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MEMORANDUM

To: House Committee on Judiciary
From: Office of Revisor of Statutes
Date: March 6, 2024
Subject: Bill Brief on SB 394

SB 394 requires the use of age-verification technology to permit access to internet websites containing material that is harmful to minors.

The bill creates a new section of law. Subsection (a) provides that 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 knowingly hosts such website would be required to verify that any person attempting to access the website, who is a resident of Kansas or who is located in Kansas at the time of the attempted access, is 18 years of age or older. It would be a violation of this section to allow a person to access such a website without verifying such person is 18 years of age or older.

The required age verification shall be conducted using (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.

Subsection (b) provides that a person who was able to access a website without verifying such person's age in violation of this section would be able to report such violation to the attorney general. The attorney general shall investigate and may bring an action for injunctive relief to enjoin any continuing violation. In addition to injunctive relief, an action may also seek to impose a civil penalty against the entity of not less than \$500 and not more than \$10,000. Each instance in which a website is accessed in violation of this section would be a separate violation.

Subsections (c) and (d) provide that a violation of this section would be considered an unconscionable act and practice under the Kansas consumer protection act, and for purposes of the remedies and penalties provided by that act (1) a person alleging a violation shall be deemed a consumer; (2) the commercial entity that violates the act shall be deemed a supplier; and (3) proof of a consumer transaction is not required.

Subsection (e) provides that 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 cause of action against a commercial entity that violates the provisions of this section. Such action may seek (1) actual damages resulting from a minor's access to material that is harmful to minors; (2) statutory damages in an amount not less than \$50,000; and (3) reasonable attorney fees and costs.

Subsection (f) provides that 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. If such information is retained then such entity or third party shall be liable to such individual for damages resulting from such retention, including reasonable attorney fees.

Subsection (g) provides that 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.

Subsection (h) provides definitions of "commercial entity", "commercially reasonable method of age verification", "harmful to minors", "host", "identifying information", "interactive computer service", "material" and "shares or distributes" to be used throughout the act.

Finally, subsection (i) provides that the provisions of the section are declared severable and if any provision is held invalid, such invalidity shall not affect the validity of the remainder of the sections.