

HB164 INTRODUCED



1 HB164
2 V6U9PL-1
3 By Representatives Robbins, DuBose, Faulkner
4 RFD: Judiciary
5 First Read: 14-Feb-24



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SYNOPSIS:

This bill would provide legislative findings regarding the public health crisis caused by pornography.

This bill would require commercial distributors of sexual material harmful to minors to utilize age-verification software or programs to ensure their published material is not distributed to minors and would provide penalties for a violation.

This bill would prohibit the retention of any personally identifying information obtained in the use of online age-verification methods.

This bill would require distributors of sexual material harmful to minors to publish notices of the dangers of pornography on their online platforms.

This bill would assess a tax on the gross proceeds of revenue generated from the sales, distribution, memberships, subscriptions, performances of material deemed harmful to minors which is generated or produced in this state.

Under existing law, a person may not distribute the private image of another without that individual's consent.

This bill would specify that the consent must be in writing.



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29 Section 111.05 of the Constitution of Alabama of
30 2022, prohibits a general law whose purpose or effect
31 would be to require a new or increased expenditure of
32 local funds from becoming effective with regard to a
33 local governmental entity without enactment by a 2/3
34 vote unless: it comes within one of a number of
35 specified exceptions; it is approved by the affected
36 entity; or the Legislature appropriates funds, or
37 provides a local source of revenue, to the entity for
38 the purpose.

39 The purpose or effect of this bill would be to
40 require a new or increased expenditure of local funds
41 within the meaning of the amendment. However, the bill
42 does not require approval of a local governmental
43 entity or enactment by a 2/3 vote to become effective
44 because it comes within one of the specified exceptions
45 contained in the amendment.

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A BILL

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TO BE ENTITLED

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AN ACT

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53 Relating to consumer protection; to provide legislative
54 findings; to provide definitions; to provide age-verification
55 requirements for the distribution of sexual material harmful
56 to minors through certain adult websites, applications, and



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57 digital and virtual platforms; to prohibit the retention of
58 certain personally identifying information; to assess an
59 additional tax on the gross proceeds received through sales,
60 distribution, memberships, subscriptions, and performances of
61 material deemed harmful to minors; to require notice to be
62 given of the dangers of pornography under certain conditions;
63 to provide civil and criminal penalties for violations; to
64 amend Section 13A-6-240, Code of Alabama 1975, as amended by
65 Act 2023-464, 2023 Regular Session, to require written consent
66 to distribute a private image of another, with exceptions; and
67 to further provide for the enforcement authority of the
68 Attorney General; and in connection therewith would have as
69 its purpose or effect the requirement of a new or increased
70 expenditure of local funds within the meaning of Section
71 111.05 of the Constitution of Alabama of 2022.

72 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

73 Section 1. The Legislature finds and declares the
74 following:

75 (1) The pervasive use of pornography is creating a
76 public health crisis.

77 (2) Pornography is contributing to the
78 hypersexualization of children and teens in our society.

79 (3) Due to advances in technology and the universal
80 availability of the Internet, young children are more easily
81 exposed to pornography than ever before, with the average age
82 of exposure now being only 11 to 12 years of age.

83 (4) Pornography treats people as objects and
84 commodities for the viewer's use.



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85 (5) Pornography normalizes violence and abuse, often
86 depicts rape and abuse as being harmless fun, and increases
87 the demand for sex trafficking, prostitution, and child
88 pornography.

89 (6) Pornography is a public health crisis leading to a
90 broad spectrum of individual and public health impacts and
91 societal harms. This state has a compelling governmental
92 interest to take action, and this act serves as the most
93 narrowly tailored approach to prevent pornography exposure and
94 addiction to minors and to educate individuals and families
95 concerning its very serious harms.

96 Section 2. As used in Sections 1 through 14 of this
97 act, the following terms have the following meanings:

98 (1) ADULT WEBSITE. A website, application, or digital
99 or virtual platform that uses the Internet to facilitate the
100 dissemination of pictures, videos, or other content, a
101 substantial portion of which is sexual material harmful to
102 minors.

103 (2) COMMERCIAL ENTITY. The term includes corporations,
104 limited liability companies, partnerships, limited
105 partnerships, sole proprietorships, or other legally
106 recognized entities.

107 (3) CONSUMER INTEREST DIVISION. The Consumer Interest
108 Division of the Office of the Attorney General.

109 (4) DISTRIBUTE. To issue, sell, give, provide, deliver,
110 transfer, circulate, or disseminate.

111 (5) HARMFUL TO MINORS. The term as defined under
112 Section 13A-12-200.1, Code of Alabama 1975.



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113 (6) MINOR. An individual under 18 years of age.

114 (7) NEWS-GATHERING ORGANIZATION. Any of the following:

115 a. A newspaper, news publication, or other news source,
116 whether in printed or electronic format, of current news and
117 public interest.

