

# HB168 INTRODUCED



1 HB168

2 YTY1N66-1

3 By Representatives Woods, Stadthagen, Underwood, Shedd,  
4 Crawford, Brinyark, Gidley, Lamb, Bolton, Starnes, Shaver,  
5 DuBose, Shaw, Shirey, Givens, Holk-Jones, Fidler, Stubbs,  
6 Colvin, Ingram, Carns, Bedsole, Treadaway, Estes, Stringer,  
7 Hammett, Faulkner, Hulsey, Wilcox, Wood (R), Simpson, Moore  
8 (P), Kiel, Rigsby, Butler, Harrison, Pettus, Sells, Hill,  
9 Mooney, Fincher, Rehm, Standridge, Whorton, Wood (D)

10 RFD: Judiciary

11 First Read: 14-Feb-24



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SYNOPSIS:

This bill would define the terms "child sexual abuse material," "sexually explicit conduct," and "virtually indistinguishable depiction."

Under existing law, it is unlawful for any person to knowingly disseminate, display publicly, knowingly possess, knowingly possess with intent to disseminate, or knowingly film, print, record, photograph, or otherwise produce certain obscene material depicting an individual under 17 years of age.

This bill would provide that it is unlawful for any person to knowingly disseminate, distribute, display publicly, knowingly possess, knowingly possess with intent to disseminate, or knowingly film, print, record, photograph, or otherwise produce child sexual abuse material.

This bill would also provide that it is unlawful for any person to knowingly advertise, promote, present, or solicit by any means, including by computer, child sexual abuse material.

Under existing law, it is unlawful for any parent or guardian to knowingly permit or allow their child, ward, or dependent under 17 years of age to engage in the production of certain obscene material containing a visual depiction of the child, ward, or



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29 dependent.

30 This bill would provide that it is unlawful for  
31 any parent or guardian to knowingly permit or allow  
32 their child, ward, or dependent under 18 years of age  
33 to engage in the production of child sexual abuse  
34 material depicting the child, ward, or dependent.

35 This bill would authorize an individual to  
36 commence a civil action against a person who commits  
37 the crime of distribution of a private image,  
38 dissemination or public display of child sexual abuse  
39 material, possession of child sexual abuse material,  
40 possession with intent to distribute child sexual abuse  
41 material, permitting or allowing a child, ward, or  
42 dependent to engage in the production of child sexual  
43 abuse material as a parent or guardian, or production  
44 of child sexual abuse material.

45 This bill would also authorize a court to award  
46 certain punitive damages against an individual who,  
47 with wantonness or malice, commits the crime of  
48 distribution of a private image, dissemination or  
49 public display of child sexual abuse material,  
50 possession of child sexual abuse material, possession  
51 with intent to distribute child sexual abuse material,  
52 permitting or allowing a child, ward, or dependent to  
53 engage in the production of child sexual abuse material  
54 as a parent or guardian, or production of child sexual  
55 abuse material.

56 This bill would direct the State Board of



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57 Education to require local school boards to develop  
58 policies related to the distribution of private images  
59 and the distribution, dissemination, public display,  
60 possession, possession with intent to distribute, and  
61 production of child sexual abuse material.

62 This bill would also make nonsubstantive,  
63 technical revisions to update the existing code  
64 language to current style.

65 Section 111.05 of the Constitution of Alabama of  
66 2022, prohibits a general law whose purpose or effect  
67 would be to require a new or increased expenditure of  
68 local funds from becoming effective with regard to a  
69 local governmental entity without enactment by a 2/3  
70 vote unless: it comes within one of a number of  
71 specified exceptions; it is approved by the affected  
72 entity; or the Legislature appropriates funds, or  
73 provides a local source of revenue, to the entity for  
74 the purpose.

75 The purpose or effect of this bill would be to  
76 require a new or increased expenditure of local funds  
77 within the meaning of the section. However, the bill  
78 does not require approval of a local governmental  
79 entity or enactment by a 2/3 vote to become effective  
80 because it comes within one of the specified exceptions  
81 contained in the section.

