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Bill Analysis

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Version: As Passed by the House

Primary Sponsors: Reps. Demetriou and Williams

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SUMMARY

- Names specific provisions of the bill the "Innocence Act."
- Requires an organization that sells, delivers, furnishes, disseminates, provides, exhibits, or presents any material or performance that is obscene or harmful to juveniles ensure that a geolocation check is performed.
- Requires an organization to submit an affidavit to the Attorney General stating that the organization complied with the age verification requirements.
- Requires the Attorney General to adopt rules specifying the information that organizations must include in the affidavit.
- Requires an organization that sells, delivers, furnishes, disseminates, provides, exhibits, or presents any material or performance that is obscene or harmful to juveniles to ensure that any third party that receives age verification information does not transfer the information.
- Allows the Attorney General to investigate reasonable allegations of an organization violating age verification requirements and gives the Attorney General the exclusive authority to enforce age verification requirements.
- Provides that the Attorney General may request a civil penalty of up to $100,000 for each day an organization fails to fulfill age verification requirements and specifies the funds to which the civil penalty is to be deposited.
- Creates the Innocence Act Enforcement Fund.

DETAILED ANALYSIS

The Innocence Act

The bill names the provisions of the act regarding age verification and the Attorney General's enforcement authority the "Innocence Act."[1]

Age verification for juveniles

Requirements

Existing law requires an organization that sells, delivers, furnishes, disseminates, provides, exhibits, or presents any material or performance that is obscene or harmful to juveniles on the internet to utilize a geofence system maintained and monitored by a licensed location-based technology provider to dynamically monitor the geolocation of persons attempting to access or creating an account or subscription to access the material or performance that is obscene or harmful to juveniles.[2]

The location-based technology provider must perform a geolocation check to dynamically monitor the person attempting to access or creating an account or subscription to access the material or performance that is obscene or harmful to juveniles and the person's location. The bill requires an organization to ensure that the location-based technology provider performs the geolocation check.[3]

Existing law also requires an organization that sells, delivers, furnishes, disseminates, provides, exhibits, or presents any material or performance that is obscene or harmful to juveniles on the internet and verifies the age of the person creating an account or subscription or attempting to access the material or performance that is obscene or harmful to juveniles on the internet to immediately delete any identifying information, except the information required for the purpose of granting a person access to the account or subscription and for billing the account or subscription, that is used for age verification of the person attempting to access or creating an account or subscription to access any material or performance on the internet that is obscene or harmful to juveniles after age verification is completed.[4] The bill requires an organization to submit an affidavit to the Attorney General stating that the organization has complied with the requirement in response to any subpoena or notice of a violation. The bill also requires the Attorney General to adopt rules specifying the information that the organization is required to include in the affidavit.[5]

Under existing law, an organization cannot transfer any information collected, except for the purpose of age verification. The bill adds that the organization is also required to ensure that

[1] Section 3.

[2] R.C. 1349.10(B)(3)(a).

[3] R.C. 1349.10(B)(3)(b) and (c).

[4] R.C. 1349.10(C)(3).

[5] R.C. 1349.10(C)(3).

any third-party who receives transferred information for age verification purposes is not allowed to transfer any information collected to any other party except for the purpose of age verification.[6]

Age verification exemptions

Existing law provides exemptions to certain persons and providers, including a provider of an interactive computer service. Under the bill, the requirements described under "**Age verification for juveniles**," above, do not apply to a provider of an interactive computer service that is not an organization, as defined in the bill.[7]

Definitions

The bill modifies the following terms for purposes of the provisions described above:

"**Organization**" means either of the following, rather than both of the following under existing law:[8]

- A commercial establishment that, for any form of consideration, has as a significant or substantial portion of its stock-in-trade in, derives a significant or substantial portion of its revenues from, devotes a significant or substantial portion of its content or advertising to, or maintains a substantial section of its sales or online content display space for the sale, rental, or viewing of materials that are obscene or harmful to juveniles;
- A commercial establishment that is an entity that is open to the public and (1) has a substantial or significant portion of its stock in trade of the sale, rental, or viewing of visual materials or performances depicting sexual conduct or (2) has as a principal business purpose the sale, rental, or viewing of visual materials or performances depicting sexual conduct. An establishment may have other principal business purposes that do not involve selling, delivering, furnishing, disseminating, providing, exhibiting, or presenting any material or performance that is obscene or harmful to juveniles on the internet and still be categorized as an organization subject to the provisions of the bill. The existence of other principal business purposes does not exempt an establishment from being categorized as an organization subject to the provisions of the bill, so long as one of its principal business purposes involves selling, delivering, furnishing, disseminating, providing, exhibiting, or presenting any material or performance that is obscene or harmful to juveniles on the internet.

"**Reasonable age verification methods**" means the following:[9]

- Verifying that the person attempting to access the material or performance that is obscene or harmful to juveniles is age 18 or older through the use of a commercial age

[6] R.C. 1349.10(C)(4).

[7] R.C. 1349.10(D)(2).

[8] R.C. 1349.10(A)(8) and 2907.38, not in the bill.

