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| **H.B. 302**<br>**136th General Assembly** | **Bill Analysis** |
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**Version**: As Introduced

**Primary Sponsors**: Reps. Workman and Plummer

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# SUMMARY

## Application distribution providers

- Requires an application distribution provider to request a user's age at the time they create an account.

- Requires an application distribution provider to allow users the provider estimates to be minors with an opportunity to verify they are adults.

- Requires an application distribution provider to give developers of covered applications the ability to request an age signal, prevent account holders who are not adults from acquiring a covered application, and view relevant parental controls through a centralized interface.

- Prohibits application distribution providers from engaging in anti-competitive practices.

## Application developers

- Requires developers of covered applications to use commercially reasonable efforts to estimate whether a user is a minor or an adult and make a reasonable effort to ensure that minor account holders cannot engage in any activity that is restricted to adults only.

- Prohibits application developers from permitting a minor to access content or features unsuitable for minors without first obtaining parental consent.

- Requires application developers provide parental controls for covered applications.

- Prohibits application developers from using age signal information for purposes other than complying with the bill.

## Operating system providers

- Requires operating system providers request an account holder's age upon account creation.

- Requires operating system providers to enable parents of minor account holders to activate a control filter setting that prevents access to obscene material.

## Browsers and search engines

- Requires internet browsers and search engines provide the ability to filter obscene content.

## Enforcement

- Authorizes the Attorney General to enforce the bill's provisions through a civil action.

- Specifies that the bill does not create a private cause of action.

- Specifies that an application distribution provider or operating system provider that makes a good faith effort to comply with the bill is not liable for violations.

## Effective date

- Delays the bill's provisions from taking effect for one year after the standard, 90-day effective date.

# DETAILED ANALYSIS

## Overview

The bill regulates the distribution of covered applications and requires the developers of those covered applications to obtain verifiable parental consent, make a good faith effort to prevent access to content that is not suitable for minors, and refrain from targeted advertising to minors. The bill also includes related requirements for application distribution providers, operating system providers, internet browsers, and search engines. The bill takes effect one year after the standard, 90-day effective date.[1]

The bill's requirements are somewhat similar to provisions of H.B. 33 of the 135th General Assembly, which required operators of social media websites to obtain "verifiable consent" from a parent or guardian before allowing an Ohio resident under age 16 to create an account. A federal court enjoined enforcement of those provisions holding that they were content-based and subject to strict scrutiny under the First Amendment to the United States Constitution. Furthermore, the court indicated that the provisions could be void for vagueness under the Due

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[1] Section 2.

Process Clause of the Fourteenth Amendment to the United States Constitution.[2] Given the similarities, this bill could attract a similar challenge.

# Application distribution providers

## Key terms

The bill establishes several new requirements for "**application distribution providers**," which are persons that own, operate, or control an application distributor. An "**application distributor**," commonly referred to as an app store, is software application, other than an internet browser, that distributes other applications from developers to users of a "**connected device**," i.e., a smartphone, tablet, gaming console, or virtual reality device that connects to the internet and downloads software. The bill defines "**application**" as a software program distributed through an app store that is designed to perform a specific task on a connected device. The term excludes websites, internet browser extensions, and software with a primary purpose of extending the functionality of an internet browser.[3]

## Age category

Under the bill, when a user creates an account with an app store, the application distribution provider is required to request the user's age. The bill does not require the user to provide their age, nor does it require the application distribution provider to decline to create an account for a user who refuses to provide that information. It only requires the application distribution provider to make the request.[4]

Furthermore, the bill expressly allows an application distribution provider to use "commercially reasonable efforts" to estimate the "**age category**" of an account holder – minor or adult. It allows, but does not require, the estimate to be a "reasonable level of certainty proportionate to the risks that arise from access to and use of the relevant service or portion thereof." Nothing in current law prohibits an application distribution provider from estimating the age category of its users. Given the bill's permissive language, it does not appear that this provision has any substantive effect. However, if the application distribution provider estimates that an account holder is not an adult, the bill requires the provider to allow the account holder an opportunity to verify that they are, in fact, an adult.[5]

## Interaction with developers

The bill requires application distribution providers to give developers of covered applications the technical ability to request an age signal when the account holder or the account holder's parent has agreed to share that information. An "**age signal**" is an indication of the account holder's age category and the methods by which that information has been assured. In addition, an application distribution provider must give such developers the ability to prevent

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[2] *NetChoice, LLC v. Yost*, S.D. Ohio, No. 2:24-cv-0047, 2024 U.S. Dist. LEXIS 24129 (February 12, 2024).

[3] R.C. 1349.07(D), (E), (F), and (G).

[4] R.C. 1349.071(A)(1).

[5] R.C. 1349.071(A)(2) and (B) and 1349.07(B).

account holders who are not adults from acquiring the covered application. Furthermore, the application distribution provider is required to provide developers with the capability to view relevant parental controls through a centralized interface and integrate the covered application into that centralized interface.[6]

## Anti-competitive practices

The bill requires application distribution providers to impose substantially the same restrictions and obligations on covered applications for which the provider is also the developer as it does on third-party applications. It prohibits application distribution providers from using data collected from third parties in the course of compliance with the bill in an anti-competitive manner.[7]

# Application developers

## Covered applications

The bill requires a "**developer**," meaning a person that creates, owns, or controls an application, to report to application distribution providers whether the developer's application is a covered application. "**Covered application**" is defined as an application, other than an app store, internet browser, or search engine, that provides a different experience for adults and minors. That different experience could be in the form of different account types, content, features, or advertising or data practices that depend on the user's age.[8]