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A BILL



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85 TO BE ENTITLED

86 AN ACT

87  
88 Relating to child sexual abuse material; to amend  
89 Sections 13A-6-240, as last amended by Act 2023-464, 2023  
90 Regular Session, 13A-12-190, 13A-12-191, 13A-12-192,  
91 13A-12-193, 13A-12-194, 13A-12-196, 13A-12-197, and  
92 13A-12-198, Code of Alabama 1975; to further provide for the  
93 age of a child for offenses involving child sexual abuse  
94 material; to provide a cause of action for certain offenses  
95 involving child sexual abuse material; to authorize a court to  
96 award punitive damages against an individual who commits  
97 certain offenses involving child sexual abuse material; to  
98 direct the State Board of Education to require local school  
99 boards to develop policies related to certain crimes; to  
100 repeal Section 13A-12-195, Code of Alabama 1975, relating to  
101 the commercial exploitation of child sexual abuse material; to  
102 make nonsubstantive, technical revisions to update the  
103 existing code language to current style; and in connection  
104 therewith would have as its purpose or effect the requirement  
105 of a new or increased expenditure of local funds within the  
106 meaning of Section 111.05 of the Constitution of Alabama of  
107 2022.

108 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

109 Section 1. This act shall be known and may be cited as  
110 the Alabama Child Protection Act of 2024.

111 Section 2. Sections 13A-6-240, as last amended by Act  
112 2023-464, 2023 Regular Session, 13A-12-190, 13A-12-191,



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113 13A-12-192, 13A-12-193, 13A-12-194, 13A-12-196, 13A-12-197,  
114 and 13A-12-198, Code of Alabama 1975, are amended to read as  
115 follows:

116 "§13A-6-240

117 (a) A person commits the crime of distributing a  
118 private image if he or she knowingly posts, emails, texts,  
119 transmits, or otherwise distributes a private image when the  
120 depicted ~~person~~ individual has not consented to the  
121 transmission and the depicted ~~person~~ individual had a  
122 reasonable expectation of privacy against transmission of the  
123 private image.

124 (b) (1) For purposes of this section, "private image"  
125 means a photograph, digital image, video, film, or other  
126 recording of ~~a person~~ an individual who is identifiable from  
127 the recording itself or from the circumstances of its  
128 transmission and who is engaged in any act of ~~sadomasochistic~~  
129 ~~abuse, sexual intercourse, sexual excitement, masturbation,~~  
130 ~~breast nudity, as defined in Section 13A-12-190, genital~~  
131 ~~nudity, or other sexual conduct~~ sexually explicit conduct, as  
132 defined in Section 13A-12-190.

133 (2) The term includes a recording that has been edited,  
134 altered, or otherwise manipulated from its original form.

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

138 a. The ~~person~~ individual depicted in the private image  
139 created it or consented to its creation believing that it  
140 would remain confidential.



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141           b. The sexual conduct depicted in the image was  
142 involuntary.

143           (2) There is no reasonable expectation of privacy  
144 against the transmission of a private image made voluntarily  
145 in a public or commercial setting.

146           (d) It is a defense to distributing a private image if  
147 the distribution of the private image was made in the public  
148 interest, including, but not limited to, the reporting of  
149 unlawful conduct; the lawful and common practices of law  
150 enforcement, legal proceedings, or medical treatment; or a  
151 bona fide attempt to prevent further distribution of the  
152 private image.

153           (e) For the purposes of determining jurisdiction, the  
154 crime of distributing a private image shall be considered to  
155 be committed in any county in which any part of the crime took  
156 place, in the county of residence of the victim or defendant,  
157 or any county where the image is received.

158           (f) A violation of this section is a Class A  
159 misdemeanor. A subsequent adjudication or conviction under  
160 this section is a Class C felony."

161           "§13A-12-190

162           For the purposes of this division, the following terms  
163 ~~shall~~ have the following meanings ~~respectively ascribed to~~  
164 ~~them by this section:~~

165           ~~(1)~~ (4) DISSEMINATE. To transmit, distribute, sell,  
166 lend, provide, transfer, or show, including through electronic  
167 means.

168           ~~(2)~~ (3) DISPLAY PUBLICLY. The exposing, placing,



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169 posting, exhibiting, or in any fashion displaying in any  
170 location, whether public or private, an item in ~~such~~ a manner  
171 that it may be readily seen and its content or character  
172 distinguished by normal unaided vision viewing it from a  
173 public thoroughfare, depot, or vehicle.

174 ~~(3)~~ (9) PUBLIC THOROUGHFARE, DEPOT, OR VEHICLE. Any  
175 street, highway, park, depot, or transportation platform or  
176 other place, whether indoors or ~~out~~ outdoors, or any vehicle  
177 for public transportation, owned or operated by government,  
178 either directly or through a public corporation or authority,  
179 or owned or operated by any agency of public transportation  
180 that is designed for the use, enjoyment, or transportation of  
181 the general public.

