By:  Paxton S.B. No. 2021

(In the Senate - Filed March 9, 2023; March 21, 2023, read first time and referred to Committee on State Affairs; April 13, 2023, reported adversely, with favorable Committee Substitute by the following vote: Yeas 11, Nays 0; April 13, 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 S.B. No. 2021 By:  Hughes

A BILL TO BE ENTITLED

AN ACT

relating to requirements for certain Internet websites containing sexual material harmful to minors; providing a civil penalty.

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

SECTION 1.  The heading to Chapter 120, Business & Commerce Code, is amended to read as follows:

CHAPTER 120. SOCIAL MEDIA PLATFORMS AND INTERNET WEBSITES

SECTION 2.  Chapter 120, Business & Commerce Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E.  SEXUAL MATERIAL HARMFUL TO MINORS

Sec. 120.201.  DEFINITIONS. In this subchapter:

(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 display or depiction 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. 120.202.  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 120.203 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 after access has been granted to the material.

(c)  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's fees as ordered by the court.

(d)  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's fees as ordered by the court.

Sec. 120.203.  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 subchapter 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. 120.204.  SEXUAL MATERIALS HEALTH WARNINGS. A commercial entity required to use reasonable age verification methods under Section 120.202(a) shall:

(1)  display the following notices on the landing page of the Internet website and all advertisements for the Internet website in 14-point font or larger:

"TEXAS HEALTH AND HUMAN SERVICES WARNING: Pornography is potentially biologically addictive, is proven to harm human 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, impaired 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."; and

(2)  display the following notice at the bottom of every page of the Internet website in 14-point font or larger:

"U.S. SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION HELPLINE:

1-800-662-HELP (4357)

THIS HELPLINE IS A FREE, CONFIDENTIAL INFORMATION SERVICE (IN ENGLISH OR SPANISH) OPEN 24 HOURS PER DAY, FOR INDIVIDUALS AND FAMILY MEMBERS FACING MENTAL HEALTH OR SUBSTANCE USE DISORDERS. THE SERVICE PROVIDES REFERRAL TO LOCAL TREATMENT FACILITIES, SUPPORT GROUPS, AND COMMUNITY-BASED ORGANIZATIONS."

Sec. 120.205.  ENFORCEMENT BY ATTORNEY GENERAL; CIVIL PENALTY. (a) 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)  The attorney general may bring an action in the name of the state to recover a civil penalty under this section. The attorney general may recover attorney's fees and costs incurred in bringing an action under this section.

(c)  The action may 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)  The attorney general shall 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) 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 may bring a civil action against the commercial entity.

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

(c)  Notwithstanding Sections 41.003 and 41.004, Civil Practice and Remedies Code, a parent or guardian who prevails in an action under this section is entitled to recover:

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

(2)  court costs; and

(3)  attorney's fees.

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

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

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

(c)  The court shall 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)  If the attorney general joins an action in accordance with Subsection (b), the attorney general may seek the remedies provided under Subsection (a) and Section 120.205.

Sec. 120.208.  APPLICABILITY OF SUBCHAPTER. (a) This subchapter 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 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.  This Act takes effect September 1, 2023.

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