

WEST VIRGINIA CODE: §49A-1-105

§49A-1-105. Injunction by action of Attorney General; civil penalties; basis of civil penalties; and statute of limitations.

(a) If the Attorney General believes that a commercial entity is knowingly and intentionally violating or has knowingly violated this article, and the action is in the public interest, the Attorney General may bring an action in the circuit court located where a minor child, or individual, has accessed the obscene material, sexual material harmful to minors, or child porn or in the circuit court located where an individual resides who has had any identifiable information improperly retained, used, shared, or sold, against a commercial entity or other person to enjoin the violation and recover a civil penalty for violating this article. If a court of competent jurisdiction finds that the commercial entity has engaged in a violation of this article, it may assess a civil penalty for each violation of this article in addition to any other damages that may have been incurred, as follows:

(1) \$10,000 per day that the entity operates an Internet website in violation of the age verification requirements of this article;

(2) \$10,000 per instance when the entity retains identifying information in violation of §49A-1-102(b) of this code; and

(3) If, because of the entity's violation of the age verification requirements of this article, one or more minors accesses sexual material harmful to minors, an additional amount of not more than \$250,000.

(b) The amount of a civil penalty under this section shall be based on:

(1) The seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) The history of previous violations;

(3) The amount necessary to deter a future violation;

(4) The economic effect of a penalty on the entity on whom the penalty will be imposed; and

(5) The entity's knowledge that the act constituted a violation of this article.

(c) 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.

(d) 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.

(e) The Attorney General may recover reasonable and necessary attorney fees and costs incurred in a civil action under this article.