Session of 2024

SENATE BILL No. 394

By Committee on Judiciary

1-24

AN ACT concerning consumer protection; relating to internet content that is harmful to minors; requiring age verification for access to such content; providing for civil penalties for violations; establishing a civil cause of action for damages, attorney fees and costs.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) Any commercial entity that knowingly shares or distributes material that is harmful to minors on a website and such material appears on 25% or more of the webpages viewed on such website in any calendar month, or that knowingly hosts such website shall verify that any person attempting to access such website, who is a resident of this state or who is located in this state at the time of such attempted access, is 18 years of age or older. It shall be a violation of this section to allow a person to access such website without verifying such person is 18 years of age or older. Such age verification shall be conducted through the use of:

(1) A commercially available database that is regularly used by businesses or governmental entities for the purpose of age and identity verification; or

(2) any other commercially reasonable method of age and identity verification.

(b) Any person who was able to access a website without verifying such person's age in violation of this section may report such violation to the attorney general. Upon receipt of any such report, the attorney general shall investigate and may bring an action for injunctive relief to enjoin any continuing violation. In addition to any injunctive relief, such action may also seek to impose a civil penalty on the commercial entity of not less than $500 and not more than $10,000 for each such violation instead of the penalty provided for in K.S.A. 50-636(a), and amendments thereto. Each instance in which a website is accessed in violation of this section shall constitute a separate violation.

(c) Any violation of this section is an unconscionable act and practice under the Kansas consumer protection act.

(d) For purposes of the remedies and penalties provided by the Kansas consumer protection act:

(1) The person alleging a violation of this section shall be deemed a consumer, and the commercial entity that violates this section shall be

deemed the supplier; and

(2) proof of a consumer transaction shall not be required.

(e) The parent or legal guardian of a minor, who was able to access a website without verifying such minor's age in violation of this section, may bring a private action against the commercial entity that violates the provisions of this section. Notwithstanding the provisions of K.S.A. 50-634 and 50-636, and amendments thereto, a person bringing such action may seek the following relief:

(1) Actual damages resulting from a minor's access to material that is harmful to a minor;

(2) statutory damages in an amount not less than $50,000; and

(3) reasonable attorney fees and costs.

(f) (1) 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 website.

(2) If a commercial entity is found to have knowingly retained identifying information of an individual after access to a website has been granted to such individual, then such commercial entity shall be liable to such individual for damages resulting from such retention, including reasonable attorney fees and costs as ordered by the court.

(g) Nothing in this section shall be construed to impose an obligation or liability on an internet service provider or the user of an interactive computer service.

(h) As used in this section:

(1) "Commercial entity" means a corporation, partnership, limited liability company, limited liability partnership, limited partnership, sole proprietorship or any other for profit organization.

(2) "Commercially reasonable method of age verification" means:

(A) Any method expressly approved by the attorney general; or

(B) any method that is certified in documented international standards for age verification as specified by the attorney general.

(3) "Harmful to minors" means the same as defined in K.S.A. 21-6402, and amendments thereto.

(4) "Host" means to provide the technology and resources necessary to store and maintain the electronic files and applications associated with a website on a computer server in order for such website to be accessible via the internet. The term "host" does not include an internet service provider.

(5) "Identifying information" means information that personally identifies an individual or that is linked to information that personally identifies an individual, including, but not limited to: (A) First and last name; (B) home address; (C) home telephone or cellphone number; (D) electronic mail address; (E) any other information that allows physical or online contact with the individual; (F) criminal records; (G) medical or

other health records; (H) social security number; (I) biometric information; (J) disabilities; (K) socioeconomic information; (L) food purchases; (M) political affiliations; (N) religious information; (O) text messages; (P) documents; (Q) employment identifiers; (R) search activity; (S) photos; (T) voice recordings; or (U) geolocation information.

(6) "Interactive computer service" means any information service, system or access software provider that provides or enables computer access by multiple users to a computer server, including a service or system that provides access to the internet and such systems operated or services offered by libraries or educational institutions.

(7) "Material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape or video tape.

(8) "Shares or distributes" means to display or present material or make such material available for download, with or without consideration.

(i) The provisions of this section are declared severable. If any provision, clause or subsection of this section or the application thereof to any person shall be held invalid, such invalidity shall not affect the validity of the remainder of this section.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.