procedural safeguards, the pre-approval process must be administered so that the presumption favors allowing the expression in question; the burden must always fall on the side of disallowing the expression. Secondly, the pre-approval process must operate rapidly and without unnecessary delay. Finally, the costs of the pre-approval process, if assessed to the putative speaker at all, must also be tightly and objectively constrained so as to avoid unnecessarily burdening the expression in question.
64. The Act imposes an unconstitutional prior restraint on the communication between covered websites and adults seeking to access them. Covered websites must offer both “anonymous age verification” and “standard age verification” when individuals attempt to access their expression. But even assuming these statutory specifications suffice, nothing requires that any such methods be made available to all website operators, operate reliably with common computer software, operate for a reasonable fee, or even exist in the first place. The State of Florida may not statutorily impose a prior restraint only to leave its operation to private actors who may or may not take up the mantle—*particularly* when leaving key terms like “commercially reasonable” undefined.
65. The “anonymous age verification” and “standard age verification” requirements that ostensibly provide safe harbor in fact fail to provide the

constitutionally sufficient channels for Plaintiffs to exercise their First Amendment rights.

H. The Burden on Interstate and Foreign Commerce

66. The Act burdens interstate commerce by impinging on protected communications between out-of-state content-providers and Floridians in several ways.
67. The Act effectively requires a website operator to choose between (on one hand) diverting web traffic from Florida or (on the other) making the laborious determination of whether more than one-third of its content fits the vague and overbroad definition of “material harmful to minors” and then instituting the State’s required age-verification protocols. And because satellites and cellular towers do not appreciate state boundaries, residents of border towns in neighboring states will find themselves restricted from accessing certain websites based on the decisions of a legislature that does not represent them.
68. Moreover, Florida is just one of many states to impose these age-verification requirements, with more certain to follow. *See* FSC Action center, *Age Verification Bills and Laws*.⁵ With each state or locality defining “material harmful to minors” differently, requiring consideration of different

⁵ *Available at:* <https://action.freespeechcoalition.com/age-verification-bills/all/>.

community standards, and demanding different age-verification technologies and protocols, website operator compliance becomes exorbitantly laborious, confusing, and expensive. The result is likely to be a total shutdown of adult websites or imposition of stringent, across-the-board age-verification protocols affecting users from states that have *not* imposed similar restrictions on web content. The unimpeded interstate exchange of constitutionally-protected material clearly outweighs any one state’s—including Florida’s—interests in requiring age verification to protect minors from viewing certain adult content online.

I. The Express Conflict with Federal Statutory Law

69. Under Section 230, “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” 47 U.S.C § 230(c)(1).
70. Plaintiff JFF is a “provider or user of an interactive computer service” within the intendment of the statute. *See* 47 U.S.C § 230(f)(2) (defining “interactive computer service” to mean “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.”). JFF does not produce content that could

plausibly be deemed “material harmful to minors.” Rather, it merely provides the platform for other “information content providers.” *See* 47 U.S.C § 230(f)(3) (defining term to mean “any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service”).

71. In seeking to render JFF and other providers and users of “interactive computer services” liable on account of the actions of “content providers,” the Act stands in direct conflict with Section 230, which expressly preempts inconsistent state laws. *See* 47 U.S.C § 230(e)(3). Article VI, Paragraph 2 of the United States Constitution requires that federal law take precedence in such case.

J. The Need for, and Nature of, the Injunctive Relief Sought

72. Each of the Plaintiffs is affected by the Act—either as a regulated commercial entity offering what might be deemed “material harmful to minors,” or as a nonregulated viewer of such materials who is unwilling to self-identify upon every visit to an adult website.
73. All Plaintiffs seek an injunction precluding AG Moody, and her officers and agents, from enforcing the Act against Plaintiffs and all other similarly situated persons.

CAUSES OF ACTION

COUNT 1: Violation of Free Speech Rights Secured Under the First and Fourteenth Amendments of the United States Constitution

74. Plaintiffs repeat and re-allege each of the foregoing paragraphs as if set forth entirely herein.
75. The Act violates the First Amendment (made applicable to the states through the Fourteenth Amendment) both on its face and as applied to Plaintiffs because it unconstitutionally interferes with the ability to communicate constitutionally protected speech, compels speech to the detriment of Plaintiffs, chills speech, and imposes an unconstrained prior restraint on speech.
76. The Act violates Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution because it is not narrowly tailored and does not adopt the least restrictive means of accomplishing any compelling governmental purpose.
77. The Act violates Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution because it is substantially overbroad.
78. All Plaintiffs seek an injunction against the Attorney General precluding her participation in the enforcement of the Act, as articulated *infra*.

