WEST VIRGINIA CODE: §49A-1-104

§49A-1-104. Liability for failing to perform reasonable age verification for sexual material harmful to minors; damages; liability for retention of data; damages; creation of cause of action; and statute of limitations.

(a) A commercial entity that knowingly and intentionally publishes or distributes sexual material harmful to minors on the internet from a website, or through an application, that contains a substantial portion of such sexual material harmful to minors shall be held liable if the entity fails to perform reasonable age verification methods to verify the age of an individual attempting to access the material. A commercial entity that is found to have violated this section is liable to an individual, as defined in subsection (d) of this section, for damages resulting from a minor child accessing the material, and the individual who brings an action under this subsection is entitled to:

(1) An award of reasonable attorney fees and court costs;

(2) $10,000 per each incident of violation; and

(3) Actual damages for financial, physical, and emotional harm incurred by the person bringing the action, if the court determines that the harm is a direct consequence of the violation or violations.

(b) A commercial entity that knowingly and intentionally publishes or distributes obscene material, or material that depicts or promotes child pornography, on the Internet may be held liable to an individual for nominal damages, actual damages, court costs, and reasonable attorney fees as ordered by the court.

(c) A commercial entity that is found to have violated this section is liable to an individual for damages resulting from retaining, using, sharing, or selling any identifying information, or other data, of the individual after access has been granted to the individual. An individual who brings an action under this subsection is entitled to:

(1) An award of reasonable attorney fees and court costs;

(2) $10,000 per each incident of violation; and

(3) Actual damages for financial, physical, and emotional harm incurred by the person bringing the action, if the court determines that the harm is a direct consequence of the violation or violations.

(d) The Legislature hereby expressly creates the causes of action described in subsections (a), (b), and (c) of this section for a minor child, parent, guardian, or other person legally permitted to act on the minor child's behalf, that is harmed by a violation of the requirements of §49A-1-102(a) or §49A-1-102(d) of this code.

WV Legislature

(e) The statute of limitation for the filing of any civil action under this section shall be within five years after the discovery of the violation, or in the exercise of reasonable diligence should have known of the violation of this section.

(f) An award of damages pursuant to this section may not be imposed for any violation that occurred prior to the effective date of this article.

WV Legislature