

**HB164 ENGROSSED**



1 HB164  
2 25GWSSK-2  
3 By Representatives Robbins, DuBose, Faulkner  
4 RFD: Judiciary  
5 First Read: 14-Feb-24



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A BILL  
TO BE ENTITLED  
AN ACT

Relating to consumer protection; to provide legislative findings; to provide definitions; to provide age-verification requirements for the distribution of sexual material harmful to minors through certain adult websites, applications, and digital and virtual platforms; to prohibit the retention of certain personally identifying information; to assess an additional tax on the gross proceeds received through sales, distribution, memberships, subscriptions, and performances of material deemed harmful to minors; to require notice to be given of the dangers of pornography under certain conditions; to provide civil and criminal penalties for violations; to amend Section 13A-6-240, Code of Alabama 1975, as amended by Act 2023-464, 2023 Regular Session, to require written consent to distribute a private image of another, with exceptions; and to further provide for the enforcement authority of the Attorney General; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Section 111.05 of the Constitution of Alabama of 2022.



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29 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

30 Section 1. The Legislature finds and declares the  
31 following:

32 (1) The pervasive use of pornography is creating a  
33 public health crisis.

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

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

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

42 (5) Pornography normalizes violence and abuse, often  
43 depicts rape and abuse as being harmless fun, and increases  
44 the demand for sex trafficking, prostitution, and child  
45 pornography.

46 (6) Pornography is a public health crisis leading to a  
47 broad spectrum of individual and public health impacts and  
48 societal harms. This state has a compelling governmental  
49 interest to take action, and this act serves as the most  
50 narrowly tailored approach to prevent pornography exposure and  
51 addiction to minors and to educate individuals and families  
52 concerning its very serious harms.

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

55 (1) ADULT WEBSITE. A website, application, or digital  
56 or virtual platform that uses the Internet to facilitate the



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57 dissemination of pictures, videos, or other content, a  
58 substantial portion of which is sexual material harmful to  
59 minors.

60 (2) COMMERCIAL ENTITY. The term includes corporations,  
61 limited liability companies, partnerships, limited  
62 partnerships, sole proprietorships, or other legally  
63 recognized entities.

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

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

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

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

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

72 a. A newspaper, news publication, or other news source,  
73 whether in printed or electronic format, of current news and  
74 public interest.

75 b. A radio broadcast station, television broadcast  
76 station, or cable television operator.

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

79 (9) REASONABLE AGE-VERIFICATION METHOD. Any  
80 commercially available software, application, program, or  
81 methodology that, when enabled, provides reasonable assurances  
82 that any individual accessing certain published material is 18  
83 years of age or older.

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



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85           Section 3. (a) Any commercial entity that knowingly and  
86 intentionally publishes or distributes sexual material harmful  
87 to minors through an adult website shall use a reasonable  
88 age-verification method to provide reasonable assurance that  
89 individuals under 18 years of age cannot access the material  
90 harmful to minors.

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

93           Section 4. (a) Any commercial entity or third party  
94 that performs the required age-verification under Section 3  
95 shall not retain any personally identifying information of the  
96 individual after access has been granted to the sexual  
97 material.

98           (b) A commercial entity that is found to have knowingly  
99 retained identifying information of the individual, as  
100 prohibited in subsection (a), shall be liable to the  
101 individual for damages resulting from retaining the  
102 identifying information, including court costs and reasonable  
103 attorney fees as ordered by the court.

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

106           Section 5. No Internet service provider, or its  
107 affiliates or subsidiaries, search engine, or cloud service  
108 provider shall be held to have violated Sections 1 through 10  
109 of this act or Section 13A-6-240, Code of Alabama 1975, solely  
110 for providing access or connection to or from a website or  
111 other information or content on the Internet or a facility,  
112 system, or network not under that provider's control,



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113 including transmission, downloading, intermediate storage, or  
114 access software to the extent the provider is not responsible  
115 for the creation of the content of the communication that  
116 constitutes sexual material harmful to minors.

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

123 (b) Upon commencement of any action brought under this  
124 section, the clerk of the court shall mail a copy of the  
125 complaint or other initial pleading to the Attorney General  
126 and upon entry of any judgment or decree in the action, shall  
127 mail a copy of the judgment or decree to the Attorney General.

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

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

136 Section 8. (a) Any commercial entity, before knowingly  
137 and intentionally publishing or distributing a private image,  
138 as defined under Section 13A-6-240, Code of Alabama 1975,  
139 through an adult website, shall obtain written consent to  
140 publish or distribute the private image from every individual



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141 depicted in the private image.

142 (b) The written consent required by this section shall  
143 be signed by the individual depicted and sworn to by a notary  
144 public. The commercial entity shall maintain records of the  
145 written consent for not less than five calendar years  
146 following the publication or distribution of the private  
147 image.

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

151 (1) Display the following notices on the home or  
152 landing page of the adult website on which sexual material  
153 harmful to minors is published or distributed and all  
154 advertisements thereof:

155 "ALABAMA HEALTH AND HUMAN SERVICES WARNING: Pornography  
156 is potentially biologically addictive, is proven to harm human  
157 brain development, desensitizes brain reward circuits,  
158 increases conditioned responses, and weakens brain function."

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

163 "ALABAMA HEALTH AND HUMAN SERVICES WARNING: Pornography  
164 increases the demand for prostitution, child exploitation, and  
165 child pornography."

