

By: Paxton, et al. S.B. No. 2021
(Schatzline, Ordaz, Schaefer, A. Johnson of Harris, et al.)

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

1 employment with the newspaper, news publication, or news source;
2 and

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

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

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

12 (A) the average person, applying contemporary
13 community standards, would find, taking the material as a whole and
14 with respect to minors, is designed to appeal to or pander to the
15 prurient interest;

16 (B) in a manner patently offensive with respect
17 to minors, exploits, is devoted to, or principally consists of
18 descriptions of actual, simulated, or animated display or depiction
19 of:

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

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

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

27 (C) taken as a whole, lacks serious literary,

1 artistic, political, or scientific value for minors.

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

7 Sec. 120.202. PUBLICATION OF MATERIAL HARMFUL TO MINORS.

8 (a) A commercial entity that knowingly and intentionally publishes
9 or distributes material on an Internet website, including a social
10 media platform, more than one-third of which is sexual material
11 harmful to minors, shall use reasonable age verification methods as
12 described by Section 120.203 to verify that an individual
13 attempting to access the material is 18 years of age or older.

14 (b) A commercial entity that performs the age verification
15 required by Subsection (a) or a third party that performs the age
16 verification required by Subsection (a) may not retain any
17 identifying information of the individual after access has been
18 granted to the material.

19 (c) A commercial entity that knowingly and intentionally
20 publishes or distributes material on an Internet website that is
21 found to have violated this section is liable to the parent or
22 guardian of the minor for damages resulting from a minor's access to
23 the material, including court costs and reasonable attorney's fees
24 as ordered by the court.

25 (d) A commercial entity that knowingly and intentionally
26 publishes or distributes material on an Internet website or a third
27 party that performs the age verification required by Subsection (a)

1 that is found to have knowingly retained identifying information of
2 an individual after access has been granted to the individual is
3 liable to the individual for damages resulting from retaining the
4 identifying information, including court costs and reasonable
5 attorney's fees as ordered by the court.

6 Sec. 120.203. REASONABLE AGE VERIFICATION METHODS. (a) In
7 this section, "digital identification" means information stored on
8 a digital network that may be accessed by a commercial entity and
9 that serves as proof of the identity of an individual.

10 (b) A commercial entity that knowingly and intentionally
11 publishes or distributes material on an Internet website or a third
12 party that performs age verification under this subchapter shall
13 require an individual to:

14 (1) provide digital identification; or

15 (2) comply with a commercial age verification system
16 that verifies age using:

17 (A) government-issued identification; or

18 (B) a commercially reasonable method that relies
19 on public or private transactional data to verify the age of an
20 individual.

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

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

27 "TEXAS HEALTH AND HUMAN SERVICES WARNING: Pornography

1 is potentially biologically addictive, is proven to harm human
2 brain development, desensitizes brain reward circuits, increases
3 conditioned responses, and weakens brain function."

4 "TEXAS HEALTH AND HUMAN SERVICES WARNING: Exposure to
5 this content is associated with low self-esteem and body image,
6 eating disorders, impaired brain development, and other emotional
7 and mental illnesses."

8 "TEXAS HEALTH AND HUMAN SERVICES WARNING: Pornography
9 increases the demand for prostitution, child exploitation, and
10 child pornography."; and

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

13 "U.S. SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION

14 HELPLINE:

15 1-800-662-HELP (4357)

16 THIS HELPLINE IS A FREE, CONFIDENTIAL INFORMATION SERVICE (IN
17 ENGLISH OR SPANISH) OPEN 24 HOURS PER DAY, FOR INDIVIDUALS AND
18 FAMILY MEMBERS FACING MENTAL HEALTH OR SUBSTANCE USE DISORDERS.

19 THE SERVICE PROVIDES REFERRAL TO LOCAL TREATMENT FACILITIES,
20 SUPPORT GROUPS, AND COMMUNITY-BASED ORGANIZATIONS."

21 Sec. 120.205. ENFORCEMENT BY ATTORNEY GENERAL; CIVIL
22 PENALTY. (a) A commercial entity who violates this subchapter is
23 liable to this state for a civil penalty in an amount not to exceed
24 \$30,000 for each violation.

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

1 bringing an action under this section.

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

3 (1) Travis County; or

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

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

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

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

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

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

20 (2) court costs; and

21 (3) attorney's fees.

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

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

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

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

6 (d) If the attorney general joins an action in accordance
7 with Subsection (b), the attorney general may seek the remedies
8 provided under Subsection (a) and Section 120.205.

9 Sec. 120.208. APPLICABILITY OF SUBCHAPTER. (a) This
10 subchapter does not apply to a bona fide news or public interest
11 broadcast, website video, report, or event and may not be construed
12 to affect the rights of a news-gathering organization.

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

23 SECTION 3. This Act takes effect September 1, 2023.