## Parental consent

If the developer's application is a covered application, the bill requires the developer to provide tools to help parents support minors using the developer's covered applications. In addition, the developer must use commercially reasonable efforts to estimate the age category of an account holder and make a reasonable effort to ensure that minor account holders cannot engage in any activity that is restricted to adults only. If the account holder is a minor, the developer must obtain verifiable parental consent prior to permitting the minor to access content or features that are designated as unsuitable for minors. Additionally, the bill prohibits developers from delivering personalized advertising to minors.[9]

Under the bill "**verifiable parental consent**" means obtaining the consent of a minor's parent in such a manner that is reasonably calculated, in light of available technology, to ensure that the person providing consent is the minor's parent, including by complying with the requirements of the federal "Children's Online Privacy Protection Act of 1998."[10]

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[6] R.C. 1349.071(A)(3), (4), and (5) and 1349.07(C).

[7] R.C. 1349.071(A)(6) and (7).

[8] R.C. 1349.072(A)(1) and 1349.07(H) and (I).

[9] R.C. 1349.072(A)(2), (3), (4), (5), and (6).

[10] R.C. 1349.07(R); 15 United States Code 6501, *et seq*.

## Age signal

Under the bill, developers may request an age signal from the application distribution provider, indicating whether the account holder is a minor or an adult. If a developer chooses to do so, the developer is required to request the minimum amount of information needed to comply with the bill. The bill prohibits developers from sharing the information with third parties, unless necessary for safety or privacy protections or required by law. Furthermore, the bill prohibits developers from using the age signal for any purpose beyond those required by the bill.[11]

# Operating system providers

## Key terms

The bill defines "**operating system provider**" as the company that owns, operates, or controls the operating system on a connected device. An "**operating system**" is the software that manages applications on a connected device, including those applications' access to the network, hardware, and other device resources.[12]

## Age category

The bill includes the same provisions related to requesting and estimating the age of operating system users as it does for app store users. Under the bill, when a user creates an account with an operating system provider, the provider is required to request the user's age. The bill does not require the user to provide their age, nor does it require the provider to decline to create an account for a user who refuses to provide that information. It only requires the operating system provider to make the request.[13]

Furthermore, the bill expressly allows an operating system provider to use "commercially reasonable efforts" to estimate the age category of an account holder. It allows, but does not require, the estimate to be to a "reasonable level of certainty proportionate to the risks that arise from access to and use of the relevant service or portion thereof." Nothing in current law prohibits an operating system provider from estimating the age category of its users. Given the bill's permissive language, it does not appear that this provision has any substantive effect. However, if the operating system provider estimates that an account holder is not an adult, the bill requires the provider to allow the account holder an opportunity to verify that they are, in fact, an adult.[14]

## Parental filters

The bill requires an operating system provider to enable parents of minor account holders to activate and control a filter setting for the minor's account. A "**filter**" is defined as a generally

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[11] R.C. 1349.073(B).

[12] R.C. 1349.07(N) and (O).

[13] R.C. 1349.073(A)(1).

[14] R.C. 1349.073(A)(2) and (B).

accepted and commercially reasonable technology used on a connected device that is capable of preventing access to obscene material, through internet browsers or search engines, in accordance with prevailing industry standards, including blocking known websites primarily intended for the distribution of obscene material via mobile data networks, wired internet networks, and wireless internet networks.

The bill requires that operating system providers provide internet browsers and search engines with the ability to determine if a filter is active on a particular account.[15]

## Internet browsers and search engines

The bill requires internet browsers and search engines to provide a filter that may be enabled by an account holder or their parent via the filter setting offered by the operating system provider. Internet browsers and search engines must read the filter setting, activate the filter when the setting is enabled, and notify the account holder when the filter blocks access to obscene material.[16]

The bill defines "**internet browser**" as a software program that enables users to access and display websites on the internet. It defines "**search engine**" as software that allows users to input queries in order to perform searches of content on websites on the basis of a query in the form of a keyword, voice request, phrase, or other input, and returns results in any format in which information related to the query can be found.[17]

## Enforcement

### Civil penalties

The bill authorizes the Attorney General to initiate an action and seek civil penalties of up to $1,000 per violation against an application distribution provider, developer, operating system provider, internet browser, or search engine that fails to comply. The Attorney General has the exclusive right to enforce the provisions of the bill. It does not create a private cause of action.[18]

### Defenses

The bill specifies that application distribution providers and operating system providers are not liable for violations of the bill if they make a good faith effort to comply, taking into consideration available technology. Furthermore, such providers are not liable for attempts to comply with the bill, including any of the following:

- Providing an erroneous age signal;

- Conduct by a developer that receives an age signal;

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[15] R.C. 1349.073(A)(3) and (4) and 1349.07(J).

[16] R.C. 1349.074.

[17] R.C. 1349.07(K) and (Q).

[18] R.C. 1349.076.

- Failing to provide an age signal due to reasonable technical limitations or outages;

- Not providing the age signal to developers that do not adhere to reasonable safety standards and policies.

The bill specifies that developers are solely liable for determining whether an application is a covered application subject to the bill and that application distribution providers are not liable if the developer provides inaccurate information about an application. Finally, developers are not liable for erroneous age signals provided by an application distribution provider if the developer makes a reasonable effort to properly use the age signal.[19]

# HISTORY

| Action | Date |
|---|---|
| Introduced | 05-27-25 |

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[19] R.C. 1349.075.