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Bill Analysis

Version: As Introduced

Primary Sponsors: Sens. Kunze and DeMora

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SUMMARY

- Requires businesses to use reasonable age verification methods in connection with websites, services, or products where more than one-third of the total material is “harmful to juveniles.”
- Stipulates that material is “harmful to juveniles” if it includes nudity, sexual excitement, or sado-masochistic abuse; appeals to the prurient interest of juveniles in sex; is patently offensive; and lacks serious literary, artistic, political, or scientific value.
- Establishes three reasonable age verification methods that businesses may use, including third-party verification services, public and private transaction data, and state identification.
- Prohibits a business from retaining information obtained for the purposes of age verification.
- Authorizes the Attorney General to enforce the bill through a civil action.
- Explicitly exempts news-gathering organizations, as well as internet service providers (ISPs), search engines, and cloud service providers that facilitate access to a publicly available website.

DETAILED ANALYSIS

Overview

The bill requires businesses to use “reasonable age verification methods” to ensure the business is not distributing pornographic materials to individuals under the age of 18. The bill applies to websites, services, or products where more than one-third of the total material is

“harmful to juveniles.”¹ It does not apply to bona fide news reports and does not affect the rights of any news gathering organization.² Furthermore, the bill does not prohibit an internet service provider (ISP), search engine, or cloud service provider from providing access to a publicly available website, service, or product.³

Material harmful to juveniles

The bill defines material “harmful to juveniles” by reference to a criminal provision in continuing law. Specifically, it means material or a performance describing or representing nudity, sexual conduct, sexual excitement, or sado-masochistic abuse that:

- When considered as a whole, appeals to the prurient interest of juveniles in sex;
- Is patently offensive to the prevailing standards in the adult community as a whole with respect to what is suitable for juveniles; and
- When considered as a whole, lacks serious literary, artistic, political, and scientific value for juveniles.⁴

Reasonable age verification methods

The bill provides three methods of reasonably verifying an individual’s age: (1) through an independent, third-party verification service that compares information entered by individuals seeking access to pornographic materials to information stored in a commercially available database regularly used by businesses and government agencies for age and identification verification, (2) any commercially reasonable method that relies on public or private transactional data, or (3) a state-issued ID card.⁵ Businesses are prohibited from retaining identifying information once the individual has been granted or denied access to the website, service, or product.⁶

Businesses that fail to use reasonable age verification methods or retain identifying information commit an unfair or deceptive practice. The bill authorizes the Attorney General to remedy violations of the bill by bringing an action for temporary restraining orders, preliminary or permanent injunctions, or civil penalties.⁷

¹ R.C. 1349.10(A)(12) and (B)(1).

² R.C. 1349.10(E).

³ R.C. 1349.10(D).

⁴ R.C. 1349.10(A)(4); R.C. 2907.01(E), not in the bill.

⁵ R.C. 1349.10(A)(10).

⁶ R.C. 1349.10(B)(2).

⁷ R.C. 1349.10(C); R.C. 1345.01 through 1345.13, not in the bill.

Exceptions

News

The bill explicitly exempts a “bona fide news or public interest broadcast, web site video, report, or event.” It also stipulates that the bill’s requirements are not to be construed to affect the rights of a “news-gathering organization,” which the bill defines as either of the following:

- A newspaper, magazine press association, news agency, news wire service, radio or television station, or similar media;
- A person employed or contracted by any of the foregoing to gather, process, transmit, compile, edit, or disseminate information to the general public.⁸

ISPs, search engines, and cloud service providers

It is not considered a violation of the bill for an ISP, a search engine, a cloud services provider, or a subsidiary or affiliate of any of the foregoing to provide juveniles access or connection to a publicly available online website, service, or product not under the entity’s control.⁹ Under the bill, a website, service, or product is “publicly available” if the communications, content, materials, or information included therein are accessible (whether free of charge or subject to a fee, subscription, or members-only model) over, on, or through the internet, a computer or mobile application, or other type of virtual or digital platform.¹⁰

For the purposes of the bill, an ISP is a provider of internet services, including all of the following:

- Broadband service, however defined or classified by the Federal Communications Commission;
- Information service or telecommunications service, both as defined in the “Telecommunications Act of 1996”;
- Internet protocol-enabled service, which is defined under continuing law as a service, capability, functionality, or application that is provided using internet protocol or a successor protocol to enable the user to send or receive communications, including a voice over internet protocol service.¹¹

A “search engine” is a website, service, or product the predominant or exclusive function of which is to search the internet for other websites, services, or products, or for information based on a user’s query. “Search engine” does not include websites, services, or

⁸ R.C. 1349.10(A)(7) and (8).

⁹ R.C. 1349.10(D).

¹⁰ R.C. 1349.10(A)(9).

¹¹ R.C. 1349.10(A)(5); R.C. 4927.01, not in the bill.

products the predominant or exclusive function of which is to conduct an internal search for content on a website, service, or product that includes a substantial portion of materials that are harmful to juveniles.¹²

A “cloud service provider” is a third-party provider of computing resources that a business may access on demand over the internet, including cloud-based application, infrastructure, platform, and storage services.¹³

State authority to require age verification

Age verification laws and other state and federal measures that address access to social media and pornography over the internet are sometimes challenged under the First and Fifth Amendments to the U.S. Constitution. For example, in *Reno v. ACLU*, the U.S. Supreme Court invalidated, on First Amendment grounds, portions of the “Communications Decency Act of 1996,” that criminalized the knowing transmission of “obscene or indecent” messages to any recipient under 18 years of age.¹⁴

State age verification laws in Texas and Ohio have been challenged and enjoined for similar reasons in recent months. The Ohio injunction on the state’s “Social Media Parental Notification Act” remains in place.¹⁵ The Texas injunction was recently overturned, in part, by the 5th Circuit Court of Appeals. The court allowed the age verification of the Texas law to take effect, but affirmed the injunction against requiring pornographic websites to provide health warnings to their users.¹⁶

HISTORY

Action	Date
Introduced	01-16-24

ANSB0212IN-135/ks

¹² R.C. 1349.10(A)(11).

¹³ R.C. 1349.10(A)(2).

¹⁴ 521 U.S. 844 (1997).

¹⁵ R.C. 1349.09; *Netchoice, LLC v. Yost*, S.D. Ohio No. 2:24-cv-00047, 2024 U.S. Dist. LEXIS 24129 (February 12, 2024).

¹⁶ *Free Speech Coalition, Inc. v. Paxton*, 95 F.4th 263 (5th Cir. 2024).