COUNT 2: Violation of Due Process Rights Secured Under the Fourteenth Amendment of the United States Constitution

79. Plaintiffs repeat and re-allege each of the foregoing paragraphs as if set forth entirely herein.
80. The Act violates Plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment (procedural component) because it is impermissibly vague and fails to provide a person of ordinary intelligence with fair notice of the most basic features of the law, including who is subject to its terms, what it prohibits, and what it requires for compliance.
81. All Plaintiffs seek an injunction against the Attorney General precluding her participation in the enforcement of the Act, as articulated *infra*.

**COUNT 3: Violation of the Commerce Clause of the
United States Constitution**

82. Plaintiffs repeat and re-allege each of the foregoing paragraphs as if set forth entirely herein.
83. The Act violates Plaintiffs' rights under the Commerce Clause because it constitutes an unreasonable and undue burden on the channels and instrumentalities of interstate and foreign commerce.
84. All Plaintiffs seek an injunction against the Attorney General precluding her participation in the enforcement of the Act, as articulated *infra*.

**COUNT 4: Violation of the Supremacy Clause of the United States
Constitution and Section 230 of Title 47, United States Code**

85. Plaintiffs repeat and re-allege each of the foregoing paragraphs as if set forth entirely herein.
86. The Act violates the rights of Plaintiff JFF, a provider and user of an “interactive computer service” within the meaning of 47 U.S.C. § 230, because it effectively treats Plaintiff as the publisher or speaker of material provided by other information content providers. As 47 U.S.C. § 230(e)(3) states that “[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent” with Section 230, the Act violates Section 230.
87. Article VI, Paragraph 2 of the United States Constitution (Supremacy Clause) exalts the laws of the United States as “the supreme law of the land” notwithstanding “anything in the constitution or laws of any State to the contrary.” Given the direct conflict between the (Florida) Act and the (federal) Section 230, the federal law must preempt the State’s.
88. Plaintiff JFF seeks an injunction against the Attorney General precluding her participation in the enforcement of the Act, as articulated *infra*.

COUNT 5: Declaratory Judgment Act

89. Plaintiffs repeat and re-allege each of the foregoing paragraphs as if set forth entirely herein.

90. There is a genuine present and justiciable dispute as to whether participation in the enforcement of the Act by the Attorney General violates the Plaintiffs' rights under the U.S. Constitution and federal law, as stated in Counts 1-4.
91. The interests of Plaintiffs, on the one hand, and the Attorney General, on the other, are real and adverse.
92. Absent court intervention, which would resolve the dispute over the Act's lawfulness, the Attorney General will proceed with participating in the enforcement of the Acts, even though they are unconstitutional and void.
93. All Plaintiffs seek a judicial declaration stating that the Act is unconstitutional and unenforceable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Permanently enjoin the Attorney General, her officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction, from participating in the enforcement of the Act;
- B. Declare that the Act violates the First and Fourteenth Amendments to, and the Commerce and Supremacy Clauses of, the United States Constitution and is therefore unenforceable and void;

- C. Award Plaintiffs their reasonable costs and attorneys' and other fees pursuant to 42 U.S.C. § 1988; and
- D. Grant Plaintiffs such other and further relief as the Court deems just and proper.

Respectfully Submitted,

Dated: December 16, 2024

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EXHIBIT “A”

CHAPTER 2024-42

Committee Substitute for
Committee Substitute for House Bill No. 3

An act relating to online protections for minors; creating s. 501.1736, F.S.; defining terms; requiring social media platforms to prohibit certain minors from creating new accounts; requiring social media platforms to terminate certain accounts and provide additional options for termination of such accounts; providing conditions under which social media platforms are required to prohibit certain minors from entering into contracts to become account holders; authorizing the Department of Legal Affairs to bring actions under the Florida Deceptive and Unfair Trade Practices Act for knowing or reckless violations; authorizing the department to issue and enforce civil investigative demands under certain circumstances; providing civil penalties; authorizing punitive damages under certain circumstances; providing for private causes of action; requiring that such actions be brought within a specified timeframe; providing that certain social media platforms are subject to the jurisdiction of state courts; providing that if a social media platform allows an account holder to use such platform, the parties have entered into a contract; providing construction; authorizing the department to take certain investigative and compliance actions; authorizing the department to adopt rules; creating s. 501.1737, F.S.; defining terms; requiring a commercial entity that knowingly and intentionally publishes or distributes material harmful to minors on a website or application that contains a substantial portion of such material to use certain verification methods and prevent access to such material by minors; providing applicability and construction; authorizing the department to bring actions under the Florida Deceptive and Unfair Trade Practices Act for violations; providing civil penalties; authorizing punitive damages under certain circumstances; providing for private causes of action; requiring that such actions be brought within a specified timeframe; providing that certain commercial entities are subject to the jurisdiction of state courts; providing construction; authorizing the department to take certain investigative and compliance actions; authorizing the department to adopt rules; creating s. 501.1738, F.S.; defining the term “anonymous age verification”; providing requirements for a third party conducting age verification pursuant to certain provisions; providing for severability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 501.1736, Florida Statutes, is created to read:

