

SUBJECT: Penalizing commercial entities for exposing minors to sexual material

COMMITTEE: Youth Health & Safety, Select — favorable, without amendment

VOTE: 6 ayes — S. Thompson, Hull, Allison, Capriglione, A. Johnson, T. King

0 nays

3 absent — Dutton, Landgraf, Lozano

SENATE VOTE: On final passage (April 18) — 31 - 0

WITNESSES: None (*considered in a formal meeting on April 27*)

BACKGROUND: Some have suggested that the state should take steps to ensure that websites containing sexually explicit materials are not accessible to minors in order to prevent negative mental and physical health consequences.

DIGEST: SB 2021 would establish a civil penalty for commercial entities that knowingly and intentionally published or distributed sexual material harmful to minors under certain conditions.

SB 2021 would define "sexual material harmful to minors" as 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;
- exploited, was devoted to, or principally consisted of descriptions of actual, simulated, or animated displays or depictions of certain sexual acts in a manner patently offensive with respect to minors; and
- lacked, as a whole, serious literary, artistic, political, or scientific value for minors.

A commercial entity that knowingly and intentionally published or distributed material on a website, more than one-third of which was sexual material harmful to minors, would be required to verify that an individual attempting to access the material was at least 18 years old using certain methods established in the bill. A commercial entity or third party that performed the required age verification could not retain any identifying information of the individual after access was granted to the material.

A commercial entity that knowingly and intentionally published or distributed material on a website that was found to have violated the bill's provisions would be liable to the parent or guardian of the minor for damages resulting from the minor's access to the material. A commercial entity that was found to have knowingly retained identifying information of an individual after access was granted to the individual would be liable to the individual for damages resulting from retaining the identifying information.

A commercial entity required to use reasonable age verification methods would have to display online certain notices outlined in the bill under certain conditions.

A commercial entity that violated the bill would be liable for a civil penalty in an amount not to exceed \$30,000 for each violation. The attorney general could bring an action to recover a civil penalty and recover attorney's fees and costs incurred in bringing an action. The action could be brought in a district court in Travis County or a county in which any part of the violation or threatened violation occurred. The attorney general would be required to deposit the civil penalty to the general revenue fund.

A parent or guardian of a minor who accessed sexual material harmful to minors due to the violation by a commercial entity also could bring a civil action against the commercial entity. A parent or guardian who brought such an action would be required to provide written notice of the action to the attorney general, after which the attorney general would have 30 days to join the action. A court could certify an action brought against a

commercial entity under the bill as a class action. Additionally, the attorney general could bring a civil action to enjoin a commercial entity from further violating the bill.

These provisions 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 news-gathering organization. Additionally, an internet service provider or its affiliates or subsidiaries, a search engine, or a cloud service provider would not be considered to have violated provisions of the bill solely by 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 that constituted sexual material harmful to minors.

The bill would take effect September 1, 2023.