[9] R.C. 1349.10(A)(10).

verification system that uses photo identification, visual age verification software (added by the bill), or public or private transactional data to verify the person's age;

- Using any available third-party or any available governmental databases that use a commercial age verification system that uses photo identification or public or private transactional data to verify the person's age.

The bill also defines the following terms for purposes of the provisions described above:

"**Harmful to juveniles**" means that quality of any material or performance describing or representing nudity, sexual conduct, sexual excitement, or sado-masochistic abuse in any form to which all of the following apply:[10]

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

"**Obscene**" is any material or performance when considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance if any of the following apply:[11]

- Its dominant appeal is to prurient interest;
- Its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement, or nudity in a way that tends to represent human beings as mere objects of sexual appetite;
- Its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality;
- Its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral, or artistic purpose;
- It contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is

[10] R.C. 1349.10(A)(13) , by reference to R.C. 2907.01(E), not in the bill.

[11] R.C. 1349.10(A)(13) , by reference to R.C. 2907.01(F), not in the bill.

primarily for its own sake or for commercial exploitation, rather than primarily for a genuine scientific, educational, sociological, moral, or artistic purpose.

"**Significant or substantial**" means at least 33⅓%.[12]

Attorney General enforcement authority

The bill provides that the Attorney General may investigate reasonable allegations that an organization has violated age verification requirements, and upon finding a violation, provide written notice to the organization believed to have committed the violation.[13] The bill also provides that the Attorney General may administer oaths, subpoena witnesses, adduce evidence, and require the production of relevant matter for the purposes of an investigation.[14] An organization subpoenaed by the Attorney General may, within 20 days after the subpoena is served, file a motion in a court of common pleas of any county to extend the return day, or to modify, or quash the subpoena. The bill requires the organization to include in the motion a statement describing good cause for the requested extension, modification, or quashing of the subpoena.[15] If an organization fails, without lawful excuse, to obey a subpoena served, or to produce relevant matter, the Attorney General may apply to the court of common pleas of any county in this state for an order compelling compliance.[16]

The bill specifies that neither of the following are public records when obtained by the Attorney General as part of an investigation:[17]

- Any subpoena issued and any records obtained pursuant to a subpoena issued by the Attorney General;
- An affidavit as previously described above.

The bill specifies that the Attorney General has the exclusive authority to enforce age verification requirements. The remedies provided by the Attorney General are exclusive remedies for any age verification requirement.[18] The bill also allows the Attorney General to bring a civil enforcement action against an organization that sells, delivers, furnishes, disseminates, provides, exhibits, or presents any material or performance that is obscene or harmful to juveniles on the internet that fails to comply with age verification requirements.[19]

Until two years after the effective date of the bill, the Attorney General is prohibited from commencing an enforcement action against an organization within 45 days of providing notice

[12] R.C. 1349.10(A)(14).

[13] R.C. 1349.101(A)(1).

[14] R.C. 1349.101(A)(2).

[15] R.C. 1349.101(A)(3).

[16] R.C. 1349.101(A)(4).

[17] R.C. 1349.101(A)(5).

[18] R.C. 1349.101(A)(6).

[19] R.C. 1349.10 and 1349.101(B)(1).

of a violation if the organization cures all violations in the notice and provides the Attorney General with a written statement indicating that the violations are cured and agreeing to refrain from further noncompliance of the age verification requirements.[20]

The bill specifies that if an organization does any of the following, the Attorney General may immediately and without additional notice, file the enforcement action in the court of common pleas of the county in which the alleged violation occurred, if known, or in the Franklin County Court of Common Pleas if the location of the violation is unknown, against that organization to seek injunctive relief and the imposition of a civil penalty:[21]

- Fails to timely respond or continues to fail to comply with age verification requirements after receiving the notice;
- Fails to cure all violations within the 45 day period;
- Commits one or more subsequent violations of age verification requirements after reporting that the initial violation was cured.

The bill also provides that two years after the effective date of the bill, the Attorney General may immediately and without notice initiate an enforcement action against an organization that commits a violation of the requirements provided by the Attorney General.[22] Under the bill, if an organization fails to comply with age verification requirements, the Attorney General may impose a civil penalty of up to $100,000 for each violation. 75% of the penalty must go to the Consumer Protection Enforcement Fund and 25% must go to the Innocence Act Enforcement Fund.[23]

The Innocence Act Enforcement Fund

The bill creates the Innocence Act Enforcement Fund that is required to be used for the payment of expenses incurred by the Attorney General's Office. The bill provides that up to 25% of all amounts collected by the Attorney General from civil penalties must be paid into the state treasury to the credit of the Innocence Act Enforcement Fund.[24]

Severability

The bill specifies that the provisions of law in the bill, and their application, are severable and if any provision of law contained in the bill, or if any application of any provision of law contained in the bill, is held invalid, the invalidity does not affect other provisions of law in the bill and their applications that can be given effect without the invalid provision or application.[25]

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[20] R.C. 1349.101(C).

[21] R.C. 1349.101(D)(1).

[22] R.C. 1349.101(D)(2).

[23] R.C. 1349.101(D)(3).

[24] R.C. 109.1111.

[25] Section 4.

HISTORY

Action	Date
Introduced	02-11-25
Reported, H. Technology and Innovation	03-04-26
Passed House (95-1)	03-18-26

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