

House File 864 - Introduced

HOUSE FILE 864
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 62)

A BILL FOR

1 An Act relating to certain commercial entities who publish or
2 distribute obscene material on the internet, and providing
3 civil penalties.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 554I.1 Definitions.

2 For purposes of this chapter:

3 1. a. "*Covered platform*" means a commercial entity for
4 which it is in the regular course of the trade or business of
5 the entity to create, host, or make available, on the internet,
6 obscene material provided by the entity, a user, or other
7 information content provider.

8 b. For purposes of this subsection, the presence alone of
9 obscene material on a commercial entity's internet site shall
10 not be construed to mean that the commercial entity's regular
11 course of trade or business is creating, hosting, or making
12 available obscene material on the internet. When determining
13 whether a commercial entity's regular course of trade or
14 business is creating, hosting, or making available obscene
15 material on the internet, a court shall consider all of the
16 following:

17 (1) The amount of data that constitutes obscene material on
18 the commercial entity's internet site.

19 (2) The amount of data that constitutes obscene material
20 on the commercial entity's internet site in proportion to the
21 total amount of data on the commercial entity's internet site.

22 (3) The amount of user traffic to obscene material on the
23 commercial entity's internet site.

24 (4) The amount of user traffic to obscene material on the
25 commercial entity's internet site in proportion to all user
26 traffic on the commercial entity's internet site.

27 (5) The amount of revenue the commercial entity obtains from
28 obscene material on the commercial entity's internet site.

29 (6) The amount of revenue the commercial entity generates
30 from obscene material on the commercial entity's internet site
31 in proportion to all revenues the commercial entity generates.

32 (7) Any other factor the court deems relevant.

33 2. "*Identifying information*" means any representation of
34 information that permits the identity of an individual to whom
35 the information applies to be reasonably inferred by either

1 direct or indirect means.

2 3. "*Information content provider*" means the same as defined
3 in 47 U.S.C. §230.

4 4. "*Interactive computer service*" means the same as defined
5 in 47 U.S.C. §230.

6 5. "*Obscene material*" means the same as defined in section
7 728.1.

8 6. "*Provider*" means all of the following:

9 a. An internet service provider.

10 b. A cloud service provider.

11 c. A wireless service provider.

12 d. An internet search engine.

13 e. An information service as defined in 47 U.S.C. §153.

14 f. A telecommunications service as defined in 47 U.S.C.
15 §153.

16 g. A cable service as defined in 47 U.S.C. §522.

17 h. An affiliate or a subsidiary of an entity listed in
18 paragraph "a" through "g".

19 7. "*Reasonable age verification*" means verifying the age of
20 an individual by using any of the following methods:

21 a. Government-issued identification.

22 b. Financial documents or other documents that are reliable
23 proxies for age.

24 c. Any other commercially reasonable and reliable method.

25 Sec. 2. NEW SECTION. 554I.2 Publication and distribution
26 of obscene material on the internet — age verification — civil
27 liability.

28 1. A covered platform shall be held liable if the covered
29 platform fails to perform reasonable age verification of
30 individuals attempting to access obscene material published or
31 distributed by the covered platform.

32 2. Reasonable age verification required under subsection
33 1 may be performed by a third party subject to state
34 jurisdiction, and may employ cryptographic techniques such
35 as zero knowledge proofs to preserve anonymity and protect

1 privacy.

2 3. *a.* A covered platform or third party that performs the
3 reasonable age verification required under subsection 1 shall
4 not retain an individual's identifying information after the
5 covered platform or third party completes the individual's
6 reasonable age verification.

7 *b.* A covered platform or third party that performs the
8 reasonable age verification required under subsection 1 shall
9 not distribute, sell, or otherwise disseminate an individual's
10 identifying information obtained through the covered platform's
11 or third party's performance of reasonable age verification.

12 4. A covered platform that violates subsection 1 shall be
13 subject to punitive damages resulting from the violation, plus
14 reasonable attorney fees and costs. Punitive damages shall not
15 exceed triple the aggregate amount of a plaintiff's reasonable
16 attorney fees and costs.