118 b. A radio broadcast station, television broadcast
119 station, or cable television operator.

120 (8) PUBLISH. To communicate or make information
121 available to another person through an online platform.

122 (9) REASONABLE AGE-VERIFICATION METHOD. Any
123 commercially available software, application, program, or
124 methodology that, when enabled, provides reasonable assurances
125 that any individual accessing certain published material is 18
126 years of age or older.

127 (10) SUBSTANTIAL PORTION. More than 33 1/3 percent.

128 Section 3. (a) Any commercial entity that knowingly
129 publishes or distributes sexual material harmful to minors
130 through an adult website shall use a reasonable
131 age-verification method to provide reasonable assurance that
132 individuals under 18 years of age cannot access the material
133 harmful to minors.

134 (b) Nothing in this section shall apply to a bona fide
135 news-gathering organization.

136 Section 4. (a) Any commercial entity or third party
137 that performs the required age-verification under Section 3
138 shall not retain any personally identifying information of the
139 individual after access has been granted to the sexual
140 material.



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141 (b) A commercial entity that is found to have knowingly
142 retained identifying information of the individual, as
143 prohibited in subsection (a), shall be liable to the
144 individual for damages resulting from retaining the
145 identifying information, including court costs and reasonable
146 attorney fees as ordered by the court.

147 (c) Nothing in this section shall apply to a bona fide
148 news-gathering organization.

149 Section 5. No Internet service provider, or its
150 affiliates or subsidiaries, search engine, or cloud service
151 provider shall be held to have violated Section 3 solely for
152 providing access or connection to or from a website or other
153 information or content on the Internet or a facility, system,
154 or network not under that provider's control, including
155 transmission, downloading, intermediate storage, or access
156 software to the extent the provider is not responsible for the
157 creation of the content of the communication that constitutes
158 sexual material harmful to minors.

159 Section 6. (a) Any individual injured by a violation of
160 Section 3, Section 8, or Section 9 may bring a civil action
161 against the commercial entity to recover actual and punitive
162 damages, court costs, and reasonable attorney's fees. If the
163 injured individual is a minor, then a parent or legal guardian
164 may bring action on his or her behalf.

165 (b) Upon commencement of any action brought under this
166 section, the clerk of the court shall mail a copy of the
167 complaint or other initial pleading to the Attorney General
168 and upon entry of any judgment or decree in the action, shall



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169 mail a copy of the judgment or decree to the Attorney General.

170 (c) Upon a finding by the court that a violation of
171 Section 3, Section 8, or Section 9 has occurred, the Attorney
172 General, upon petition to the court, may recover a civil
173 penalty up to ten thousand dollars (\$10,000) per violation.

174 Section 7. In addition to any other penalty provided by
175 law, any violation of Section 3, Section 8, or Section 9 shall
176 be considered a violation of the Deceptive Trade Practices Act
177 under Chapter 19 of Title 8, Code of Alabama 1975.

178 Section 8. (a) Any commercial entity, before knowingly
179 publishing or distributing a private image, as defined under
180 Section 13A-6-240, Code of Alabama 1975, through an adult
181 website, shall obtain written consent to publish or distribute
182 the private image from every individual depicted in the
183 private image.

184 (b) The written consent required by this section shall
185 be signed by the individual depicted and sworn to by a notary
186 public. The commercial entity shall maintain records of the
187 written consent for not less than five calendar years
188 following the publication or distribution of the private
189 image.

190 Section 9. (a) A commercial entity required to use
191 reasonable age verification methods under Section 3 shall do
192 all of the following:

193 (1) Display the following notices on the home or
194 landing page of the adult website on which sexual material
195 harmful to minors is published or distributed and all
196 advertisements thereof:



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197 "ALABAMA HEALTH AND HUMAN SERVICES WARNING: Pornography
198 is potentially biologically addictive, is proven to harm human
199 brain development, desensitizes brain reward circuits,
200 increases conditioned responses, and weakens brain function."

201 "ALABAMA HEALTH AND HUMAN SERVICES WARNING: Exposure to
202 this content is associated with low self-esteem and body
203 image, eating disorders, impaired brain development, and other
204 emotional and mental illnesses."

205 "ALABAMA HEALTH AND HUMAN SERVICES WARNING: Pornography
206 increases the demand for prostitution, child exploitation, and
207 child pornography."

208 (2) Display the following notice on every page of the
209 adult website:

210 "U.S. SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES
211 ADMINISTRATION HELPLINE:

212 "1-800-662-HELP (4357)

213 "THIS HELPLINE IS A FREE, CONFIDENTIAL INFORMATION
214 SERVICE (IN ENGLISH OR SPANISH) OPEN 24 HOURS PER DAY, FOR
215 INDIVIDUALS AND FAMILY MEMBERS FACING MENTAL HEALTH OR
216 SUBSTANCE USE DISORDERS. THE SERVICE PROVIDES REFERRAL TO
217 LOCAL TREATMENT FACILITIES, SUPPORT GROUPS, AND
218 COMMUNITY-BASED ORGANIZATIONS."

