

Testimony on HB 2592
House Committee on Judiciary
February 7, 2024

Written Testimony of the
Age Verification Providers Association

Dear Chairwoman and Members of the Committee:

We are the global trade body representing over 25 suppliers of age verification and age estimation technology. Age Assurance, as it is generally termed, is a rapidly growing field as legislators around the world have determined they must do more to protect children from online harms, and to do so, it is first necessary to know which users are minors and which are adults. Age assurance is the foundation of a safer Internet for kids.

We are politically neutral but support this Bill in respect of its technical coherence. We provided expert testimony on behalf of attorneys-general in four other states last year for federal courts hearing constitutional challenges to similar legislation. We have reviewed HB 2592 and concluded it addresses the principal concerns raised in those cases. We also note that the Fifth Circuit of Appeals, when reviewing an injunction granted to prevent implementation of age verification for pornography in Texas, overturned that injunction, in spite of many of those arguments. This represents the highest court which has considered the issues raised by opponents of such measures designed to protect children from exposure to adult content. And HB 2592 is a considerably better drafted Bill than HB 1181 in Texas, for reasons we will explain below.

Scope

Section 1 (a) defines the scope of the Bill such that it applies to commercial entities operating websites where material that is harmful to minors appears on 25% or more of the webpages viewed on such website in any calendar month. Similar Bills in other states have used looser language for the denominator in this fraction. For example, the Texas Act applies when more than one-third of material on the site is sexual. This raised the concern that a site could easily evade the law by adding a large volume of non-sexual material – cartoons or the back-catalogue of the Walt Disney Corporation, diluting the share that is adult material. The Bill before this Committee is careful to consider only the webpages viewed by users each month, so unless their users wish to watch more than three hours of innocent content for every hour of pornography, the site will remain in scope.

This Bill is also geographically targeted to affect only residents of and visitors to the state of Kansas. Other Bills we have reviewed arguably sought to extend their reach beyond their state borders, again creating constitutional concerns.

Methods of age verification

The first Section of the Bill then defines the methods of age verification which are acceptable, with further definition of “Commercially reasonable method of age verification” added at (h) 2. Our industry began through primarily the use of commercially available databases, such as those that include electoral list data, credit reports and social security number information which can be used to confirm that a user’s claimed date of birth is accurate. But this Bill also allows for other commercially reasonable methods where these are approved by the Attorney General. That will allow for innovation, ensuring that the Bill is not outdated as technology advances. It also gives consumers choice, allowing them to select the method which they prefer, perhaps the most convenient, or which suits the documentation they have to hand, or is supplied by a provider they know and trust.

International Standards

We already work to an international standard for age verification – BSI PAS 1296:2018. The Institute of Electrical and Electronics Engineers is about to publish a new standard IEEE P2089.1, and the International Standards Organization is currently reviewing version 2.0 of a working draft of ISO 27566 which will be finalised in the coming months.

In what is a relatively new field, standards create a common language and define terms which allows regulators to specify their requirements, and digital services to build or buy solutions which meet those demands. Standards take a holistic approach, also addressing data security and privacy measures. They allow for measurement of the accuracy of age assurance measures, so this can be clearly specified too. For example, the newest standards define maximum false positive rates where a minor is wrong assessed to be 18+ in a range from basic (90%) through standard (95%) and up to enhanced (99%) and then strict (99.99%). No technology is perfect, any more than a storekeeper will always detect an underage sale in person, but we can scientifically measure the statistically predicted outcomes of any approach.

By encouraging the Attorney-General to reference these standards, the Bill introduces the opportunity for effective co-regulation. This is where private auditors can certify technology against those international standards allowing the providers and the websites which use their solutions to demonstrate compliance to regulators and the courts. Auditing is carried out by organisations which are approved by the ANSI National Accreditation Board (ANAB) as competent to do so. The authorities can concentrate their limited resources platforms which do not have certification.

Privacy and Data Protection

Clause (f) 1 provides for critically important data protection. Our industry began in Europe where the General Data Protection Regulations already provide a great deal of protection to their citizen’s privacy and personal data. As that is not the case across the United States, it is necessary for Bills such as this to, in effect, replicate those protections for users who are proving their age. The essence of age verification is proving your age without disclosing your identity. Privacy is built into the solutions our members offer by design. Indeed, data minimisation is a legal requirement in Europe already. So, where personally identifiable information is used to check age, once the age has been established, that information is not retained. We only need to know that any given user is over 18-year-old – we do not even need to remember their actual date of birth to be able to confirm to adult websites that the user is at least 18 years old. We do not tell the adult site the actual age of the user – we simply reply ‘yes’ or ‘no’ to the question “is this user 18 or older?”

This can provoke a concern that it is hard to audit compliance with Bills such as HB 2592 which forbid the retention of evidence of an individual age check. Regulators used to operating under data protection regimes rely instead on checking that services use a certified method of age verification. That might be outsourced, in which case, the service should specify that only certified vendors may bid for that work, or services can submit their own internal age verification systems for audit. Regulators and courts can be satisfied that an effective system was in place to conduct age verification, and therefore it was highly likely that an age check was conducted to a high standard, and the site is not held culpable for non-compliance.

Timetable

Section 2 defines the timing of implementation. Major adult sites when confronted by the regulator in France were able to implement age verification within ten days – and did so over the Christmas holiday season. This is because integrating age verification is straightforward. Many of our members offer plug-ins to the leading e-commerce platforms, and their marketing materials state that integration can be done in hours or perhaps days, but not weeks or months.

Other ill-founded concerns

It may be helpful to the Committee if we also briefly address some of the other criticisms levelled at age assurance:

Cost

In its Impact Assessment for the Online Safety Act, the UK Government estimates that an online age check will cost about 10 pence – 12 cents – but it expects this cost to fall through competition and the introduction of interoperability which will allow a single check to be re-used across multiple sites. Of course, whether cost should ever be an excuse to permit harm to children is a question for you as policymakers.

Inconvenience

The burden on adults to prove their age is now negligible, with a wide range of methods on offer, and as interoperability is adopted, no need to repeat the process on each site. For example, a user might have established a reusable digital identity, from which the user agrees to release selectively only their age data, whenever it is required. There would be no need to find a passport or drivers' license every time an age restriction is encountered. A project funded by the European Union has successfully piloted a network of AV providers who recognise one another's checks, so users can access any site served by those providers without any additional action required of them.

Virtual Private Networks (VPNs)

Some argue age checks can be evaded through the use of VPNs or other technologies designed to mask or change the apparent physical location of the user. This is a myth because neither this Bill, nor any other we have reviewed, offers a get-out-of-jail-free card if a child access pornography using a VPN. The site remains

liable to enforcement action. In some states where age verification is already required, adult sites have blocked access to IP addresses registered there, but on the same page promoted VPN services. At best, this earns them some commission from the VPN service to offset the fines and damages they face for allowing a child in that state to access their adult content.

Enforcement

The one area where this Bill could be improved is the powers for enforcement. The UK government has given its regulator the power to require critical business services such as search, payments, advertising and hosting, to withdraw those services from non-compliant sites. That enables effective action even when sites are based abroad.

Conclusion

We wish to reassure the Committee through our evidence that this Bill will lead to effective, privacy-preserving, audited and certified age verification; that the approach the legislation takes should prove robust in the face of constitutional challenges; and adult users will remain free to access adult content conveniently without disproportionate cost.

Respectfully submitted,

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The Age Verification Providers Association.