

## **BILL ANALYSIS**

S.B. 2021  
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Youth Health & Safety, Select  
Committee Report (Unamended)

### **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. S.B. 2021 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**

S.B. 2021 amends the Business & Commerce Code to require 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 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.

S.B. 2021 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.

S.B. 2021 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.

S.B. 2021 requires a commercial entity required to use reasonable age verification methods under the bill to display on the landing page of the website and all advertisements for the website in 14-point font or larger sexual materials health warning notices regarding the following:

- pornography being potentially biologically addictive, being proven to harm human brain development, being desensitizing to brain reward circuits, increasing conditioned responses, and weakening brain function;
- exposure to such content being associated with low self-esteem and body image, eating disorders, impaired brain development, and other emotional and mental illnesses; and
- pornography increasing the demand for prostitution, child exploitation, and child pornography.

The bill also requires the entity to include at the bottom of every page of the website in 14-point font or larger a notice that provides the telephone number for the U.S. Substance Abuse and Mental Health Services Administrative Helpline and informs the user that this helpline is a free, confidential information service, provided both in English and Spanish, that is open 24 hours per day for individuals and family members facing mental health or substance use disorders and that the helpline provides referral to local treatment facilities, support groups, and community-based organizations. The bill sets out the specific form and language for these notices.

S.B. 2021 makes a commercial entity who violates the bill's provisions liable to the state for a civil penalty in an amount capped at \$30,000 for each violation. The bill authorizes the attorney general to bring action in the name of the state to recover the penalty and authorizes the attorney general to recover attorney's fees and costs incurred in bringing the action. The bill authorizes an action to be brought in a district court in Travis County or a county in which any part of the violation or threatened violation occurs. The bill requires the attorney general to deposit any collected civil penalty in the state treasury to the credit of the general revenue fund.

S.B. 2021 authorizes a parent or guardian of a minor who accesses sexual material harmful to minors due to the violation of the bill's provisions by a commercial entity to bring a civil action against the commercial entity. The bill requires a parent or guardian who brings such an action to provide written notice of the action to the attorney general. The bill entitles a parent or guardian who prevails in such action to recover damages in the amount of \$10,000, court costs, and attorney's fees. The bill authorizes a court to certify an action brought against a commercial entity as a class action.

S.B. 2021 authorizes the attorney general, in addition to collecting a civil penalty, to bring a civil action to enjoin a commercial entity from further violating the bill's provisions. The bill authorizes the attorney general to join an action for which the attorney general receives notice from a parent or guardian and requires a court to permit the attorney general to join the action not later than the 30th day after the date the attorney general receives notice of the action. If the attorney general joins an action, the attorney general may seek the same remedies the attorney general may seek under the bill in an action brought on the attorney general's own accord.

S.B. 2021 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.

S.B. 2021 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.