219 (b) A violation of this section shall be punished as
220 provided under Section 6 or Section 7.

221 (c) Each notice required under this section shall be
222 displayed in 14 point font or greater and in a conspicuous
223 manner.

224 Section 10. (a) In addition to all other taxes of



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225 every kind, there is levied and shall be collected a tax at
226 the rate of 10 percent upon the gross receipts of all sales,
227 distributions, memberships, subscriptions, performances, and
228 all other content amounting to material harmful to minors that
229 is produced, sold, filmed, generated, or otherwise based in
230 this state.

231 (b) The tax levied by this section may be collected by
232 the State Department of Revenue at the same time and in the
233 same manner as state sales and use taxes are collected. On or
234 prior to the date the tax is due, each person subject to the
235 tax shall file with the department a report in the form
236 prescribed by the department. The report shall set forth, with
237 respect to all sales and business transactions that are
238 required to be used as a measure of the tax levied, a correct
239 statement of the gross proceeds of all the sales and gross
240 receipts of all business transactions. The report shall also
241 include items of information pertinent to the tax as the
242 department may require. Any person subject to the tax levied
243 by this section may defer reporting credit sales until after
244 their collection, and in the event the person defers reporting
245 sales, the person shall thereafter include in each monthly
246 report all credit collections made during the preceding month,
247 and shall pay the tax due at the time of filing the report.

248 (c) Any taxes collected under this section shall be
249 budgeted and allotted in accordance with Sections 41-4-80
250 through 41-4-96, Code of Alabama 1975, and Sections 41-19-1
251 through 41-19-12, Code of Alabama 1975, and shall be
252 distributed to the Department of Mental Health for the care



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253 and treatment of individuals with behavioral health needs,
254 including prevention, treatment, and recovery services and
255 supports.

256 Section 11. Section 13A-6-240, Code of Alabama 1975, as
257 amended by Act 2023-464, 2023 Regular Session, is amended to
258 read as follows:

259 "§13A-6-240

260 (a) A person commits the crime of distributing a
261 private image if he or she knowingly posts, emails, texts,
262 transmits, or otherwise distributes a private image when the
263 depicted ~~person~~ individual has not consented in writing to the
264 transmission and the depicted ~~person~~ individual had a
265 reasonable expectation of privacy against transmission of the
266 private image.

267 (b) For purposes of this section, "private image" means
268 a photograph, digital image, video, film, or other recording
269 of ~~a person~~ an individual who is identifiable from the
270 recording itself or from the circumstances of its transmission
271 and who is engaged in any act of
272 ~~sadomasochistic~~ sado-masochistic abuse, sexual intercourse,
273 sexual excitement, masturbation, breast nudity, ~~as defined in~~
274 ~~Section 13A-12-190~~, genital nudity, or other sexual conduct.
275 The term includes a recording that has been edited, altered,
276 or otherwise manipulated from its original form.

277 (c) (1) For purposes of this section, a "reasonable
278 expectation of privacy" includes, but is not limited to,
279 either of the following circumstances:

280 a. The ~~person~~ individual depicted in the private image



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281 created it or consented to its creation believing that it
282 would remain confidential.

283 b. The sexual conduct depicted in the image was
284 involuntary.

285 (2) There is no reasonable expectation of privacy
286 against the transmission of a private image made voluntarily
287 in a public setting or made with prior written consent in a
288 commercial setting.

289 (d) It is a defense to distributing a private image if
290 the distribution of the private image was made in the public
291 interest, including, but not limited to, the reporting of
292 unlawful conduct; the lawful and common practices of law
293 enforcement, legal proceedings, or medical treatment; or a
294 bona fide attempt to prevent further distribution of the
295 private image.

296 (e) For the purposes of determining jurisdiction, the
297 crime of distributing a private image shall be considered to
298 be committed in any county in which any part of the crime took
299 place, in the county of residence of the victim or defendant,
300 or any county where the image is received.

301 (f) A violation of this section is a Class A
302 misdemeanor. A subsequent adjudication or conviction under
303 this section is a Class C felony.

304 (g) If the Attorney General has reason to believe a
305 person has engaged in, or is engaging in, a violation of this
306 section, the Attorney General may petition for an emergency
307 injunction or other necessary relief to enjoin the violation,
308 and may order the person to provide a copy of the written



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309 [consent required by this section.](#)"

310 Section 12. Although this bill would have as its
311 purpose or effect the requirement of a new or increased
312 expenditure of local funds, the bill is excluded from further
313 requirements and application under Section 111.05 of the
314 Constitution of Alabama of 2022, because the bill defines a
315 new crime or amends the definition of an existing crime.

316 Section 13. This act shall become effective on October
317 1, 2024.