501.1736 Social media use for minors.—

(1) As used in this section, the term:

(a) “Account holder” means a resident who opens an account or creates a profile or is identified by the social media platform by a unique identifier while using or accessing a social media platform when the social media platform knows or has reason to believe the resident is located in this state.

(b) “Daily active users” means the number of unique users in the United States who used the online forum, website, or application at least 80 percent of the days during the previous 12 months, or, if the online forum, website, or application did not exist during the previous 12 months, the number of unique users in the United States who used the online forum, website, or application at least 80 percent of the days during the previous month.

(c) “Department” means the Department of Legal Affairs.

(d) “Resident” means a person who lives in this state for more than 6 months of the year.

(e) “Social media platform” means an online forum, website, or application that satisfies each of the following criteria:

1. Allows users to upload content or view the content or activity of other users;

2. Ten percent or more of the daily active users who are younger than 16 years of age spend on average 2 hours per day or longer on the online forum, website, or application on the days when using the online forum, website, or application during the previous 12 months or, if the online forum, website, or application did not exist during the previous 12 months, during the previous month;

3. Employs algorithms that analyze user data or information on users to select content for users; and

4. Has any of the following addictive features:

a. Infinite scrolling, which means either:

(I) Continuously loading content, or content that loads as the user scrolls down the page without the need to open a separate page; or

(II) Seamless content, or the use of pages with no visible or apparent end or page breaks.

b. Push notifications or alerts sent by the online forum, website, or application to inform a user about specific activities or events related to the user’s account.

c. Displays personal interactive metrics that indicate the number of times other users have clicked a button to indicate their reaction to content or have shared or reposted the content.

d. Auto-play video or video that begins to play without the user first clicking on the video or on a play button for that video.

e. Live-streaming or a function that allows a user or advertiser to broadcast live video content in real-time.

The term does not include an online service, website, or application where the exclusive function is e-mail or direct messaging consisting of text, photographs, pictures, images, or videos shared only between the sender and the recipients, without displaying or posting publicly or to other users not specifically identified as the recipients by the sender.

(2)(a) A social media platform shall prohibit a minor who is younger than 14 years of age from entering into a contract with a social media platform to become an account holder.

(b) A social media platform shall:

1. Terminate any account held by an account holder younger than 14 years of age, including accounts that the social media platform treats or categorizes as belonging to an account holder who is likely younger than 14 years of age for purposes of targeting content or advertising, and provide 90 days for an account holder to dispute such termination. Termination must be effective upon the expiration of the 90 days if the account holder fails to effectively dispute the termination.

2. Allow an account holder younger than 14 years of age to request to terminate the account. Termination must be effective within 5 business days after such request.

3. Allow the confirmed parent or guardian of an account holder younger than 14 years of age to request that the minor's account be terminated. Termination must be effective within 10 business days after such request.

4. Permanently delete all personal information held by the social media platform relating to the terminated account, unless there are legal requirements to maintain such information.

(3)(a) A social media platform shall prohibit a minor who is 14 or 15 years of age from entering into a contract with a social media platform to become an account holder, unless the minor's parent or guardian provides consent for the minor to become an account holder.

(b) A social media platform shall:

1. Terminate any account held by an account holder who is 14 or 15 years of age, including accounts that the social media platform treats or categorizes as belonging to an account holder who is likely 14 or 15 years of age for purposes of targeting content or advertising, if the account holder's parent or guardian has not provided consent for the minor to create or maintain the account. The social media platform shall provide 90 days for an

account holder to dispute such termination. Termination must be effective upon the expiration of the 90 days if the account holder fails to effectively dispute the termination.

2. Allow an account holder who is 14 or 15 years of age to request to terminate the account. Termination must be effective within 5 business days after such request.

