ONLINE PORNOGRAPHY VIEWING AGE REQUIREMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler
House Sponsor: Susan Pulsipher

LONG TITLE

General Description:
This bill creates obligations and liabilities for a commercial entity that provides pornography or other materials harmful to minors.

Highlighted Provisions:
This bill:
- provides definitions;
- requires a commercial entity that provides pornography and other materials defined as being harmful to minors as a substantial portion of the entity's content to verify the age of individuals accessing the material;
- establishes requirements and liability for retention of data;
- imposes liability for publishers and distributors of material harmful to minors who fail to comply with verification requirements; and
- provides that an Internet service provider or hosting entity is not liable for hosting or transmitting material harmful to minors to the extent that it is not the creator of the material.

Money Appropriated in this Bill:
None

Other Special Clauses:
None

Utah Code Sections Affected:
ENACTS:
78B-3-1001, Utah Code Annotated 1953
Be it enacted by the Legislature of the state of Utah:

Section 1. Section 78B-3-1001 is enacted to read:

Part 10. Liability for Publishers and Distributors of Material Harmful to Minors

78B-3-1001. Definitions.

As used in this chapter:

(1) "Commercial entity" includes corporations, limited liability companies, partnerships, limited partnerships, sole proprietorships, or other legally recognized entities.

(2) "Digitized identification card" means a data file available on any mobile device which has connectivity to the Internet through a state-approved application that allows the mobile device to download the data file from a state agency or an authorized agent of a state agency that contains all of the data elements visible on the face and back of a license or identification card and displays the current status of the license or identification card.

(3) "Distribute" means to issue, sell, give, provide, deliver, transfer, transmute, circulate, or disseminate by any means.

(4) "Internet" means the international computer network of both federal and non-federal interoperable packet switched data networks.

(5) "Material harmful to minors" is defined as all of the following:

(a) any material that the average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors, is designed to appeal to, or is designed to pander to, the prurient interest;

(b) material that exploits, is devoted to, or principally consists of descriptions of actual, simulated, or animated display or depiction of any of the following, in a manner patently offensive with respect to minors:

(i) pubic hair, anus, vulva, genitals, or nipple of the female breast;

(ii) touching, caressing, or fondling of nipples, breasts, buttocks, anus, uses, or genitals; or

(iii) sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation,
(c) the material taken as a whole lacks serious literary, artistic, political, or scientific value for minors.

(6) "Minor" means any person under 18 years old.

(7) "News-gathering organization" means any of the following:

(a) an employee of a newspaper, news publication, or news source, printed or on an online or mobile platform, of current news and public interest, while operating as an employee as provided in this subsection, who can provide documentation of such employment with the newspaper, news publication, or news source; or

(b) an employee of a radio broadcast station, television broadcast station, cable television operator, or wire service while operating as an employee as provided in this subsection, who can provide documentation of such employment.

(8) "Publish" means to communicate or make information available to another person or entity on a publicly available Internet website.

(9) "Reasonable age verification methods" means verifying that the person seeking to access the material is 18 years old or older by using any of the following methods:

(a) use of a digitized information card as defined in this section;

(b) verification through an independent, third-party age verification service that compares the personal information entered by the individual who is seeking access to the material that is available from a commercially available database, or aggregate of databases, that is regularly used by government agencies and businesses for the purpose of age and identity verification; or

(c) any commercially reasonable method that relies on public or private transactional data to verify the age of the person attempting to access the material.

(10) "Substantial portion" means more than 33-1/3% of total material on a website, which meets the definition of "material harmful to minors" as defined in this section.

(11) (a) "Transactional data" means a sequence of information that documents an exchange, agreement, or transfer between an individual, commercial entity, or third party used
for the purpose of satisfying a request or event.

(b) "Transactional data" includes records from mortgage, education, and employment entities.

Section 2. Section 78B-3-1002 is enacted to read:

**78B-3-1002. Liability for publishers and distributors -- Age verification --**

**Retention of data -- Exceptions.**

(1) A commercial entity that knowingly and intentionally publishes or distributes material harmful to minors on the Internet from a website that contains a substantial portion of such material shall be held liable if the entity fails to perform reasonable age verification methods to verify the age of an individual attempting to access the material.

(2) A commercial entity or third party that performs the required age verification shall not retain any identifying information of the individual after access has been granted to the material.

(3) A commercial entity that is found to have violated this section shall be liable to an individual for damages resulting from a minor's accessing the material, including court costs and reasonable attorney fees as ordered by the court.

(4) A commercial entity that is found to have knowingly retained identifying information of the individual after access has been granted to the individual shall be liable to the individual for damages resulting from retaining the identifying information, including court costs and reasonable attorney fees as ordered by the court.

(5) This section shall not apply to any bona fide news or public interest broadcast, website video, report, or event and shall not be construed to affect the rights of a news-gathering organization.

(6) No Internet service provider, affiliate or subsidiary of an Internet service provider, search engine, or cloud service provider shall be held to have violated the provisions of this section solely for providing access or connection to or from a website or other information or content on the Internet, or a facility, system, or network not under that provider's control, including transmission, downloading, storing, or providing access, to the extent that such
114 provider is not responsible for the creation of the content of the communication that constitutes
115 material harmful to minors.