

- SUBJECT:** Restricting access to online sexual material harmful to minors
- COMMITTEE:** Judiciary & Civil Jurisprudence — committee substitute recommended
- VOTE:** 8 ayes — Leach, Julie Johnson, Flores, Moody, Murr, Schofield, Slawson, Vasut
- 0 nays
- 1 absent — Davis
- WITNESSES:** For — Anne Newman; Deborah Simmons (*Registered, but did not testify*: Jonathan Covey, Jonathan Saenz, Texas Values; Mary Elizabeth Castle, Texas Values Action; Aileen Blachowski; Adam Cahn; Michelle Evans; Thomas Parkinson)
- Against — None
- BACKGROUND:** Some have suggested that entities who publish sexual material harmful to minors on websites should be held accountable to using age verification methods to reduce negative emotional, psychological, and physical health outcomes for minors who may access these websites.
- DIGEST:** CSHB 1181 would require a commercial entity that published sexual material harmful to minors on a website to implement age-verification methods, and also would implement liability for damages associated with a minor's access to this material.
- Definitions.** CSHB 1181 would define "sexual material harmful to minors" to include any material that:
- the average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors, was designed to appeal to or pander to the prurient interest;
 - in a manner patently offensive with respect to minors, exploited, was devoted to, or principally consisted of descriptions of actual,

- simulated, or animated display or depiction of certain body parts or sexual acts; and
- taken as a whole, lacked serious literary, artistic, political, or scientific value for minors.

For the purposes of the bill, "digital identification" would mean information stored on a digital network that could be accessed by a commercial entity and would serve as proof of the identity of an individual.

Publication of harmful material. A commercial entity that knowingly and intentionally published or distributed material on a website, including a social media platform, more than one-third of which was sexual material harmful to minors, would have to use reasonable age verification methods to verify that an individual attempting to access the material was not a minor. A commercial entity or third party that performed the age verification could not retain any identifying information of the individual after access has been granted to the material.

A commercial entity that knowingly and intentionally published or distributed material on a website that was found to have violated these provisions would be 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. A commercial entity that knowingly and intentionally published or distributed material on a website or a third party that performed the age verification that was found to have knowingly retained identifying information of an individual after access had been granted to the individual would be 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.

Age verification. A commercial entity that knowingly and intentionally published or distributed material on a website or a third party that performed age verification would have to require an individual to provide digital identification or comply with a commercial age verification system

that verified age using government-issued identification or certain commercially reasonable methods.

Implementation. The bill would not apply to a bona fide news or public interest broadcast, website video, report, or event and could not be construed to affect the rights of a newsgathering organization. An internet service provider, a search engine, or a cloud service provider would not be held to have violated the bill solely by providing access or connection to or from certain online content not under that provider's control.

The bill would take effect September 1, 2023.

NOTES:

According to the Legislative Budget Board, the fiscal implications of CSHB 1181 could not be determined because the extent to which caseloads would increase in the state court system is unknown.