

Summary – HB 1593

This legislation is a forward-thinking, comprehensive, and constitutional approach to ensuring minors are protected from harmful, primarily pornographic, online content. The goal is to prevent this harm to minors by requiring websites which provide obscene or indecent material to verify the age of their users before they access that material. The harm we are addressing here—mental, emotional, and developmental—is well-documented in academic and legal discourse. Courts have long upheld states' compelling interest in shielding children from harmful content, and this bill aligns with that established precedent.

A bill with similar objectives from Texas was considered last month at an oral hearing by the United States Supreme Court. We do not yet have the benefit of their judgement in that case, which is likely to come in June. Nonetheless, those who have worked with me to draft HB 1593 took careful note of the various lines of questioning from the Justices, and the findings of lower federal courts, and we have tailored this statute to address many of the topics that were debated in that case.

“Covered Platform” and “Regular Course of Business” Standard.

On Page 4, Lines 18-20, we define “covered platform” and use a standard of “in the regular course of business”, as opposed to similar bills, which use a “substantial portion” standard, often indicating a one-third threshold (or 33%) of harmful content. However, the substantial portion standard is vague, and it will be a challenge for a court to determine what sites have more than 33% of this content. Using the standard in HB 1593 will also make it easier to target harmful content on major pornography websites which specifically seek to profit from pornography. This avoids potentially affecting a broader range of websites and encountering non-harmful content protected by the First Amendment. This also makes it more difficult for sites to manipulate the law by adding non-adult content to stay below an arbitrary threshold.

Methods of Age Verification

On Page 4, Line 26, we define reasonable age verification measures, ensuring that compliance methods are practical, widely available, and protective of user privacy. This list includes state-issued identification, bank account verification, and other commercially reasonable methods. Importantly, the bill prohibits covered platforms and their suppliers from retaining personally identifiable information specifically collected for age verification purposes once access has been granted. This ensures privacy protection without unduly restricting business operations.

Ensuring Accountability

On Page 4, starting on Line 22, requires compliance from covered platforms—websites that regularly distribute harmful material for profit. It makes clear that if they fail to implement reasonable age verification, they will be held liable. The liability in HB 1593 is much stronger than similar bills, which is done in two ways.

First, subsections 8 and 9 establish who may bring civil action against a covered platform. This private right of action ensures enforcement without requiring additional

state resources. Importantly, it also allows users to sue platforms and their suppliers that retain identifying information collected for verification after access has been granted, addressing privacy concerns.

Second, subsection 6 establishes a fine for noncompliance, by charging a fee of \$10,000 per day each day as violation occurs of failing to age verify. Proving specific injury could be very difficult to do in the circumstances of a child accessing porn. Meanwhile, a provider could go unpunished. This two-pronged approach to violations strengthens enforcement and guarantees immediate consequences for violating the law.

Location & Geographic Scope

Page 5, starting on Line 26, we address a key component missing in all over age verification bills – the VPN fallacy. This is a response to arguments that could be used by pornographic websites that the use of a virtual private network to pretend to be located outside of the state somehow undermines the effectiveness of the legislation. None of the 20 other states has ever created an exception to permit kids smart enough to use a VPN to see pornography. The language added here makes it clear that adult sites, just like online gambling operators who do this already very effectively, must use more than just an Internet Protocol – IP – address to confirm that a user is not in one of those states where age verification is required – for example GPS, wifi networks and cell tower connections.

Page 5, starting on Line 29, defines the geographic scope of the law, ensuring it applies only when a minor has clear residency or presence in the state. This helps the bill withstand potential legal challenges under the Commerce Clause, as the state is not attempting to regulate conduct entirely outside its jurisdiction.

Limitations and Exemptions

On Page 6, Lines 18-27, clear exemptions are made for news organizations, internet service providers, search engines, and cloud service providers, which are not liable under this bill. This ensures that the bill targets content publishers rather than infrastructure providers.

Recommended changes:

Finally, while the bill has already been “hog-housed”, there are a few final missing pieces which are necessary or highly recommended.

1. On Page 5, starting on Line 3, we should change the wording very slightly to the following: “Any *other* commercially reasonable *means or method* that ~~relies on public or private transactional data to verify the age of the individual attempting to access information is eighteen years of age or older~~ *reliably and accurately can determine a user of a covered platform is a minor and prevent access by minors to the content on a covered platform.*” Since new methods for verification continue to develop and become available that are anonymous and privacy-protecting for adults, this language will be preemptive to allowing a wide array of

future technological methods. This might include hand motions, or other biometrics.

2. On Page 5, Line 6, it lists the material considered "sexual material harmful to a minor". I would recommend adding to this section at the end on Page 5, Line 22: (4) is obscene, indecent or child pornography. The reason is that these terms – "child pornography," "obscene," and "indecent" are rooted in existing federal law and Supreme Court rulings. These three elements, while in some ways redundant, could enhance the list of items considered "material harmful to minors" so it mirrors those definitions already upheld as constitutionally sound. Clarifying that these legal thresholds fall within the scope of regulation, can help avoid concerns of overreach or vagueness.
3. On Page 6, Line 22, there is a grammatical error. It should read, "*An internet service provider or its affiliates or subsidiaries, a search engine, ~~or a cloudservice provider app store,~~ or an application store may...*" The intention is to apply clear liability protection on these.
4. On Page 6, Line 2, subsection 5 should be rewritten to read, "*A covered platform or third party must ensure that any reasonable age verification method is designed to anonymize an individual's identity, may not retain any identifying information of the individual after access has been granted to the material, and be incapable of being used to create a record of the individual's online activity.*" This would strengthen the privacy standards of the bill.

Thank you for your kind consideration.

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