

## BILL ANALYSIS

Senate Research Center  
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C.S.H.B. 1181  
By: Shaheen et al. (Paxton)  
State Affairs  
5/15/2023  
Committee Report (Substituted)

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 1181 passed the House unanimously and, as substituted, includes:

- S.B. 2021. Passed the Senate 31-0
- S.B. 417. Passed the Senate 29-2. This was revised with stakeholder input.

Problem to Solve:

- Protecting children from harm is a primary duty of a parent. Yet in this day and age, the devices they use contain readily available hardcore pornographic content and videos and pictures that harm the minds of children.
- Texas law prohibits exposing a minor to pornography in Section 43.24 of the Texas Penal Code—Relating to the "sale, distribution, or display of harmful material to a minor."
- According to The National Center on Child Exploitation, pornography is proven to be biologically addictive and research shows that adolescents are more susceptible than adults to addictions and there are developmental effects on the brain.
- Exposure to explicit content in childhood is proven to increase the demand for child pornography, child exploitation, human trafficking, and prostitution.
- Children who use pornography are more prone to engage in risky sexual behaviors and are at risk of sexual victimization, which leads to mental health disorders.
- Self-generated imagery now accounts for 1/3 of web pages featuring child pornography. Sexualization through devices is creating more demand, access, and content creation from minors.
- Children's development is harmed when viewing content from mainstream pornography websites that show sexual violence, incest, physical aggression, sexual assault, non-consent, and teens.

Bill Summary:

- This legislation would ban minors under 18 from viewing explicit content online by requiring distributors and publishers of explicit content to require 18+ commercially reasonable age verification in order to view content.
- Publishers and distributors of explicit content are held liable if they fail to perform age verification. Users' data is not retained after verification.

The Committee Substitute:

- The committee substitute adds language from S.B. 417 "Electronic Device Filters" chapter to the Business and Commerce Code. It requires manufacturers to enable an optional filter on electronic devices activated in Texas that blocks minors from accessing explicit material.
- The filter can be bypassed by the parent/guardian by entering a password or access code but must be reasonably secure.
- Manufacturers violating this chapter can be liable for a civil penalty of up to \$10,000 per violation or \$50 million total.
- Removes liability of nonparent violator.
- Adds the *Miller v. California* test to provide a good degree of specificity so that organizations may be put on adequate notice as to what is pornographic and what is not.

- Creates a more specific definition of filter including a good faith clause.
- Removes the private right of action.
- Makes the attorney general the enforcement mechanism.

C.S.H.B. 1181 amends current law relating to access to sexually explicit material on the Internet or electronic devices and provides civil penalties.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle C, Title 5, Business and Commerce Code, by adding Chapter 121, as follows:

#### CHAPTER 121. ELECTRONIC DEVICE FILTERS

##### SUBCHAPTER A. ELECTRONIC DEVICE FILTER REQUIREMENTS

Sec. 121.001. DEFINITIONS. Defines "activate," "electronic device," "explicit material," "filter," "manufacturer," "minor," "simulated," and "visual material."

Sec. 121.002. APPLICABILITY. Provides that this chapter does not apply to a telecommunications provider who activates an electronic device on behalf of a user.

Sec. 121.003. ELECTRONIC DEVICE FILTER REQUIRED. (a) Requires a manufacturer to ensure that an electronic device activated in this state will, on activation, automatically enable a filter and notify the user of the device when the filter prevents the device from accessing, downloading, or displaying explicit material.

(b) Requires that an electronic device:

(1) allow the user of the device or a minor user's parent or guardian to circumvent the filter required under Subsection (a) by entering a password or access code; and

(2) reasonably prevent a user of the device from circumventing, modifying, removing, or uninstalling the filter without entering a password or access code.

Sec. 121.004. VIOLATION. (a) Provides that a manufacturer violates this chapter if the manufacturer releases into the market an electronic device that, when activated in this state, does not automatically enable a filter under Section 121.003 because the device lacks the necessary software or is defective.

(b) Provides that a manufacturer, notwithstanding Subsection (a), does not violate this chapter if the manufacturer makes a good faith effort to provide an electronic device that automatically enables a filter under Section 121.003.

##### SUBCHAPTER B. ENFORCEMENT

Sec. 121.051. CIVIL PENALTY; INJUNCTION. (a) Provides that a manufacturer who violates Section 121.004(a) is liable to this state for a civil penalty in the amount not to exceed the lesser of:

(1) \$10,000 for each violation; or

(2) \$50 million.

(b) Provides that a manufacturer who negligently violates Section 121.004(a) is liable to this state for a civil penalty in an amount not to exceed the lesser of:

(1) \$1,000 for each violation; or

(2) \$5 million.

(c) Authorizes the attorney general to bring an action in the name of the state to obtain an injunction preventing further violations of this chapter by a manufacturer or to recover a civil penalty under this section. Requires the prevailing party to recover reasonable and necessary attorney's fees and costs incurred in an action brought under this section.

(d) Authorizes the action to be brought in a district court in:

(1) Travis County; or

(2) the county located in which the defendant's principal place of business is located.

(e) Requires the attorney general to deposit a civil penalty collected under this section in the state treasury to the credit of the general revenue fund.

SECTION 2. Amends Title 6, Civil Practice and Remedies Code, by adding Chapter 129B, as follows:

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

Sec. 129B.001. DEFINITIONS. Defines "commercial entity," "distribute," "minor," "news-gathering organization," "publish," "sexual material harmful to minors," and "transactional data."

Sec. 129B.002. PUBLICATION OF MATERIAL HARMFUL TO MINORS. (a) Requires a commercial entity that knowingly and intentionally publishes or distributes material on an Internet website, including a social media platform, more than one-third of which is sexual material harmful to minors, to use reasonable age verification methods as described by Section 129B.003 to verify that an individual attempting to access the material is 18 years of age or older.

(b) Prohibits a commercial entity that performs the age verification required by Subsection (a) or a third party that performs the age verification required by Subsection (a) from retaining any identifying information of the individual.

Sec. 129B.003. REASONABLE AGE VERIFICATION METHODS. (a) Defines "digital identification."

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

(1) provide digital identification; or

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

(A) government-issued identification; or

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

Sec. 129B.004. APPLICABILITY OF CHAPTER. (a) Provides that this chapter does not apply to a bona fide news or public interest broadcast, website video, report, or event and is prohibited from being construed to affect the rights of a news-gathering organization.

(b) Prohibits an Internet service provider, or its affiliates or subsidiaries, a search engine, or a cloud service provider from being held to have violated this chapter 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, including transmission, downloading, intermediate storage, access software, or other services to the extent the provider or search engine is not responsible for the creation of the content that constitutes sexual material harmful to minors.

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

(b) Authorizes a civil penalty imposed under this section to be in an amount equal to not more than the total, if applicable, of:

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

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

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

(c) Requires that the amount of a civil penalty under this section 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;

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

(6) any other matter that justice may require

SECTION 3. Requires each manufacturer to implement a software update to automatically enable an electronic device filter on an electronic device activated in this state as required by Chapter 121, Business and Commerce Code, as added by this Act, not later than January 1, 2024.

SECTION 4. (a) Effective date, except as provided by Subsection (b): September 1, 2023.

(b) Effective date, Chapter 121, Business and Commerce Code, as added by this Act:  
January 1, 2024.