182 ~~(4)~~ (6) KNOWINGLY. A person knowingly ~~disseminates or~~  
183 ~~publicly displays obscene matter~~ acts regarding child sexual  
184 abuse material when the person knows the nature of the  
185 ~~matter~~ material. A person knows the nature of the ~~matter~~  
186 material when either of the following circumstances exist:

187 a. The person is aware of the character and content of  
188 the ~~matter~~ material.

189 b. The person recklessly disregards circumstances  
190 suggesting the character and content of the ~~matter~~ material.

191 ~~(5)~~ (10) ~~SADO-MASOCHISTIC~~ SADOMASOCHISTIC ABUSE. ~~Such~~  
192 ~~term means either~~ Either of the following:

193 a. Flagellation or torture, for the purpose of sexual  
194 stimulation, by or upon ~~a person~~ an individual who is nude or  
195 clad in undergarments or in a revealing or bizarre costume.

196 b. The condition of ~~a person~~ an individual who is nude





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197 or clad in undergarments or in a revealing or bizarre costume  
198 being fettered, bound, or otherwise physically restrained for  
199 the purpose of sexual stimulation.

200 ~~(6)~~ (12) SEXUAL EXCITEMENT. The condition of human male  
201 or female genitals when in a state of sexual stimulation.

202 ~~(7)~~ (13) SEXUAL INTERCOURSE. Intercourse, real or  
203 simulated, whether genital-genital, oral-genital,  
204 anal-genital, or oral-anal, whether between ~~persons~~  
205 individuals of the same or opposite sex or between a human and  
206 an animal.

207 ~~(8)~~ (7) MASTURBATION. Manipulation, by hand or  
208 instrument, of the human genitals, whether one's own or  
209 another's for the purpose of sexual stimulation.

210 ~~(9)~~ (8) OTHER SEXUAL CONDUCT. Any touching of the  
211 genitals, pubic areas, or buttocks of the human male or  
212 female, or the breasts of the female, whether alone or between  
213 members of the same or opposite sex or between humans and  
214 animals in an act of apparent sexual stimulation or  
215 gratification.

216 ~~(10)~~ (1) BREAST NUDITY. The lewd showing of the  
217 post-pubertal human female breasts below a point immediately  
218 above the top of the areola.

219 ~~(11)~~ (5) GENITAL NUDITY. The lewd showing of the  
220 genitals or pubic area.

221 ~~(12) MATTER. Any book, magazine, newspaper, or other~~  
222 ~~printed material, or any picture, photograph, motion picture,~~  
223 ~~video cassette, tape, record, digital video disc (DVD), video~~  
224 ~~compilation, or electronic depiction in a comparable format,~~



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225 ~~or an image, file, download, or other content stored, or~~  
226 ~~reproduced by using a computer or electronic device or other~~  
227 ~~digital storage, or any other thing, articles, or materials~~  
228 ~~that either are or contain a photographic or other visual~~  
229 ~~depiction of a live act, performance, or event.~~

230 ~~(13) OBSCENE. a. When used to describe any matter that~~  
231 ~~contains a visual reproduction of breast nudity, the term~~  
232 ~~shall include all of the following:~~

233 ~~1. Applying contemporary local community standards, on~~  
234 ~~the whole, appeals to the prurient interest.~~

235 ~~2. Is patently offensive.~~

236 ~~3. On the whole, lacks serious literary, artistic,~~  
237 ~~political, or scientific value.~~

238 ~~b. When used to describe matter that is a depiction of~~  
239 ~~an act of sado-masochistic abuse, sexual intercourse, sexual~~  
240 ~~excitement, masturbation, genital nudity, or other sexual~~  
241 ~~conduct, the term means matter containing a visual~~  
242 ~~reproduction that itself lacks serious literary, artistic,~~  
243 ~~political, or scientific value.~~

244 ~~(14) LOCAL COMMUNITY. The judicial circuit in which the~~  
245 ~~indictment is brought.~~

246 ~~(15) VISUAL DEPICTION. A portrayal, representation,~~  
247 ~~illustration, image, likeness, or other thing that creates a~~  
248 ~~sensory impression, whether an original, duplicate, or~~  
249 ~~reproduction.~~

250 ~~(16)~~ (11) SEPARATE OFFENSE. The depiction of an  
251 individual less than ~~17~~ 18 years of age that violates this  
252 division shall constitute a separate offense for each single



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253 visual depiction.

254 (2) CHILD SEXUAL ABUSE MATERIAL. Any visual depiction  
255 of an individual under 18 years of age engaged in any act of  
256 sexually explicit conduct, including a virtually  
257 indistinguishable depiction.

