

1-1 By: Shaheen, Collier, Schatzline H.B. No. 1181  
 1-2 (Senate Sponsor - Paxton)  
 1-3 (In the Senate - Received from the House May 10, 2023;  
 1-4 May 11, 2023, read first time and referred to Committee on State  
 1-5 Affairs; May 17, 2023, reported adversely, with favorable  
 1-6 Committee Substitute by the following vote: Yeas 11, Nays 0;  
 1-7 May 17, 2023, sent to printer.)

1-8 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-9				
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18	X			
1-19	X			
1-20	X			

1-21 COMMITTEE SUBSTITUTE FOR H.B. No. 1181 By: Hughes

1-22 A BILL TO BE ENTITLED  
 1-23 AN ACT

1-24 relating to access to sexually explicit material on the Internet or  
 1-25 electronic devices; providing civil penalties.  
 1-26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
 1-27 SECTION 1. Subtitle C, Title 5, Business & Commerce Code, is  
 1-28 amended by adding Chapter 121 to read as follows:  
 1-29 CHAPTER 121. ELECTRONIC DEVICE FILTERS  
 1-30 SUBCHAPTER A. ELECTRONIC DEVICE FILTER REQUIREMENTS  
 1-31 Sec. 121.001. DEFINITIONS. In this chapter:  
 1-32 (1) "Activate" means the process of powering on an  
 1-33 electronic device and associating the device with a new user  
 1-34 account.  
 1-35 (2) "Electronic device" means a device with a screen  
 1-36 that is capable of connecting to a cellular network or the Internet.  
 1-37 (3) "Explicit material" means visual material that:  
 1-38 (A) the average person applying contemporary  
 1-39 community standards would find, taking the material as a whole, is  
 1-40 intended to appeal to a prurient interest;  
 1-41 (B) depicts, regardless of whether the depiction  
 1-42 is actual, simulated, or animated, in a patently offensive way:  
 1-43 (i) sexual intercourse, bestiality,  
 1-44 masturbation, sodomy, oral copulation, flagellation, or excretory  
 1-45 functions or actions;  
 1-46 (ii) the striking, manipulating, or  
 1-47 touching of a person's nipple, breast, buttock, anus, or genitals;  
 1-48 (iii) the use of devices, tools,  
 1-49 instruments, structures, or other items in relation to the  
 1-50 performance of any of the acts listed in Subparagraph (i) or (ii);  
 1-51 or  
 1-52 (iv) sadomasochistic abuse or lewd  
 1-53 exhibition of a person's genitals, anus, pubic hair, or nipple; and  
 1-54 (C) taken as a whole, lacks serious literary,  
 1-55 artistic, political, religious, or scientific value.  
 1-56 (4) "Filter" means software installed on an electronic  
 1-57 device that, at the time a user activates the device, meets or  
 1-58 exceeds industry standards and employs the manufacturer's most  
 1-59 advanced, market-ready technology for preventing the device from  
 1-60 accessing, downloading, or displaying explicit material using:

2-1 (A) a mobile data network;  
2-2 (B) an Internet network, including wireless  
2-3 Internet; or  
2-4 (C) a software application owned and controlled  
2-5 by the device's manufacturer.

2-6 (5) "Manufacturer" means a person who:  
2-7 (A) is engaged in the business of manufacturing  
2-8 electronic devices or holds a patent for an electronic device; and  
2-9 (B) maintains a registered agent under Section  
2-10 5.201, Business Organizations Code.

2-11 (6) "Minor" means an individual younger than 18 years  
2-12 of age who:  
2-13 (A) has never been married; and  
2-14 (B) has not had the disabilities of minority  
2-15 removed for general purposes.

2-16 (7) "Simulated" has the meaning assigned by Section  
2-17 21.16, Penal Code.

2-18 (8) "Visual material" means any film, photograph,  
2-19 videotape, negative, or slide or any photographic reproduction that  
2-20 contains or incorporates any film, photograph, videotape,  
2-21 negative, or slide.

2-22 Sec. 121.002. APPLICABILITY. This chapter does not apply  
2-23 to a telecommunications provider who activates an electronic device  
2-24 on behalf of a user.

2-25 Sec. 121.003. ELECTRONIC DEVICE FILTER REQUIRED. (a) A  
2-26 manufacturer shall ensure that an electronic device activated in  
2-27 this state will, on activation, automatically enable a filter and  
2-28 notify the user of the device when the filter prevents the device  
2-29 from accessing, downloading, or displaying explicit material.

