

By: Hughes

S.B. No. 2164

A BILL TO BE ENTITLED

AN ACT

relating to restricting access to sexual material harmful to minors on an Internet website.

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 fees as
24 ordered by the court.

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

1 Subsection (a) that is found to have knowingly retained identifying
2 information of an individual after access has been granted to the
3 individual is liable to the individual for damages resulting from
4 retaining the identifying information, including court costs and
5 reasonable attorney 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. APPLICABILITY OF SUBCHAPTER. (a) This
22 subchapter does not apply to a bona fide news or public interest
23 broadcast, website video, report, or event and may not be construed
24 to affect the rights of a news-gathering organization.

25 (b) An Internet service provider, or its affiliates or
26 subsidiaries, a search engine, or a cloud service provider may not
27 be held to have violated this subchapter solely for providing

1 access or connection to or from a website or other information or
2 content on the Internet or on a facility, system, or network not
3 under that provider's control, including transmission,
4 downloading, intermediate storage, access software, or other
5 services to the extent the provider or search engine is not
6 responsible for the creation of the content that constitutes sexual
7 material harmful to minors.

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