258 (14) SEXUALLY EXPLICIT CONDUCT. Actual or simulated  
259 conduct that includes sadomasochistic abuse, sexual  
260 excitement, sexual intercourse, masturbation, breast nudity,  
261 genital nudity, or other sexual conduct.

262 (15) VIRTUALLY INDISTINGUISHABLE DEPICTION. A visual  
263 depiction created, altered, or produced by digital, computer  
264 generated, or other means that an ordinary person would  
265 conclude is of an actual individual under 18 years of age  
266 engaged in sexually explicit conduct."

267 "§13A-12-191

268 (a) Any person who shall knowingly disseminate or  
269 display publicly any ~~obscene matter containing a visual~~  
270 ~~depiction of a person under the age of 17 years engaged in any~~  
271 ~~act of sado-masochistic abuse, sexual intercourse, sexual~~  
272 ~~excitement, masturbation, breast nudity, genital nudity, or~~  
273 ~~other sexual conduct~~ child sexual abuse material shall be  
274 guilty of a Class B felony.

275 (b) Any person who shall knowingly advertise, promote,  
276 present, distribute, or solicit by any means, including by  
277 computer, any material or purported material in a manner that  
278 reflects the belief, or that is intended to cause another to  
279 believe, that the material or purported material is a visual  
280 depiction of an actual minor engaging in sexually explicit



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281 conduct shall be guilty of a Class B felony."

282 "§13A-12-192

283 (a) Any person who knowingly possesses with intent to  
284 disseminate any ~~obscene matter that contains a visual~~  
285 ~~depiction of a person under the age of 17 years engaged in any~~  
286 ~~act of sado-masochistic abuse, sexual intercourse, sexual~~  
287 ~~excitement, masturbation, breast nudity, genital nudity, or~~  
288 ~~other sexual conduct~~ child sexual abuse material shall be  
289 guilty of a Class B felony. Any transfer of ~~the visual~~  
290 ~~depiction~~ child sexual abuse material from any electronic  
291 device to any other device, program, application, or any other  
292 place with storage capability ~~which~~ that can be made available  
293 or is accessible by other users, is prima facie evidence of  
294 possession with intent to disseminate.

295 (b) Any person who knowingly possesses any ~~obscene~~  
296 ~~matter that contains a visual depiction of a person under the~~  
297 ~~age of 17 years engaged in any act of sado-masochistic abuse,~~  
298 ~~sexual intercourse, sexual excitement, masturbation, breast~~  
299 ~~nudity, genital nudity, or other sexual conduct~~ child sexual  
300 abuse material shall be guilty of a Class C felony."

301 "§13A-12-193

302 ~~(a) In proving that a person in a visual depiction who~~  
303 ~~is engaged in any obscene act set out in Sections 13A-12-191,~~  
304 ~~13A-12-192, 13A-12-196 and 13A-12-197 is under the age of 17~~  
305 ~~years, the state is not required to introduce into evidence a~~  
306 ~~birth certificate, produce testimony as to the date of birth~~  
307 ~~of such person, or produce testimony of any person who knows~~  
308 ~~or is acquainted with the person alleged to be under the age~~



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309 ~~of 17 years. If the defendant or the state intends to rely on~~  
310 ~~a birth certificate to prove the date of birth of any person~~  
311 ~~in the visually reproduced matter, such defendant or the state~~  
312 ~~shall file with the clerk of the court in which the action is~~  
313 ~~pending, at least 15 days prior to trial, a notice of an~~  
314 ~~intention to rely on an official, certified copy of a birth~~  
315 ~~certificate together with a copy of the birth certificate.~~

316 ~~(b) (a) A jury, or the court if a jury trial is waived,~~  
317 The factfinder may infer from the following factors whether or  
318 not the ~~person~~ individual displayed or depicted in any ~~obscene~~  
319 ~~matter~~ visual depiction is under ~~the age of 17-18~~ years of  
320 age:

321 (1) The general body growth and bone structure of the  
322 ~~person~~ individual.

323 (2) The development of pubic hair or body hair on the  
324 ~~person~~ individual.

325 (3) The development of the ~~person's~~ individual's sexual  
326 organs~~;~~.

327 (4) The context in which the ~~person~~ individual is  
328 placed by any accompanying printed or text material~~;~~.

329 (5) Any expert testimony as to the degree of maturity  
330 of the ~~person~~ individual.

