By:  Shaheen, Collier, Schatzline H.B. No. 1181

     (Senate Sponsor - Paxton)

(In the Senate - Received from the House May 10, 2023; May 11, 2023, read first time and referred to Committee on State Affairs; May 17, 2023, reported adversely, with favorable Committee Substitute by the following vote: Yeas 11, Nays 0; May 17, 2023, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Hughes          X

Paxton          X

Bettencourt     X

Birdwell        X

LaMantia        X

Menéndez        X

Middleton       X

Parker          X

Perry           X

Schwertner      X

Zaffirini       X

COMMITTEE SUBSTITUTE FOR H.B. No. 1181 By:  Hughes

A BILL TO BE ENTITLED

AN ACT

relating to access to sexually explicit material on the Internet or electronic devices; providing civil penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Subtitle C, Title 5, Business & Commerce Code, is amended by adding Chapter 121 to read as follows:

CHAPTER 121. ELECTRONIC DEVICE FILTERS

SUBCHAPTER A. ELECTRONIC DEVICE FILTER REQUIREMENTS

Sec. 121.001.  DEFINITIONS. In this chapter:

(1)  "Activate" means the process of powering on an electronic device and associating the device with a new user account.

(2)  "Electronic device" means a device with a screen that is capable of connecting to a cellular network or the Internet.

(3)  "Explicit material" means visual material that:

(A)  the average person applying contemporary community standards would find, taking the material as a whole, is intended to appeal to a prurient interest;

(B)  depicts, regardless of whether the depiction is actual, simulated, or animated, in a patently offensive way:

(i)  sexual intercourse, bestiality, masturbation, sodomy, oral copulation, flagellation, or excretory functions or actions;

(ii)  the striking, manipulating, or touching of a person's nipple, breast, buttock, anus, or genitals;

(iii)  the use of devices, tools, instruments, structures, or other items in relation to the performance of any of the acts listed in Subparagraph (i) or (ii); or

(iv)  sadomasochistic abuse or lewd exhibition of a person's genitals, anus, pubic hair, or nipple; and

(C)  taken as a whole, lacks serious literary, artistic, political, religious, or scientific value.

(4)  "Filter" means software installed on an electronic device that, at the time a user activates the device, meets or exceeds industry standards and employs the manufacturer's most advanced, market-ready technology for preventing the device from accessing, downloading, or displaying explicit material using:

(A)  a mobile data network;

(B)  an Internet network, including wireless Internet; or

(C)  a software application owned and controlled by the device's manufacturer.

(5)  "Manufacturer" means a person who:

(A)  is engaged in the business of manufacturing electronic devices or holds a patent for an electronic device; and

(B)  maintains a registered agent under Section 5.201, Business Organizations Code.

(6)  "Minor" means an individual younger than 18 years of age who:

(A)  has never been married; and

(B)  has not had the disabilities of minority removed for general purposes.

(7)  "Simulated" has the meaning assigned by Section 21.16, Penal Code.

(8)  "Visual material" means any film, photograph, videotape, negative, or slide or any photographic reproduction that contains or incorporates any film, photograph, videotape, negative, or slide.

Sec. 121.002.  APPLICABILITY. 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) A manufacturer shall 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)  An electronic device must:

(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) 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)  Notwithstanding Subsection (a), a manufacturer 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) A manufacturer who knowingly violates Section 121.004(a) is liable to this state for a civil penalty in an amount not to exceed the lesser of:

(1)  $10,000 for each violation; or

(2)  $50 million.

(b)  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)  The attorney general may 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. The prevailing party shall recover reasonable and necessary attorney's fees and costs incurred in an action brought under this section.

(d)  The action may be brought in a district court in:

(1)  Travis County; or

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

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

SECTION 2.  Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 129B to read as follows:

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

Sec. 129B.001.  DEFINITIONS. In this chapter:

(1)  "Commercial entity" includes a corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legally recognized business entity.

(2)  "Distribute" means to issue, sell, give, provide, deliver, transfer, transmute, circulate, or disseminate by any means.

(3)  "Minor" means an individual younger than 18 years of age.

(4)  "News-gathering organization" includes:

(A)  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

(B)  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.

(5)  "Publish" means to communicate or make information available to another person or entity on a publicly available Internet website.

(6)  "Sexual material harmful to minors" includes any material that:

(A)  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;

(B)  in a manner patently offensive with respect to minors, exploits, is devoted to, or principally consists of descriptions of actual, simulated, or animated displays or depictions of:

(i)  a person's pubic hair, anus, or genitals or the nipple of the female breast;

(ii)  touching, caressing, or fondling of nipples, breasts, buttocks, anuses, or genitals; or

(iii)  sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory functions, exhibitions, or any other sexual act; and

(C)  taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

(7)  "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. The term includes records from mortgage, education, and employment entities.

Sec. 129B.002.  PUBLICATION OF MATERIAL HARMFUL TO MINORS. (a) 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, shall 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)  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) may not retain any identifying information of the individual.

Sec. 129B.003.  REASONABLE AGE VERIFICATION METHODS. (a) In this section, "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.

(b)  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 shall 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) This chapter does 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.

(b)  An Internet service provider, or its affiliates or subsidiaries, a search engine, or a cloud service provider may not be 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) 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, the attorney general may 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)  A civil penalty imposed under this section may 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)  The amount of a civil penalty under this section shall 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.  Not later than January 1, 2024, each manufacturer shall 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 & Commerce Code, as added by this Act.

SECTION 4.  (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2023.

(b)  Chapter 121, Business & Commerce Code, as added by this Act, takes effect January 1, 2024.

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