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H.B. No. 1181

A BILL TO BE ENTITLED

AN ACT

relating to restricting access to sexual material harmful to minors on an Internet website; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 129B to read as follows:

CHAPTER 129B. LIABILITY FOR ALLOWING MINORS TO ACCESS PORNOGRAPHIC MATERIAL

Sec. 129B.001. DEFINITIONS. In this chapter:

(1) "Commercial entity" includes a corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legally recognized business entity.

(2) "Distribute" means to issue, sell, give, provide, deliver, transfer, transmute, circulate, or disseminate by any means.

(3) "Minor" means an individual younger than 18 years of age.

(4) "News-gathering organization" includes:

(A) an employee of a newspaper, news publication, or news source, printed or on an online or mobile platform, of current news and public interest, who is acting within the course and scope of that employment and can provide documentation of that employment with the newspaper, news publication, or news source; and

1 (B) an employee of a radio broadcast station,
2 television broadcast station, cable television operator, or wire
3 service who is acting within the course and scope of that employment
4 and can provide documentation of that employment.

5 (5) "Publish" means to communicate or make information
6 available to another person or entity on a publicly available
7 Internet website.

8 (6) "Sexual material harmful to minors" includes any
9 material that:

10 (A) the average person, applying contemporary
11 community standards, would find, taking the material as a whole and
12 with respect to minors, is designed to appeal to or pander to the
13 prurient interest;

14 (B) in a manner patently offensive with respect
15 to minors, exploits, is devoted to, or principally consists of
16 descriptions of actual, simulated, or animated display or depiction
17 of:

18 (i) a person's pubic hair, anus, or genitals
19 or the nipple of the female breast;

20 (ii) touching, caressing, or fondling of
21 nipples, breasts, buttocks, anuses, or genitals; or

22 (iii) sexual intercourse, masturbation,
23 sodomy, bestiality, oral copulation, flagellation, excretory
24 functions, exhibitions, or any other sexual act; and

25 (C) taken as a whole, lacks serious literary,
26 artistic, political, or scientific value for minors.

27 (7) "Transactional data" means a sequence of

1 information that documents an exchange, agreement, or transfer
2 between an individual, commercial entity, or third party used for
3 the purpose of satisfying a request or event. The term includes
4 records from mortgage, education, and employment entities.

5 Sec. 129B.002. PUBLICATION OF MATERIAL HARMFUL TO MINORS.

6 (a) A commercial entity that knowingly and intentionally publishes
7 or distributes material on an Internet website, including a social
8 media platform, more than one-third of which is sexual material
9 harmful to minors, shall use reasonable age verification methods as
10 described by Section 129B.003 to verify that an individual
11 attempting to access the material is 18 years of age or older.

12 (b) A commercial entity that performs the age verification
13 required by Subsection (a) or a third party that performs the age
14 verification required by Subsection (a) may not retain any
15 identifying information of the individual.

16 Sec. 129B.003. REASONABLE AGE VERIFICATION METHODS. (a)

17 In this section, "digital identification" means information stored
18 on a digital network that may be accessed by a commercial entity and
19 that serves as proof of the identity of an individual.

20 (b) A commercial entity that knowingly and intentionally
21 publishes or distributes material on an Internet website or a third
22 party that performs age verification under this chapter shall
23 require an individual to:

24 (1) provide digital identification; or

25 (2) comply with a commercial age verification system
26 that verifies age using:

27 (A) government-issued identification; or

1 (B) a commercially reasonable method that relies
2 on public or private transactional data to verify the age of an
3 individual.

4 Sec. 129B.004. APPLICABILITY OF CHAPTER. (a) This chapter
5 does not apply to a bona fide news or public interest broadcast,
6 website video, report, or event and may not be construed to affect
7 the rights of a news-gathering organization.

8 (b) An Internet service provider, or its affiliates or
9 subsidiaries, a search engine, or a cloud service provider may not
10 be held to have violated this chapter solely for providing access or
11 connection to or from a website or other information or content on
12 the Internet or on a facility, system, or network not under that
13 provider's control, including transmission, downloading,
14 intermediate storage, access software, or other services to the
15 extent the provider or search engine is not responsible for the
16 creation of the content that constitutes sexual material harmful to
17 minors.

18 Sec. 129B.005. CIVIL PENALTY; INJUNCTION. (a) If the
19 attorney general believes that an entity is knowingly violating or
20 has knowingly violated this chapter and the action is in the public
21 interest, the attorney general may bring an action in a Travis
22 County district court or the district court in the county in which
23 the principal place of business of the entity is located in this
24 state to enjoin the violation, recover a civil penalty described by
25 Subsection (b), and obtain other relief the court considers
26 appropriate.

27 (b) A civil penalty imposed under this section may be in an

1 amount equal to not more than the total, if applicable, of:

2 (1) \$10,000 per day that the entity operates an
3 Internet website in violation of the age verification requirements
4 of this chapter;

5 (2) \$10,000 per instance when the entity retains
6 identifying information in violation of Section 129B.002(b); and

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

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

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

15 (2) the history of previous violations;

16 (3) the amount necessary to deter a future violation;

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

19 (5) the entity's knowledge that the act constituted a
20 violation of this chapter; and

21 (6) any other matter that justice may require.

22 SECTION 2. This Act takes effect September 1, 2023.