166 (2) Display the following notice on every page of the  
167 adult website:

168 "U.S. SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES



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169 ADMINISTRATION HELPLINE:

170 "1-800-662-HELP (4357)

171 "THIS HELPLINE IS A FREE, CONFIDENTIAL INFORMATION  
172 SERVICE (IN ENGLISH OR SPANISH) OPEN 24 HOURS PER DAY, FOR  
173 INDIVIDUALS AND FAMILY MEMBERS FACING MENTAL HEALTH OR  
174 SUBSTANCE USE DISORDERS. THE SERVICE PROVIDES REFERRAL TO  
175 LOCAL TREATMENT FACILITIES, SUPPORT GROUPS, AND  
176 COMMUNITY-BASED ORGANIZATIONS."

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

179 (c) Each notice required under this section shall be  
180 displayed in 14 point font or greater and in a conspicuous  
181 manner.

182 Section 10. (a) In addition to all other taxes of  
183 every kind, there is levied and shall be collected a tax at  
184 the rate of 10 percent upon the gross receipts of any  
185 commercial entity operating an adult website for all sales,  
186 distributions, memberships, subscriptions, performances, and  
187 all other content amounting to material harmful to minors that  
188 is produced, sold, filmed, generated, or otherwise based in  
189 this state.

190 (b) The tax levied by this section shall be collected  
191 by the State Department of Revenue at the same time and in the  
192 same manner as state sales and use taxes are collected. On or  
193 prior to the date the tax is due, each person subject to the  
194 tax shall file with the department a report in the form  
195 prescribed by the department.

196 (c) Any taxes collected under this section shall be





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197 budgeted and allotted in accordance with Sections 41-4-80  
198 through 41-4-96, Code of Alabama 1975, and Sections 41-19-1  
199 through 41-19-12, Code of Alabama 1975, and shall be  
200 distributed to the Department of Mental Health for the care  
201 and treatment of individuals with behavioral health needs,  
202 including prevention, treatment, and recovery services and  
203 supports.

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

207 "§13A-6-240

208 (a) A person commits the crime of distributing a  
209 private image if he or she knowingly posts, emails, texts,  
210 transmits, or otherwise distributes a private image when the  
211 depicted ~~person~~ individual has not consented in writing to the  
212 transmission and the depicted ~~person~~ individual had a  
213 reasonable expectation of privacy against transmission of the  
214 private image.

215 (b) For purposes of this section, "private image" means  
216 a photograph, digital image, video, film, or other recording  
217 of ~~a person~~ an individual who is identifiable from the  
218 recording itself or from the circumstances of its transmission  
219 and who is engaged in any act of  
220 ~~sadomasochistic~~ sado-masochistic abuse, sexual intercourse,  
221 sexual excitement, masturbation, breast nudity, ~~as defined in~~  
222 ~~Section 13A-12-190,~~ genital nudity, or other sexual conduct,  
223 as those terms are defined under Section 13A-12-190. The term  
224 includes a recording that has been edited, altered, or



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225 otherwise manipulated from its original form.

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

229 a. The ~~person~~ individual depicted in the private image  
230 created it or consented to its creation believing that it  
231 would remain confidential.

232 b. The sexual conduct depicted in the image was  
233 involuntary.

234 (2) There is no reasonable expectation of privacy  
235 against the transmission of a private image made voluntarily  
236 in a public setting or made with prior written consent in a  
237 commercial setting.

238 (d) It is a defense to distributing a private image if  
239 the distribution of the private image was made in the public  
240 interest, including, but not limited to, the reporting of  
241 unlawful conduct; the lawful and common practices of law  
242 enforcement, legal proceedings, or medical treatment; or a  
243 bona fide attempt to prevent further distribution of the  
244 private image.

245 (e) For the purposes of determining jurisdiction, the  
246 crime of distributing a private image shall be considered to  
247 be committed in any county in which any part of the crime took  
248 place, in the county of residence of the victim or defendant,  
249 or any county where the image is received.

250 (f) A violation of this section is a Class A  
251 misdemeanor. A subsequent adjudication or conviction under  
252 this section is a Class C felony.



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253 (g) If the Attorney General has reason to believe a  
254 person has engaged in, or is engaging in, a violation of this  
255 section, the Attorney General may petition for an emergency  
256 injunction or other necessary relief to enjoin the violation,  
257 and may order the person to provide a copy of the written  
258 consent required by this section.

259 (h) No Internet service provider, or its affiliates or  
260 subsidiaries, search engine, or cloud service provider shall  
261 be held to have violated this section solely for providing  
262 access or connection to or from a website or other information  
263 or content on the Internet or a facility, system, or network  
264 not under that provider's control, including transmission,  
265 downloading, intermediate storage, or access software to the  
266 extent the provider is not responsible for the creation of the  
267 content of the communication that constitutes a private  
268 image."

269 Section 12. Although this bill would have as its  
270 purpose or effect the requirement of a new or increased  
271 expenditure of local funds, the bill is excluded from further  
272 requirements and application under Section 111.05 of the  
273 Constitution of Alabama of 2022, because the bill defines a  
274 new crime or amends the definition of an existing crime.

275 Section 13. The Department of Revenue may adopt rules  
276 for the implementation and administration of Sections 1  
277 through 10 of this act.

278 Section 14. Section 10 of this act shall become  
279 effective September 1, 2025; the remaining sections of this  
280 act shall become effective on October 1, 2024.



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House of Representatives

Read for the first time and referred .....14-Feb-24  
to the House of Representatives  
committee on Judiciary  
  
Read for the second time and placed .....21-Feb-24  
on the calendar:  
4 amendments  
  
Read for the third time and passed .....29-Feb-24  
as amended  
Yeas 101  
Nays 1  
Abstains 0

John Treadwell  
Clerk