

HB164 ENROLLED



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



HB164 Enrolled

1
2 Enrolled, An Act,
3 Relating to consumer protection; to provide
4 legislative findings; to provide definitions; to provide
5 age-verification requirements for the distribution of sexual
6 material harmful to minors through certain adult websites,
7 applications, and digital and virtual platforms; to prohibit
8 the retention of certain personally identifying information;
9 to assess an additional tax on the gross proceeds received
10 through sales, distribution, memberships, subscriptions, and
11 performances of material deemed harmful to minors; to require
12 notice to be given of the dangers of pornography under certain
13 conditions; to provide civil and criminal penalties for
14 violations; to amend Section 13A-6-240, Code of Alabama 1975,
15 as amended by Act 2023-464, 2023 Regular Session, to require
16 written consent to distribute a private image of another, with
17 exceptions; and to further provide for the enforcement
18 authority of the Attorney General; and in connection therewith
19 would have as its purpose or effect the requirement of a new
20 or increased expenditure of local funds within the meaning of
21 Section 111.05 of the Constitution of Alabama of 2022.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. The Legislature finds and declares the
24 following:

25 (1) The pervasive use of pornography is creating a
26 public health crisis.

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



HB164 Enrolled

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

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

35 (5) Pornography normalizes violence and abuse, often
36 depicts rape and abuse as being harmless fun, and increases
37 the demand for sex trafficking, prostitution, and child
38 pornography.

39 (6) Pornography is a public health crisis leading to a
40 broad spectrum of individual and public health impacts and
41 societal harms. This state has a compelling governmental
42 interest to take action, and this act serves as the most
43 narrowly tailored approach to prevent pornography exposure and
44 addiction to minors and to educate individuals and families
45 concerning its very serious harms.

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

48 (1) ADULT WEBSITE. A website, application, or digital
49 or virtual platform that uses the Internet to facilitate the
50 dissemination of pictures, videos, or other content, a
51 substantial portion of which is sexual material harmful to
52 minors.

53 (2) COMMERCIAL ENTITY. The term includes corporations,
54 limited liability companies, partnerships, limited
55 partnerships, sole proprietorships, or other legally
56 recognized entities.



HB164 Enrolled

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

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

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

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

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

65 a. A newspaper, news publication, or other news source,
66 whether in printed or electronic format, of current news and
67 public interest.

68 b. A radio broadcast station, television broadcast
69 station, or cable television operator.

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

72 (9) REASONABLE AGE-VERIFICATION METHOD. Any
73 commercially available software, application, program, or
74 methodology that, when enabled, provides reasonable assurances
75 that any individual accessing certain published material is 18
76 years of age or older.

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

78 Section 3. (a) Any commercial entity that knowingly and
79 intentionally publishes or distributes sexual material harmful
80 to minors through an adult website shall use a reasonable
81 age-verification method to provide reasonable assurance that
82 individuals under 18 years of age cannot access the material
83 harmful to minors.

84 (b) Nothing in this section shall apply to a bona fide



HB164 Enrolled

85 news-gathering organization.

86 Section 4. (a) Any commercial entity or third party
87 that performs the required age-verification under Section 3
88 shall not retain any personally identifying information of the
89 individual after access has been granted to the sexual
90 material.

91 (b) A commercial entity that is found to have knowingly
92 retained identifying information of the individual, as
93 prohibited in subsection (a), shall be liable to the
94 individual for damages resulting from retaining the
95 identifying information, including court costs and reasonable
96 attorney fees as ordered by the court.

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

99 Section 5. No Internet service provider, or its
100 affiliates or subsidiaries, search engine, or cloud service
101 provider shall be held to have violated Sections 1 through 10
102 of this act or Section 13A-6-240, Code of Alabama 1975, solely
103 for providing access or connection to or from a website or
104 other information or content on the Internet or a facility,
105 system, or network not under that provider's control,
106 including transmission, downloading, intermediate storage, or
107 access software to the extent the provider is not responsible
108 for the creation of the content of the communication that
109 constitutes sexual material harmful to minors.

110 Section 6. (a) Any individual injured by a violation of
111 Section 3, Section 8, or Section 9 may bring a civil action in
112 circuit court against the commercial entity to recover actual



HB164 Enrolled

113 and punitive damages, court costs, and reasonable attorney's
114 fees. If the injured individual is a minor, then a parent or
115 legal guardian may bring action on his or her behalf.

116 (b) Upon commencement of any action brought under this
117 section, the plaintiff shall mail a copy of the complaint or
118 other initial pleading to the Attorney General and upon entry
119 of any judgment or decree in the action, shall mail a copy of
120 the judgment or decree to the Attorney General.

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

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

129 Section 8. (a) Any commercial entity, before knowingly
130 and intentionally publishing or distributing a private image,
131 as defined under Section 13A-6-240, Code of Alabama 1975,
132 through an adult website, shall obtain written consent to
133 publish or distribute the private image from every individual
134 depicted in the private image.