17 5. A covered platform or third party that violates
18 subsection 3 shall be subject to punitive damages and actual
19 damages resulting from the violation, plus reasonable attorney
20 fees and costs. Punitive damages shall not exceed triple the
21 aggregate amount of a plaintiff's reasonable attorney fees and
22 costs.

23 Sec. 3. NEW SECTION. 554I.3 **Enforcement — penalties.**

24 1. If the attorney general has reasonable belief that a
25 covered platform, or third party performing reasonable age
26 verification, is in violation of this chapter, the attorney
27 general has the sole authority to bring civil action to provide
28 for all of the following:

29 *a.* Enjoinment of further violations by the covered platform
30 or third party performing reasonable age verification.

31 *b.* Enforcement of compliance with this chapter.

32 *c.* Assessment of civil penalties in an amount not more than
33 ten thousand dollars for each violation of this chapter.

34 *d.* Other remedies permitted under law.

35 2. If the attorney general has reasonable belief that a

1 covered platform, or third party performing reasonable age
2 verification, is in violation of an injunction issued under
3 this section, the attorney general has the sole authority to
4 bring civil action to provide for civil penalties in an amount
5 not more than one hundred thousand dollars.

6 3. An individual that has knowledge of a violation of this
7 chapter may report the violation to the attorney general.

8 4. The attorney general shall establish an electronic
9 reporting system for the submission of reports pursuant to this
10 section.

11 Sec. 4. NEW SECTION. 554I.4 Limitations on liability.

12 1. This chapter shall not be construed to impose liability
13 on a user of an interactive computer service on the internet.

14 2. This chapter shall not be construed to impose liability
15 on a provider solely for providing access or connection to
16 a covered platform, or to obscene material on an internet
17 site or in a facility, system, or network not under the
18 provider's control. For purposes of this subsection, "access
19 or connection" includes but is not limited to transmitting,
20 downloading, providing intermediate storage for, and providing
21 access software for data.

22 EXPLANATION

23 The inclusion of this explanation does not constitute agreement with
24 the explanation's substance by the members of the general assembly.

25 This bill relates to certain commercial entities who publish
26 or distribute certain material on the internet.

27 The bill defines "covered platform", "identifying
28 information", "information content provider", "interactive
29 computer service", "obscene material", "provider", and
30 "reasonable age verification".

31 The bill makes a covered platform liable if the covered
32 platform fails to perform reasonable age verification of
33 individuals attempting to access obscene material published
34 or distributed by the covered platform. Reasonable
35 age verification includes the use of government-issued

1 identification, financial documents or other documents that
2 are reliable proxies for age, or any other commercially
3 reasonable and reliable method. Reasonable age verification
4 may be performed by a third party subject to state jurisdiction
5 (third party), and the bill permits the use of cryptographic
6 techniques to preserve anonymity and protect privacy. A
7 covered platform or third party is prohibited from retaining
8 an individual's identifying information after completing
9 the individual's reasonable age verification, and from
10 distributing, selling, or disseminating an individual's
11 identifying information obtained through the performance of
12 reasonable age verification. A covered platform or third party
13 is subject to punitive damages for violations of the bill.
14 Punitive damages cannot exceed triple the aggregate amount of a
15 plaintiff's reasonable attorney fees and costs.

16 The bill's provisions are not to be construed as to impose
17 liability on a user of an interactive computer service on the
18 internet.

19 The bill's provisions are not to be construed as to impose
20 liability on a provider solely for providing access or
21 connection to a covered platform, or to obscene material on an
22 internet site or in a facility, system, or network not under
23 the provider's control.

24 If the attorney general has reasonable belief that a covered
25 platform, or third party, is in violation of the bill, the
26 attorney general may bring a civil action to enjoin further
27 violations, enforce compliance with the bill, assess a civil
28 penalty in an amount not more than \$10,000 for each violation,
29 and provide other remedies permitted by law. If the attorney
30 general has reasonable belief that a covered platform, or third
31 party, is in violation of an injunction issued under the bill,
32 the attorney general may bring a civil action to provide for
33 civil penalties in an amount not more than \$100,000.

34 The bill allows individuals with knowledge of a violation to
35 report the violation to the attorney general, and requires the

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1 attorney general to establish an electronic reporting system
2 for the submission of reports of violations of the bill.