2-30 (b) An electronic device must:

2-31 (1) allow the user of the device or a minor user's  
2-32 parent or guardian to circumvent the filter required under  
2-33 Subsection (a) by entering a password or access code; and

2-34 (2) reasonably prevent a user of the device from  
2-35 circumventing, modifying, removing, or uninstalling the filter  
2-36 without entering a password or access code.

2-37 Sec. 121.004. VIOLATION. (a) A manufacturer violates this  
2-38 chapter if the manufacturer releases into the market an electronic  
2-39 device that, when activated in this state, does not automatically  
2-40 enable a filter under Section 121.003 because the device lacks the  
2-41 necessary software or is defective.

2-42 (b) Notwithstanding Subsection (a), a manufacturer does not  
2-43 violate this chapter if the manufacturer makes a good faith effort  
2-44 to provide an electronic device that automatically enables a filter  
2-45 under Section 121.003.

SUBCHAPTER B. ENFORCEMENT

2-47 Sec. 121.051. CIVIL PENALTY; INJUNCTION. (a) A  
2-48 manufacturer who knowingly violates Section 121.004(a) is liable to  
2-49 this state for a civil penalty in an amount not to exceed the lesser  
2-50 of:

- 2-51 (1) \$10,000 for each violation; or
- 2-52 (2) \$50 million.

2-53 (b) A manufacturer who negligently violates Section  
2-54 121.004(a) is liable to this state for a civil penalty in an amount  
2-55 not to exceed the lesser of:

- 2-56 (1) \$1,000 for each violation; or
- 2-57 (2) \$5 million.

2-58 (c) The attorney general may bring an action in the name of  
2-59 the state to obtain an injunction preventing further violations of  
2-60 this chapter by a manufacturer or to recover a civil penalty under  
2-61 this section. The prevailing party shall recover reasonable and  
2-62 necessary attorney's fees and costs incurred in an action brought  
2-63 under this section.

2-64 (d) The action may be brought in a district court in:

- 2-65 (1) Travis County; or
- 2-66 (2) the county in which the defendant's principal  
2-67 place of business is located.

2-68 (e) The attorney general shall deposit a civil penalty  
2-69 collected under this section in the state treasury to the credit of

3-1 the general revenue fund.

3-2 SECTION 2. Title 6, Civil Practice and Remedies Code, is  
3-3 amended by adding Chapter 129B to read as follows:

3-4 CHAPTER 129B. LIABILITY FOR ALLOWING MINORS TO ACCESS PORNOGRAPHIC  
3-5 MATERIAL

3-6 Sec. 129B.001. DEFINITIONS. In this chapter:

3-7 (1) "Commercial entity" includes a corporation,  
3-8 limited liability company, partnership, limited partnership, sole  
3-9 proprietorship, or other legally recognized business entity.

3-10 (2) "Distribute" means to issue, sell, give, provide,  
3-11 deliver, transfer, transmute, circulate, or disseminate by any  
3-12 means.

3-13 (3) "Minor" means an individual younger than 18 years  
3-14 of age.

3-15 (4) "News-gathering organization" includes:

3-16 (A) an employee of a newspaper, news publication,  
3-17 or news source, printed or on an online or mobile platform, of  
3-18 current news and public interest, who is acting within the course  
3-19 and scope of that employment and can provide documentation of that  
3-20 employment with the newspaper, news publication, or news source;  
3-21 and

3-22 (B) an employee of a radio broadcast station,  
3-23 television broadcast station, cable television operator, or wire  
3-24 service who is acting within the course and scope of that employment  
3-25 and can provide documentation of that employment.

3-26 (5) "Publish" means to communicate or make information  
3-27 available to another person or entity on a publicly available  
3-28 Internet website.

3-29 (6) "Sexual material harmful to minors" includes any  
3-30 material that:

3-31 (A) the average person applying contemporary  
3-32 community standards would find, taking the material as a whole and  
3-33 with respect to minors, is designed to appeal to or pander to the  
3-34 prurient interest;

3-35 (B) in a manner patently offensive with respect  
3-36 to minors, exploits, is devoted to, or principally consists of  
3-37 descriptions of actual, simulated, or animated displays or  
3-38 depictions of:

3-39 (i) a person's pubic hair, anus, or genitals  
3-40 or the nipple of the female breast;

3-41 (ii) touching, caressing, or fondling of  
3-42 nipples, breasts, buttocks, anuses, or genitals; or

3-43 (iii) sexual intercourse, masturbation,  
3-44 sodomy, bestiality, oral copulation, flagellation, excretory  
3-45 functions, exhibitions, or any other sexual act; and

3-46 (C) taken as a whole, lacks serious literary,  
3-47 artistic, political, or scientific value for minors.

