

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 2021
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State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Studies show that the ease with which minors can access pornography is poorly controlled, allowing for the exposure and exploitation of children online.

The use of pornography among minors has been linked to mental health problems, harmful sexual behavior among children, increased demand for child pornography, human trafficking, and prostitution.

Minors are gaining access to pornography, which has been proven to be harmful to brain development. They are also more susceptible than adults to addictions and developmental effects on the brain.

Children's development can be harmed when they view content from mainstream pornography websites that depict sexual violence, incest, physical aggression, sexual assault, non-consensual acts, and underage individuals.

Currently in the United States, since January 1, 2023, when Louisiana's age verification law went into effect, over a dozen states have introduced age verification legislation:

- Arkansas, Virginia, Florida, South Dakota, West Virginia, Kansas, and Mississippi have introduced legislation virtually identical to Louisiana.
- Oregon, South Carolina, Minnesota, Utah, Oklahoma, Missouri, and Arizona have either introduced or plan to introduce other age verification legislation.

This legislation would ban minors under 18 from viewing explicit content online by requiring distributors and publishers of explicit content to require 18+ 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 publisher and distributor of explicit content are required to show a Texas Health and Human Services warning prior to viewing the page that states:

- Texas Health and Human Services Warning: Pornography is potentially biologically addictive, proven to harm brain development, desensitizes brain reward circuits, increases conditioned responses and weakens brain function.
- Texas Health and Human Services Warning: Exposure to this content is associated with low self-esteem and body image, eating disorders, brain development, and other emotional and mental illnesses.
- Texas Health and Human Services Warning: Pornography increases the demand for prostitution, child exploitation, and child pornography.

The publisher and distributor are also required to show a porn addiction help page on all pages.

- U.S. Dept. of Health and Human Services Helpline: 1-800-662-4357 Helpline Information - A national hotline that assists in finding appropriate addiction treatment centers, rehabs, and other mental health resources.

Committee Substitute:

- Adds an enforcement mechanism and penalty to publishers and distributors who do not comply.

Support:

- Parents of minors
- Protect Young Eyes
- Texas Values
- NCOSE—National Center on Sexual Exploitation
- First Baptist Church
- Dallas Prayer Chapter
- Prestonwood Baptist Church
- National Center for Missing & Exploited Children

C.S.S.B. 2021 amends current law relating to requirements for certain Internet websites containing sexual material harmful to minors and provides a civil penalty.

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 the heading to Chapter 120, Business and Commerce Code, to read as follows:

CHAPTER 120. SOCIAL MEDIA PLATFORMS AND INTERNET WEBSITES

SECTION 2. Amends Chapter 120, Business and Commerce Code, by adding Subchapter E, as follows:

SUBCHAPTER E. SEXUAL MATERIAL HARMFUL TO MINORS

Sec. 120.201. DEFINITIONS. Defines "commercial entity," "distribute," "minor," "news-gathering organization," "publish," "sexual material harmful to minors," and "transactional data."

Sec. 120.202. 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 120.203 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 after access has been granted to the material.

(c) Provides that a commercial entity that knowingly and intentionally publishes or distributes material on an Internet website that is found to have violated this section is 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 fees as ordered by the court.

(d) Provides that a commercial entity that knowingly and intentionally publishes or distributes material on an Internet website or a third party that performs the age verification required by Subsection (a) that is found to have knowingly retained identifying information of an individual after access has been granted to the individual is liable to the individual for damages resulting from retaining the identifying information, including court costs and reasonable attorney fees as ordered by the court.

Sec. 120.203. 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 subchapter 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. 120.204. SEXUAL MATERIALS HEALTH WARNINGS. Requires a commercial entity required to use reasonable age verification methods under Section 120.202(a) to display certain notices on the landing page of the Internet website and all advertisements for the Internet website. Sets forth the required language for the Internet website notices.

Sec. 120.205. ENFORCEMENT BY ATTORNEY GENERAL; CIVIL PENALTY. (a) Provides that a commercial entity who violates this subchapter is liable to this state for a civil penalty in an amount not to exceed \$30,000 for each violation.

(b) Authorizes the attorney general to bring an action in the name of the state to recover a civil penalty under this section. Authorizes the attorney general to recover attorney's fees and costs incurred in bringing an action under this section.

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

(1) Travis County; or

(2) a county in which any part of the violation or threatened violation occurs.

(d) 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.

Sec. 120.206. CIVIL ACTION AGAINST COMMERCIAL ENTITY. (a) Authorizes a parent or guardian of a minor who accesses sexual material harmful to minors due to the violation of this subchapter by a commercial entity to bring a civil action against the commercial entity.

(b) Requires a parent or guardian who brings an action under this section to provide written notice of the action to the attorney general.

(c) Entitles a parent or guardian who prevails in an action under this section, notwithstanding Sections 41.003 (Standards for Recovery of Exemplary Damages) and 41.004 (Factors Precluding Recovery), Civil Practice and Remedies Code, to recover:

(1) damages in the amount of \$10,000;

(2) court costs; and

(3) attorney's fees.

(d) Authorizes a court to certify an action brought against a commercial entity under this section as a class action.

Sec. 120.207. OTHER ACTION BY ATTORNEY GENERAL. (a) Authorizes the attorney general, in addition to collecting the penalty under Section 120.205, to bring a civil action to enjoin a commercial entity from further violating this subchapter.

(b) Authorizes the attorney general to join an action for which the attorney general receives notice under Section 120.206(b).

(c) Requires the court to permit the attorney general to join an action in accordance with Subsection (b) not later than the 30th day after the date the attorney general receives notice of the action.

(d) Authorizes the attorney general, if the attorney general joins an action in accordance with Subsection (b), to seek the remedies provided under Subsection (a) and Section 120.205.

Sec. 120.208. APPLICABILITY OF SUBCHAPTER. (a) Provides that this subchapter 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 subchapter 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.

SECTION 3. Effective date: September 1, 2023.