135 (b) The written consent required by this section shall
136 be signed by the individual depicted and sworn to by a notary
137 public. The commercial entity shall maintain records of the
138 written consent for not less than five calendar years
139 following the publication or distribution of the private
140 image.



HB164 Enrolled

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

144 (1) Display the following notices on the home or
145 landing page of the adult website on which sexual material
146 harmful to minors is published or distributed and all
147 advertisements thereof:

148 "ALABAMA HEALTH AND HUMAN SERVICES WARNING: Pornography
149 is potentially biologically addictive, is proven to harm human
150 brain development, desensitizes brain reward circuits,
151 increases conditioned responses, and weakens brain function."

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

156 "ALABAMA HEALTH AND HUMAN SERVICES WARNING: Pornography
157 increases the demand for prostitution, child exploitation, and
158 child pornography."

159 (2) Display the following notice on every page of the
160 adult website:

161 "U.S. SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES
162 ADMINISTRATION HELPLINE:

163 "1-800-662-HELP (4357)

164 "THIS HELPLINE IS A FREE, CONFIDENTIAL INFORMATION
165 SERVICE (IN ENGLISH OR SPANISH) OPEN 24 HOURS PER DAY, FOR
166 INDIVIDUALS AND FAMILY MEMBERS FACING MENTAL HEALTH OR
167 SUBSTANCE USE DISORDERS. THE SERVICE PROVIDES REFERRAL TO
168 LOCAL TREATMENT FACILITIES, SUPPORT GROUPS, AND



HB164 Enrolled

169 COMMUNITY-BASED ORGANIZATIONS."

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

172 (c) Each notice required under this section shall be
173 displayed in 14 point font or greater and in a conspicuous
174 manner.

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

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

189 (c) Any taxes collected under this section shall be
190 budgeted and allotted in accordance with Sections 41-4-80
191 through 41-4-96, Code of Alabama 1975, and Sections 41-19-1
192 through 41-19-12, Code of Alabama 1975, and shall be
193 distributed to the Department of Mental Health for the care
194 and treatment of individuals with behavioral health needs,
195 including prevention, treatment, and recovery services and
196 supports.



HB164 Enrolled

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

200 "§13A-6-240

201 (a) A person commits the crime of distributing a
202 private image if he or she knowingly posts, emails, texts,
203 transmits, or otherwise distributes a private image when the
204 depicted ~~person~~ individual has not consented in writing to the
205 transmission and the depicted ~~person~~ individual had a
206 reasonable expectation of privacy against transmission of the
207 private image.

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

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

222 a. The ~~person~~ individual depicted in the private image
223 created it or consented to its creation believing that it
224 would remain confidential.



HB164 Enrolled

225 b. The sexual conduct depicted in the image was
226 involuntary.

227 (2) There is no reasonable expectation of privacy
228 against the transmission of a private image made voluntarily
229 in a public setting or made with prior written consent in a
230 commercial setting.

231 (d) It is a defense to distributing a private image if
232 the distribution of the private image was made in the public
233 interest, including, but not limited to, the reporting of
234 unlawful conduct; the lawful and common practices of law
235 enforcement, legal proceedings, or medical treatment; or a
236 bona fide attempt to prevent further distribution of the
237 private image.

238 (e) For the purposes of determining jurisdiction, the
239 crime of distributing a private image shall be considered to
240 be committed in any county in which any part of the crime took
241 place, in the county of residence of the victim or defendant,
242 or any county where the image is received.

243 (f) A violation of this section is a Class A
244 misdemeanor. A subsequent adjudication or conviction under
245 this section is a Class C felony.

246 (g) If the Attorney General has reason to believe a
247 person has engaged in, or is engaging in, a violation of this
248 section, the Attorney General may petition for an emergency
249 injunction or other necessary relief to enjoin the violation,
250 and may order the person to provide a copy of the written
251 consent required by this section.

252 (h) No Internet service provider, or its affiliates or



HB164 Enrolled

253 subsidiaries, search engine, or cloud service provider shall
254 be held to have violated this section solely for providing
255 access or connection to or from a website or other information
256 or content on the Internet or a facility, system, or network
257 not under that provider's control, including transmission,
258 downloading, intermediate storage, or access software to the
259 extent the provider is not responsible for the creation of the
260 content of the communication that constitutes a private
261 image."

262 Section 12. Although this bill would have as its
263 purpose or effect the requirement of a new or increased
264 expenditure of local funds, the bill is excluded from further
265 requirements and application under Section 111.05 of the
266 Constitution of Alabama of 2022, because the bill defines a
267 new crime or amends the definition of an existing crime.

268 Section 13. The Department of Revenue may adopt rules
269 for the implementation and administration of Sections 1
270 through 10 of this act.

271 Section 14. Section 10 of this act shall become
272 effective September 1, 2025; the remaining sections of this
273 act shall become effective on October 1, 2024.



HB164 Enrolled

274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306

Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 29-Feb-24, as amended.

John Treadwell
Clerk

Senate

09-Apr-24

Amended and Passed

House

11-Apr-24

Concurred in Senate
Amendment