3. Allow the confirmed parent or guardian of an account holder who is 14 or 15 years of age to request that the minor's account be terminated. Termination must be effective within 10 business days after such request.

4. Permanently delete all personal information held by the social media platform relating to the terminated account, unless there are legal requirements to maintain such information.

(4) If a court enjoins the enforcement of subsection (3) or would otherwise enjoin enforcement of any other provision of this section due to subsection (3), then subsection (3) shall be severed, and the following shall come into effect:

(a) A social media platform shall prohibit a minor who is 14 or 15 years of age from entering into a contract with a social media platform to become an account holder.

(b) A social media platform shall:

1. Terminate any account held by an account holder who is 14 or 15 years of age, including accounts that the social media platform treats or categorizes as belonging to an account holder who is likely 14 or 15 years of age for purposes of targeting content or advertising, and provide 90 days for an account holder to dispute such termination. Termination must be effective upon the expiration of 90 days if the account holder fails to effectively dispute the termination.

2. Allow an account holder who is 14 or 15 years of age to request to terminate the account. Termination must be effective within 5 business days after such request.

3. Allow the confirmed parent or guardian of an account holder who is 14 or 15 years of age to request that the minor's account be terminated. Termination must be effective within 10 business days after such request.

4. Permanently delete all personal information held by the social media platform relating to the terminated account, unless there are legal requirements to maintain such information.

(5) Any knowing or reckless violation of subsection (2), subsection (3), or, if in effect, subsection (4) is deemed an unfair and deceptive trade practice actionable under part II of this chapter solely by the department against a social media platform. If the department has reason to believe that a social

media platform is in violation of subsection (2), subsection (3), or, if in effect, subsection (4), the department, as the enforcing authority, may bring an action against such platform for an unfair or deceptive act or practice. For the purpose of bringing an action pursuant to this section, ss. 501.211 and 501.212 do not apply. In addition to other remedies under part II of this chapter, the department may collect a civil penalty of up to \$50,000 per violation and reasonable attorney fees and court costs. When the social media platform's failure to comply with subsection (2), subsection (3), or, if in effect, subsection (4) is a consistent pattern of knowing or reckless conduct, punitive damages may be assessed against the social media platform.

(6)(a) A social media platform that knowingly or recklessly violates subsection (2), subsection (3), or, if in effect, subsection (4) is liable to the minor account holder, including court costs and reasonable attorney fees as ordered by the court. Claimants may be awarded up to \$10,000 in damages.

(b) A civil action for a claim under this subsection must be brought within 1 year from the date the complainant knew, or reasonably should have known, of the alleged violation.

(c) Any action brought under this subsection may only be brought on behalf of a minor account holder.

(7) For purposes of bringing an action under this section, a social media platform that allows a minor account holder younger than 14 years of age or a minor account holder who is 14 or 15 years of age to create an account on such platform is considered to be both engaged in substantial and not isolated activities within this state and operating, conducting, engaging in, or carrying on a business and doing business in this state, and is therefore subject to the jurisdiction of the courts of this state.

(8) If a social media platform allows an account holder to use the social media platform, the parties have entered into a contract.

(9) This section does not preclude any other available remedy at law or equity.

(10)(a) If, by its own inquiry or as a result of complaints, the department has reason to believe that an entity or person has engaged in, or is engaging in, an act or practice that violates this section, the department may administer oaths and affirmations, subpoena witnesses or matter, and collect evidence. Within 5 days, excluding weekends and legal holidays, after the service of a subpoena or at any time before the return date specified therein, whichever is longer, the party served may file in the circuit court in the county in which it resides or in which it transacts business and serve upon the enforcing authority a petition for an order modifying or setting aside the subpoena. The petitioner may raise any objection or privilege which would be available upon service of such subpoena in a civil action. The subpoena shall inform the party served of its rights under this subsection.

(b) If the matter that the department seeks to obtain by subpoena is located outside the state, the entity or person subpoenaed may make it available to the department or its representative to examine the matter at the place where it is located. The department may designate representatives, including officials of the state in which the matter is located, to inspect the matter on its behalf, and may respond to similar requests from officials of other states.

(c) Upon failure of an entity or person without lawful excuse to obey a subpoena and upon reasonable notice to all persons affected, the department may apply to the circuit court for an order compelling compliance.

(d) The department may request that an entity or person that refuses to comply with a subpoena on the ground that testimony or matter may incriminate the entity or person be ordered by the court to provide the testimony or matter. Except in a prosecution for perjury, an entity or individual that complies with a court order to provide testimony or matter after asserting a valid privilege against self-incrimination shall not have the testimony or matter so provided, or evidence derived therefrom, received against the entity or person in any criminal investigation or proceeding.

