

BILL ANALYSIS

C.S.H.B. 3570
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Youth Health & Safety, Select
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Exposing minors to sexually explicit materials can lead to negative mental and physical health consequences. Because of easy and unrestricted access to websites containing this harmful material, minors in Texas are at risk of suffering the negative consequences associated with viewing this material at a young age. The state should take steps to ensure that websites containing this material are not accessible to minors. C.S.H.B. 3570 seeks to prevent minors from accessing sexually explicit material online by requiring commercial entities publishing or distributing this material to implement age verification technology that will ensure that only adults are able to access the sexually explicit content. In addition, the bill seeks to hold commercial entities that allow minors to access this material accountable by making the entities liable to the parent or guardian of the minor for damages resulting from the unrestricted access.

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. 3570 amends the Business & Commerce Code to require a commercial entity that knowingly and intentionally publishes or distributes on a website, including a social media platform, 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. Specifically, the bill provides for age verification to be performed by either the commercial entity or a third party by requiring an individual to provide digital identification or to comply with a commercial age verification system that verifies age using government-issued identification or a commercially reasonable method that relies on public or private transactional data to verify age.

C.S.H.B. 3570 makes a commercial entity that knowingly and intentionally publishes or distributes material on a website that is found in violation of that requirement liable 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. However, a social media platform is not liable for such damages unless the platform fails to remove or restrict through age verification the sexual material harmful to minors before the 45th day after the date on which the material was published or distributed.

C.S.H.B. 3570 prohibits a commercial entity or a third party conducting age verification from retaining any individual identifying information after access has been granted to the material.

The bill makes a commercial entity or third party that is found to have knowingly retained that information after access has been granted liable 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. 3570 exempts from its provisions a bona fide news or public interest broadcast, website video, report, or event and establishes that its provisions may not be construed to affect the rights of a news-gathering organization. The bill prohibits an Internet service provider (ISP), or its affiliates or subsidiaries, a search engine, or a cloud service provider from being held in violation of 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 ISP's control, including transmission, downloading, intermediate storage, access software, or other services to the extent the ISP or search engine is not responsible for the creation of the content that constitutes sexual material harmful to minors.

C.S.H.B. 3570 sets out the following definitions:

- "commercial entity" includes a corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legally recognized business entity;
- "digital identification" means information stored on a digital network that may be accessed by a commercial entity and that serves as proof of the identity of an individual;
- "distribute" means to issue, sell, give, provide, deliver, transfer, transmute, circulate, or disseminate by any means;
- "minor" means an individual younger than 18 years of age;
- "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;
- "publish" means to communicate or make information available to another person or entity on a publicly available website;
- "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; and
- "transactional data" means 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 includes records from mortgage, education, and employment entities.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 3570 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.

Whereas the introduced limited the requirement to use age verification to a commercial entity for whom more than one-third of the material they publish or distribute on a website is sexual material harmful to minors, the substitute makes the requirement applicable to any commercial entity that knowingly and intentionally publishes or distributes sexual material harmful to minors on a website, regardless of the amount of such material published or distributed.

The substitute includes a provision absent from the introduced establishing a 45-day grace period for a social media platform to remove or restrict through age verification harmful sexual material before that platform is liable to the parent or guardian of a minor for damages resulting from the minor's access to that material.