

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:

unofficial

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

2 For purposes of this chapter:

3 1. a. "Covered platform" means a commercial entity for which
4 it is in the regular course of the trade or business of the
5 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 business
14 is creating, hosting, or making available obscene material on the
15 internet, a court shall consider all of the following:

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

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

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

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

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

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

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

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

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

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

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

7 6. "Provider" means all of the following:

8 a. An internet service provider.

9 b. A cloud service provider.

10 c. A wireless service provider.

11 d. An internet search engine.

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

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

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

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

17 7. "Reasonable age verification" means verifying the age of
18 an individual by using any of the following methods:

19 a. Government-issued identification.

20 b. Financial documents or other documents that are reliable
21 proxies for age.

22 c. Any other commercially reasonable and reliable method.

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

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

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

34 3. a. A covered platform or third party that performs the
35 reasonable age verification required under subsection 1 shall not

1 retain an individual's identifying information after the covered
2 platform or third party completes the individual's reasonable age
3 verification.

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

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

14 5. A covered platform or third party that violates subsection
15 3 shall be subject to punitive damages and actual damages
16 resulting from the violation, plus reasonable attorney fees and
17 costs. Punitive damages shall not exceed triple the aggregate
18 amount of a plaintiff's reasonable attorney fees and costs.

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

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

- 25 a. Enjoinment of further violations by the covered platform
26 or third party performing reasonable age verification.
- 27 b. Enforcement of compliance with this chapter.
- 28 c. Assessment of civil penalties in an amount not more than
29 ten thousand dollars for each violation of this chapter.
- 30 d. Other remedies permitted under law.

31 2. If the attorney general has reasonable belief that a
32 covered platform, or third party performing reasonable age
33 verification, is in violation of an injunction issued under this
34 section, the attorney general has the sole authority to bring
35 civil action to provide for civil penalties in an amount not more

1 than one hundred thousand dollars.

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

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

7 Sec. 4. NEW SECTION. **554I.4 Limitations on liability.**

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

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

17 **EXPLANATION**

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

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

22 The bill defines "covered platform", "identifying
23 information", "information content provider", "interactive
24 computer service", "obscene material", "provider", and
25 "reasonable age verification".

26 The bill makes a covered platform liable if the covered
27 platform fails to perform reasonable age verification of
28 individuals attempting to access obscene material published or
29 distributed by the covered platform. Reasonable age verification
30 includes the use of government-issued identification, financial
31 documents or other documents that are reliable proxies for
32 age, or any other commercially reasonable and reliable method.
33 Reasonable age verification may be performed by a third party
34 subject to state jurisdiction (third party), and the bill permits
35 the use of cryptographic techniques to preserve anonymity and

1 protect privacy. A covered platform or third party is prohibited
2 from retaining an individual's identifying information after
3 completing the individual's reasonable age verification, and
4 from distributing, selling, or disseminating an individual's
5 identifying information obtained through the performance of
6 reasonable age verification. A covered platform or third party
7 is subject to punitive damages for violations of the bill.
8 Punitive damages cannot exceed triple the aggregate amount of a
9 plaintiff's reasonable attorney fees and costs.

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

13 The bill's provisions are not to be construed as to impose
14 liability on a provider solely for providing access or connection
15 to a covered platform, or to obscene material on an internet site
16 or in a facility, system, or network not under the provider's
17 control.

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

28 The bill allows individuals with knowledge of a violation to
29 report the violation to the attorney general, and requires the
30 attorney general to establish an electronic reporting system for
31 the submission of reports of violations of the bill.