

Age Verification for Certain Websites; SB 394

SB 394 creates law requiring the use of age verification technology to permit access to internet websites containing material that is harmful to minors.

Definitions

The bill defines several terms used throughout the bill, including the following:

- “Harmful to minors” is defined in the same manner as in the crime of promotion to minors of material harmful to minors in the Criminal Code and means that quality of any description, exhibition, presentation, or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when the material or performance, taken as a whole or, with respect to a prosecution for an act described by KSA 21-6402(a)(1), that portion of the material that was actually exposed to the view of minors, having the following characteristics:
 - The average adult person applying contemporary community standards would find the material or performance has a predominant tendency to appeal to a prurient interest in sex to minors;
 - The average adult person applying contemporary community standards would find the material or performance depicts or describes nudity, sexual conduct, sexual excitement, or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and
 - A reasonable person would find the material or performance lacks serious literary, scientific, educational, artistic, or political value for minors;
- “Material” means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape, or video tape; and
- “Commercially reasonable method of age verification” means:
 - Any method expressly approved by the Attorney General (AG); or
 - Any method that is certified in documented international standards for age verification, as specified by the AG.

Age Verification Requirements

The bill requires any commercial entity that knowingly shares or distributes material that is harmful to minors on a website, and the material appears on 25.0 percent or more of the webpages viewed on the website in any calendar month, or that knowingly hosts the website, to verify any person who is a resident of or is located in the state that attempts to access the

website is 18 years of age or older. Under the bill, it is a violation to allow access to the type of website described above without verifying the age of the user.

The bill requires the age verification to be conducted through the use of:

- A commercially available database that is regularly used by businesses or governmental entities for the purpose of age and identity verification; or
- Any other commercially reasonable method of age and identity verification.

Violations and Penalties

Attorney General Enforcement

The bill allows any person who is able to access a website without verifying their age to report the violation to the AG. The AG is required to investigate the violation and may bring an action to enjoin any continuing violation and impose a civil penalty on the commercial entity in violation of the bill's provisions. The penalty imposed may be in an amount between \$500 and \$10,000 for each violation and clarifies this penalty would be imposed instead of any civil penalty recoverable in an action brought by the AG in the Kansas Consumer Protection Act (KCPA). The bill specifies that each instance in which a website is accessed without proper verification constitutes a separate violation.

Kansas Consumer Protection Act

The bill states any violation pursuant to the bill is deemed an unconscionable act and practice under the KCPA. For the purposes of remedies and penalties provided by the KCPA:

- The person alleging a violation of the bill's provisions is deemed a consumer;
- The commercial entity violating the bill's provisions is deemed the supplier; and
- Proof of a consumer transaction is not required.

Private Cause of Action

The bill allows the parent or legal guardian of a minor who was able to access a website without age verification to bring a private action against the commercial entity that permitted the access. The person bringing the action may seek actual damages resulting from a minor's access to harmful material, statutory damages of no less than \$50,000, and reasonable attorney fees and costs.

Retention of Identifying Information Not Permitted

The bill prohibits any commercial entity or third party performing age verification pursuant to the bill from retaining any identifying information, as defined by the bill, of the individual after access has been granted to the website. If a commercial entity is found to have

knowingly retained identifying information in violation of the bill's provision, the bill requires the commercial entity to be liable to the individual for resulting damages, including reasonable attorney fees and costs as ordered by the court.

Obligation and Liability of Internet Service Providers

The bill specifies that nothing in the bill may be construed to impose an obligation or liability on an internet service provider or the user of an interactive computer service.