

BILL ANALYSIS

C.S.H.B. 1181
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Committee Report (Substituted)

BACKGROUND AND PURPOSE

Sexual material on websites has become increasingly accessible to a young demographic of users. Exposure to this material can be associated with many negative emotional, psychological, and physical health outcomes for preadolescent users. According to an analysis published in the *Journal of Adolescent Health*, approximately one in five youth experience unwanted online exposure to sexually explicit material. Some studies, such as a 2015 study by Zachary D. Bloom and W. Bryce Hagedorn, have noted several potential negative impacts stemming from certain adolescents' use of sexually explicit material. C.S.H.B. 1181 seeks to hold individuals and entities who publish sexual material harmful to minors on a website accountable by setting out age verification requirements and creating liability for those who violate certain requirements.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1181 amends the Civil Practice and Remedies Code to require a commercial entity, including a corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legally recognized business entity, that knowingly and intentionally publishes or distributes material on a website, including a social media platform, more than one-third of which is sexual material harmful to minors, to use reasonable age verification methods to verify that an individual attempting to access the material is 18 years of age or older. The bill makes liable a commercial entity that knowingly and intentionally publishes or distributes material on a website that is found to have violated the bill's age verification requirement to the parent or guardian of the minor for damages resulting from a minor's access to the material, including court costs and reasonable attorney's fees as ordered by the court.

C.S.H.B. 1181 requires a commercial entity that knowingly and intentionally publishes or distributes material on a website or a third party that performs age verification to require an individual to provide digital identification stored on a digital network that may be accessed by a commercial entity and serves as proof of the identity of an individual or to comply with a commercial age verification system that verifies age using a government-issued identification or a commercially reasonable method that relies on public or private transactional data to verify the age of an individual. The bill prohibits the commercial entity or a third party that performs the age verification from retaining any identifying information of the individual after access has been granted to the material. The bill makes liable a commercial entity that knowingly and

intentionally publishes or distributed material on a website or a third party that performs the age verification that is found to have knowingly retained identifying information of an individual after access has been granted to the individual for damages resulting from retaining the identifying information, including court costs and reasonable attorney's fees as ordered by the court.

C.S.H.B. 1181 establishes the bill's provisions do not apply to a bona fide news or public interest broadcast, website video, report, or event and may not be construed to affect the rights of a news-gathering organization. The bill prohibits an Internet service provider, or its affiliates or subsidiaries, a search engine, or a cloud service provider from being held to have violated the bill's provisions solely for providing access or connection to or from a website or other information or content on the Internet or on a facility, system, or network not under that provider's control to the extent the provider or search engine is not responsible for the creation of the content that constitutes sexual material harmful to minors.

C.S.H.B. 1181 establishes that, for purposes of the bill's provisions, sexual material harmful to minors includes any material that:

- the average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors, is designed to appeal to or pander to the prurient interest;
- in a manner patently offensive with respect to minors, exploits, is devoted to, or principally consists of descriptions of actual, simulated, or animated display or depiction of:
 - a person's pubic hair, anus, or genitals or the nipple of the female breast;
 - touching, caressing, or fondling of nipples, breasts, buttocks, anuses, or genitals;
 - or
 - sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory functions, exhibitions, or any other sexual act; and
- taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

The bill defines the following terms for purposes of the bill's provisions:

- "distribute" as issuing, selling, giving, providing, delivering, transferring, transmuting, circulating, or disseminating by any means;
- "minor" as an individual younger than 18 years of age;
- "publish" as communicating or making information available to another person or entity on a publicly available website; and
- "transactional data" as a sequence of information that documents an exchange, agreement, or transfer between an individual, commercial entity, or third party used for the purpose of satisfying a request or event and include records from mortgage, education, and employment entities.

The bill establishes that, for purposes of the bill's provisions, a news-gathering organization includes:

- 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
- an employee of a radio broadcast station, television broadcast station, cable television operator, or wire service who is acting within the course and scope of that employment and can provide documentation of that employment.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 1181 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute replaces the requirement from the introduced for an organization that owns a website, including an organization that owns a social media website, to include a mechanism that prevents a user from accessing pornographic material unless the user is 13 years of age or older with a requirement for a commercial entity that knowingly and intentionally publishes or distributes material on a website, including a social media platform, more than one-third of which is sexual material harmful to an individual younger than 18 years of age to use reasonable age verification methods to verify that an individual attempting to access the material is 18 years of age or older.

The substitute includes requirements for reasonable age verification methods, whereas the introduced did not include such requirements.

Whereas the requirement for preventing certain users from accessing pornographic material in the introduced applied to a corporation, limited or general partnership, limited liability company, business trust, real estate investment trust, joint venture, joint stock company, cooperative, association, bank, insurance company, credit union, savings and loan association, or other organization, regardless of whether the organization is for-profit, nonprofit, domestic, or foreign, the requirement for age verification in the substitute applies to a corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legally recognized business entity. Whereas the introduced included the term "pornographic material," defined as an image, video, or other means of visual display depicting actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse, or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola, the substitute omits this term. The substitute includes the term "sexual material harmful to minors," defined as any material that:

- the average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors, is designed to appeal to or pander to the prurient interest;
- in a manner patently offensive with respect to minors, exploits, is devoted to, or principally consists of descriptions of actual, simulated, or animated display or depiction of:
 - a person's pubic hair, anus, or genitals or the nipple of the female breast;
 - touching, caressing, or fondling of nipples, breasts, buttocks, anuses, or genitals;
 - or
 - sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory functions, exhibitions, or any other sexual act; and
- taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

This term does not appear in the introduced.

Whereas the introduced established that an applicable organization may be held liable for damages if the organization does not include the mechanism to prevent certain users from accessing pornographic materials, the substitute makes liable an applicable commercial entity that knowingly and intentionally publishes or distributes material on a website and is found to have violated the age verification requirement to the parent or guardian of the minor for damages resulting from a minor's access to the material, including court costs and reasonable attorney's fees as ordered by the court.

Whereas the introduced included a provision that established that a person who uploads pornographic material to a website may be held liable for damages if an individual younger than

13 years of age accesses the material on the website, the substitute does not include this provision.

The substitute includes the following provisions absent in the introduced:

- a prohibition against a commercial entity or a third party that performs the age verification retaining any identifying information of an individual after access has been granted;
- a provision making liable a commercial entity that knowingly and intentionally publishes material on a website or a third party that performs the age verification that is found to have knowingly retained identifying information to the applicable individual for damages, including court costs and reasonable attorney's fees as ordered by the court;
- a provision establishing that the bill's provisions do not apply to a bona fide news or public interest broadcast, website video, report, or event and may not be construed to affect the rights of a news-gathering organization; and
- a provision prohibiting an Internet service provider, or its affiliates or subsidiaries, a search engine, or a cloud service provider from being held to have violated the bill's provisions under certain conditions.

The substitute includes definitions of the following terms, which were absent in the introduced:

- "commercial entity";
- "digital identification";
- "distribute";
- "minor";
- "news-gathering organization";
- "publish"; and
- "transactional data."

The substitute omits the definition for "organization," which appeared in the introduced.