(e) Any entity or person upon whom a subpoena is served pursuant to this section shall comply with the terms thereof unless otherwise provided by order of the court. Any entity or person that fails to appear with the intent to avoid, evade, or prevent compliance in whole or in part with any investigation under this part or who removes from any place, conceals, withholds, mutilates, alters, or destroys, or by any other means falsifies any documentary material in the possession, custody, or control of any entity or person subject to any such subpoena, or knowingly conceals any relevant information with the intent to avoid, evade, or prevent compliance shall be liable for a civil penalty of not more than \$5,000 per week in violation, reasonable attorney's fees, and costs.

(11) The department may adopt rules to implement this section.

Section 2. Section 501.1737, Florida Statutes, is created to read:

501.1737 Age verification for online access to materials harmful to minors.—

(1) As used in this section, the term:

(a) “Anonymous age verification” has the same meaning as in s. 501.1738.

(b) “Commercial entity” includes a corporation, a limited liability company, a partnership, a limited partnership, a sole proprietorship, and any other legally recognized entity.

(c) “Department” means the Department of Legal Affairs.

(d) “Distribute” means to issue, sell, give, provide, deliver, transfer, transmit, circulate, or disseminate by any means.

(e) “Material harmful to minors” means any material that:

1. The average person applying contemporary community standards would find, taken as a whole, appeals to the prurient interest;

2. Depicts or describes, in a patently offensive way, sexual conduct as specifically defined in s. 847.001(19); and

3. When taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

(f) “News-gathering organization” means any of the following:

1. A newspaper, news publication, or news source, printed or published online or on a mobile platform, engaged in reporting current news and matters of public interest, and an employee thereof who can provide documentation of such employment.

2. A radio broadcast station, television broadcast station, cable television operator, or wire service, and an employee thereof who can provide documentation of such employment.

(g) “Publish” means to communicate or make information available to another person or entity on a publicly available website or application.

(h) “Resident” means a person who lives in this state for more than 6 months of the year.

(i) “Standard age verification” means any commercially reasonable method of age verification approved by the commercial entity.

(j) “Substantial portion” means more than 33.3 percent of total material on a website or application.

(2) A commercial entity that knowingly and intentionally publishes or distributes material harmful to minors on a website or application, if the website or application contains a substantial portion of material harmful to minors, must use either anonymous age verification or standard age verification to verify that the age of a person attempting to access the material is 18 years of age or older and prevent access to the material by a person younger than 18 years of age. The commercial entity must offer anonymous age verification and standard age verification, and a person attempting to access the material may select which method will be used to verify his or her age.

(3) A commercial entity must ensure that the requirements of s. 501.1738 are met.

(4)(a) This section does not apply to any bona fide news or public interest broadcast, website video, report, or event and does not affect the rights of a news-gathering organization.

(b) An Internet service provider or its affiliates or subsidiaries, a search engine, or a cloud service provider does not violate this section solely for providing access or connection to or from a website or other information or content on the Internet or a facility, system, or network not under the provider's control, including transmission, downloading, intermediate storage, or access software, to the extent the provider is not responsible for the creation of the content of the communication which constitutes material harmful to minors.

(5)(a) Any violation of subsection (2) or subsection (3) is deemed an unfair and deceptive trade practice actionable under part II of this chapter solely by the department on behalf of a resident minor against a commercial entity. If the department has reason to believe that a commercial entity is in violation of subsection (2) or subsection (3), the department, as the enforcing authority, may bring an action against the commercial entity for an unfair or deceptive act or practice. For the purpose of bringing an action pursuant to this section, ss. 501.211 and 501.212 do not apply. In addition to any other remedy under part II of this chapter, the department may collect a civil penalty of up to \$50,000 per violation and reasonable attorney fees and court costs. When the commercial entity's failure to comply with subsection (2) or subsection (3) is a consistent pattern of conduct of the commercial entity, punitive damages may be assessed against the commercial entity.

(b) A third party that performs age verification for a commercial entity in violation of s. 501.1738 is deemed to have committed an unfair and deceptive trade practice actionable under part II of this chapter solely by the department against such third party. If the department has reason to believe that the third party is in violation of s. 501.1738, the department, as the enforcing authority, may bring an action against such third party for an unfair or deceptive act or practice. For the purpose of bringing an action pursuant to this section, ss. 501.211 and 501.212 do not apply. In addition to other remedies under part II of this chapter, the department may collect a civil penalty of up to \$50,000 per violation and reasonable attorney fees and court costs.

