

House Bill 1181
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. 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

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(Unless otherwise indicated, all SECTIONS below are from FA1)

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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. 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.

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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.

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(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. SEXUAL MATERIALS HEALTH WARNINGS. A commercial entity required to use reasonable age verification methods under Section 129B.002(a) shall:

(1) display the following notices on the landing page of the Internet website on which sexual material harmful to minors is published or distributed and all advertisements for that 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

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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. 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

Sec. 129B.005. 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

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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;

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Sec. 129B.006. 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, and obtain other relief the court considers appropriate.

(b) A civil penalty imposed under this section for a violation of Section 129B.002 or 129B.003 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;

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(5) the entity's knowledge that the act constituted a violation of this chapter; and
(6) any other matter that justice may require.

SECTION 2. This Act takes effect September 1, 2023.

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(5) the entity's knowledge that the act constituted a violation of this chapter; and
(6) any other matter that justice may require.
(d) The attorney general may recover reasonable and necessary attorney's fees and costs incurred in an action under this section.

SECTION 2. Same as House version.

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