3-48 (7) "Transactional data" means a sequence of  
3-49 information that documents an exchange, agreement, or transfer  
3-50 between an individual, commercial entity, or third party used for  
3-51 the purpose of satisfying a request or event. The term includes  
3-52 records from mortgage, education, and employment entities.

3-53 Sec. 129B.002. PUBLICATION OF MATERIAL HARMFUL TO MINORS.

3-54 (a) A commercial entity that knowingly and intentionally publishes  
3-55 or distributes material on an Internet website, including a social  
3-56 media platform, more than one-third of which is sexual material  
3-57 harmful to minors, shall use reasonable age verification methods as  
3-58 described by Section 129B.003 to verify that an individual  
3-59 attempting to access the material is 18 years of age or older.

3-60 (b) A commercial entity that performs the age verification  
3-61 required by Subsection (a) or a third party that performs the age  
3-62 verification required by Subsection (a) may not retain any  
3-63 identifying information of the individual.

3-64 Sec. 129B.003. REASONABLE AGE VERIFICATION METHODS. (a)

3-65 In this section, "digital identification" means information stored  
3-66 on a digital network that may be accessed by a commercial entity and  
3-67 that serves as proof of the identity of an individual.

3-68 (b) A commercial entity that knowingly and intentionally  
3-69 publishes or distributes material on an Internet website or a third

4-1 party that performs age verification under this chapter shall  
4-2 require an individual to:

- 4-3 (1) provide digital identification; or
- 4-4 (2) comply with a commercial age verification system

4-5 that verifies age using:  
4-6 (A) government-issued identification; or  
4-7 (B) a commercially reasonable method that relies  
4-8 on public or private transactional data to verify the age of an  
4-9 individual.

4-10 Sec. 129B.004. APPLICABILITY OF CHAPTER. (a) This chapter  
4-11 does not apply to a bona fide news or public interest broadcast,  
4-12 website video, report, or event and may not be construed to affect  
4-13 the rights of a news-gathering organization.

4-14 (b) An Internet service provider, or its affiliates or  
4-15 subsidiaries, a search engine, or a cloud service provider may not  
4-16 be held to have violated this chapter solely for providing access or  
4-17 connection to or from a website or other information or content on  
4-18 the Internet or on a facility, system, or network not under that  
4-19 provider's control, including transmission, downloading,  
4-20 intermediate storage, access software, or other services to the  
4-21 extent the provider or search engine is not responsible for the  
4-22 creation of the content that constitutes sexual material harmful to  
4-23 minors.

4-24 Sec. 129B.005. CIVIL PENALTY; INJUNCTION. (a) If the  
4-25 attorney general believes that an entity is knowingly violating or  
4-26 has knowingly violated this chapter and the action is in the public  
4-27 interest, the attorney general may bring an action in a Travis  
4-28 County district court or the district court in the county in which  
4-29 the principal place of business of the entity is located in this  
4-30 state to enjoin the violation, recover a civil penalty described by  
4-31 Subsection (b), and obtain other relief the court considers  
4-32 appropriate.

4-33 (b) A civil penalty imposed under this section may be in an  
4-34 amount equal to not more than the total, if applicable, of:

4-35 (1) \$10,000 per day that the entity operates an  
4-36 Internet website in violation of the age verification requirements  
4-37 of this chapter;

4-38 (2) \$10,000 per instance when the entity retains  
4-39 identifying information in violation of Section 129B.002(b); and

4-40 (3) if, because of the entity's violation of the age  
4-41 verification requirements of this chapter, one or more minors  
4-42 accesses sexual material harmful to minors, an additional amount of  
4-43 not more than \$250,000.

4-44 (c) The amount of a civil penalty under this section shall  
4-45 be based on:

4-46 (1) the seriousness of the violation, including the  
4-47 nature, circumstances, extent, and gravity of the violation;

4-48 (2) the history of previous violations;

4-49 (3) the amount necessary to deter a future violation;

4-50 (4) the economic effect of a penalty on the entity on  
4-51 whom the penalty will be imposed;

4-52 (5) the entity's knowledge that the act constituted a  
4-53 violation of this chapter; and

4-54 (6) any other matter that justice may require.

4-55 SECTION 3. Not later than January 1, 2024, each  
4-56 manufacturer shall implement a software update to automatically  
4-57 enable an electronic device filter on an electronic device  
4-58 activated in this state as required by Chapter 121, Business &  
4-59 Commerce Code, as added by this Act.

4-60 SECTION 4. (a) Except as provided by Subsection (b) of this  
4-61 section, this Act takes effect September 1, 2023.

4-62 (b) Chapter 121, Business & Commerce Code, as added by this  
4-63 Act, takes effect January 1, 2024.

4-64 \* \* \* \* \*