

SESSION OF 2024

SUPPLEMENTAL NOTE ON SENATE BILL NO. 394

As Recommended by Senate Committee on
Judiciary

Brief*

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

Definitions

The bill would define several terms used throughout the bill, including the following:

- “Harmful to minors” would be defined in the same manner as in the crime of promotion to minors of material harmful to minors in the Criminal Code and would mean 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 21-4602(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;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- 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” would mean 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” would mean:
 - 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 would require 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 attempting to access the site is 18 years of age or older. Under the bill it would be a violation to allow access to the type of website described above without verifying the age of the user.

The bill would require 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

AG Enforcement

The bill would allow any person who is able to access a website without verifying their age to report the violation to the AG. The AG would be required to investigate the violation and could 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 could be in an amount between \$500 and \$10,000 for each violation and would clarify 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 would specify that each instance in which a website is accessed without proper verification constitutes a separate violation.

KCPA

The bill would state any violation pursuant to the bill would be 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 would be deemed a consumer;
- The commercial entity violating the bill's provisions would be deemed the supplier; and

- Proof of a consumer transaction would not be required.

Private Cause of Action

The bill would allow 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 could 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 would prohibit 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 would require 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 would specify that nothing in the bill could be construed to impose an obligation or liability on an internet service provider or the user of an interactive computer service.

Background

The bill was introduced by the Senate Committee on Judiciary at the request of Senator Claeys.

[*Note:* A companion bill, HB 2592, was introduced by the House Committee on Judiciary at the request of Representative Penn.]

Senate Committee on Judiciary

In the Senate Committee hearing, representatives of the Age Verification Providers Association, Center for Constitutional Liberty, Family Policy Alliance, Kansas Catholic Conference, and Kansas Family Voice testified as **proponents** of the bill. The proponents stated the bill is necessary to protect minors from the harmful effects of pornography easily accessed through the internet. Written-only proponent testimony was provided by a representative of Heritage Action for America and two private citizens.

Neutral testimony was provided by a representative of the Heritage Foundation. The representative noted the organization supports the merits of the policy contained in the bill, but takes no position on enactment of the bill itself. Written-only neutral testimony was provided by a representative of TechNet Central.

Opponent testimony was provided by a representative of NetChoice, who stated the bill would violate the *First Amendment* of the *U.S. Constitution*, undermine the rights of parents, and negatively impact advancements in internet filtering technologies. Written-only opponent testimony was provided by a representative of Brightspeed.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, the Office of Attorney General (OAG) indicates the bill would require State General Fund (SGF) expenditures of at least \$210,000 in FY 2025 and at least \$220,000 in FY 2026 to support 1.0 new FTE attorney position and 1.0 new FTE legal assistant position. The OAG

also anticipates legal challenges to the bill, but is unable to calculate the amount of additional SGF resources required to defend the bill from any legal challenges.

The Judicial Branch indicates the bill has the potential to increase the number of cases filed in district courts. This may increase agency operating expenditures due to the additional time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases but is unable to calculate an exact estimate of this effect. Likewise, the bill has the potential to increase the collections of docket fees that are deposited in the SGF but the amount of additional docket fee collections is unknown. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2025 Governor's Budget Report*.

Age verification technology; Kansas Consumer Protection Act; children and minors; material harmful to minors; internet websites