(c) A commercial entity that violates subsection (2) for failing to prohibit access or prohibit a minor from future access to material harmful to minors after a report of unauthorized or unlawful access is liable to the minor for such access, including court costs and reasonable attorney fees as ordered by the court. Claimants may be awarded up to \$10,000 in damages. A civil action for a claim under this paragraph must be brought within 1 year from the date the complainant knew, or reasonably should have known, of the alleged violation.

(d) Any action under this subsection may only be brought on behalf of or by a resident minor.

(6) For purposes of bringing an action under subsection (5), a commercial entity that publishes or distributes material harmful to minors on a website or application, if the website or application contains a substantial portion of material harmful to minors and such website or application is available to be accessed in this state, is considered to be both engaged in substantial and not isolated activities within this state and operating, conducting, engaging in, or carrying on a business and doing business in this state, and is therefore subject to the jurisdiction of the courts of this state.

(7) This section does not preclude any other available remedy at law or equity.

(8)(a) If, by its own inquiry or as a result of complaints, the department has reason to believe that an entity or person has engaged in, or is engaging in, an act or practice that violates this section, the department may administer oaths and affirmations, subpoena witnesses or matter, and collect evidence. Within 5 days, excluding weekends and legal holidays, after the service of a subpoena or at any time before the return date specified therein, whichever is longer, the party served may file in the circuit court in the county in which it resides or in which it transacts business and serve upon the enforcing authority a petition for an order modifying or setting aside the subpoena. The petitioner may raise any objection or privilege which would be available upon service of such subpoena in a civil action. The subpoena shall inform the party served of its rights under this subsection.

(b) If the matter that the department seeks to obtain by subpoena is located outside the state, the entity or person subpoenaed may make it available to the department or its representative to examine the matter at the place where it is located. The department may designate representatives, including officials of the state in which the matter is located, to inspect the matter on its behalf, and may respond to similar requests from officials of other states.

(c) Upon failure of an entity or person without lawful excuse to obey a subpoena and upon reasonable notice to all persons affected, the department may apply to the circuit court for an order compelling compliance.

(d) The department may request that an entity or person that refuses to comply with a subpoena on the ground that testimony or matter may incriminate the entity or person be ordered by the court to provide the testimony or matter. Except in a prosecution for perjury, an entity or individual that complies with a court order to provide testimony or matter after asserting a valid privilege against self-incrimination shall not have the testimony or matter so provided, or evidence derived therefrom, received against the entity or person in any criminal investigation or proceeding.

(e) Any entity or person upon whom a subpoena is served pursuant to this section shall comply with the terms thereof unless otherwise provided by order of the court. Any entity or person that fails to appear with the intent to avoid, evade, or prevent compliance in whole or in part with any

investigation under this part or that removes from any place, conceals, withholds, mutilates, alters, or destroys, or by any other means falsifies any documentary material in the possession, custody, or control of any entity or person subject to any such subpoena, or knowingly conceals any relevant information with the intent to avoid, evade, or prevent compliance, shall be liable for a civil penalty of not more than \$5,000 per week in violation, reasonable attorney's fees, and costs.

(9) The department may adopt rules to implement this section.

Section 3. Section 501.1738, Florida Statutes, is created to read:

501.1738 Anonymous age verification.—

(1) As used in this section, the term “anonymous age verification” means a commercially reasonable method used by a government agency or a business for the purpose of age verification which is conducted by a nongovernmental, independent third party organized under the laws of a state of the United States which:

(a) Has its principal place of business in a state of the United States; and

(b) Is not owned or controlled by a company formed in a foreign country, a government of a foreign country, or any other entity formed in a foreign country.

(2) A third party conducting anonymous age verification pursuant to this section:

(a) May not retain personal identifying information used to verify age once the age of an account holder or a person seeking an account has been verified.

(b) May not use personal identifying information used to verify age for any other purpose.

(c) Must keep anonymous any personal identifying information used to verify age. Such information may not be shared or otherwise communicated to any person.

(d) Must protect personal identifying information used to verify age from unauthorized or illegal access, destruction, use, modification, or disclosure through reasonable security procedures and practices appropriate to the nature of the personal information.

Section 4. If any provision of this act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 5. This act shall take effect January 1, 2025.

Approved by the Governor March 25, 2024.

Filed in Office Secretary of State March 25, 2024.