331 ~~(c) (b)~~ The existence of any or all of the factors  
332 listed in subsection ~~(b) of this section~~ (a) shall not operate  
333 to change the requirement that before any conviction may be  
334 had, the state must convince the factfinder beyond a  
335 reasonable doubt that the ~~person~~ individual engaged in the ~~act~~  
336 ~~of sado-masochistic abuse, sexual intercourse, sexual~~



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337 ~~excitement, masturbation, breast nudity, genital nudity, or~~  
338 ~~other sexual conduct in the visual depiction~~ sexually explicit  
339 conduct is or is virtually indistinguishable from an  
340 individual under ~~the age of 17-18~~ years of age.

341 (c) It is an affirmative defense to prosecution under  
342 this division if the actual individual purported to be under  
343 18 years of age and engaged in sexually explicit conduct was  
344 an actual individual 18 years of age or older at the time of  
345 the offense."

346 "§13A-12-194

347 The state shall not be required to establish the actual  
348 existence or identity, either in the indictment or in any  
349 subsequent proceeding, of the ~~person~~ individual alleged to be  
350 under ~~the age of 17-18~~ years of age who is engaged in any ~~of~~  
351 ~~the acts described in Sections 13A-12-191, 13A-12-192,~~  
352 ~~13A-12-196 and 13A-12-197, which are visual depiction~~ act of  
353 sexually explicit conduct."

354 "§13A-12-196

355 Any parent or guardian who knowingly permits or allows  
356 their child, ward, or dependent under ~~the age of 17-18~~ years  
357 of age to engage in the production of any ~~obscene matter~~ child  
358 sexual abuse material containing a visual depiction of ~~such~~  
359 the child, ward, or dependent ~~under the age of 17 years~~  
360 ~~engaged in any act of sado-masochistic abuse, sexual~~  
361 ~~excitement, masturbation, breast nudity, genital nudity, or~~  
362 ~~other sexual conduct~~ shall be guilty of a Class A felony."

363 "§13A-12-197

364 (a) Any person who knowingly films, prints, records,



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365 photographs, or otherwise produces any ~~obscene matter that~~  
366 ~~contains a visual depiction of a person under the age of 17~~  
367 ~~years engaged in any act of sado-masochistic abuse, sexual~~  
368 ~~intercourse, sexual excitement, masturbation, breast nudity,~~  
369 ~~genital nudity, or other sexual conduct~~ child sexual abuse  
370 material shall be guilty of a Class A felony.

371 (b) For any person who violates this section, each  
372 ~~depiction of each individual less than 17 years of age~~  
373 instance of child sexual abuse material constitutes a separate  
374 offense."

375 "§13A-12-198

376 Any article, equipment, machine, materials, matter,  
377 vehicle, or other thing ~~whatsoever~~ used in the commercial  
378 production, transportation, dissemination, display, or storage  
379 of any ~~obscene matter displaying or depicting a person under~~  
380 ~~the age of 17 years engaged in any of the obscene acts~~  
381 ~~described in Sections 13A-12-191, 13A-12-192, 13A-12-196 and~~  
382 ~~13A-12-197~~ child sexual abuse material shall be contraband and  
383 shall be forfeited to the State of Alabama. The manner,  
384 method, and procedure for the forfeiture and condemnation of  
385 ~~such the~~ thing shall be the same as that provided by law for  
386 the confiscation ~~or~~, condemnation, or forfeiture of  
387 automobiles, conveyances, or vehicles in which alcoholic  
388 beverages are illegally transported."

389 Section 3. An individual who commits any of the  
390 following crimes is civilly liable to the individual depicted  
391 in the relevant image:

392 (1) Distributing a private image, pursuant to Section



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393 13A-6-240, Code of Alabama 1975.

394 (2) Dissemination, distribution, or public display of  
395 child sexual abuse material, pursuant to Section 13A-12-191,  
396 Code of Alabama 1975.

397 (3) Possession of child sexual abuse material, pursuant  
398 to Section 13A-12-192, Code of Alabama 1975.

399 (4) Possession with intent to distribute child sexual  
400 abuse material, pursuant to Section 13A-12-192, Code of  
401 Alabama 1975.

402 (5) Permitting or allowing a child, ward, or dependent  
403 to engage in production of child sexual abuse material as a  
404 parent or guardian, pursuant to Section 13A-12-196, Code of  
405 Alabama 1975.

406 (6) Production of child sexual abuse material, pursuant  
407 to Section 13A-12-197, Code of Alabama 1975.

408 (7) Advertising, promoting, presenting, or soliciting  
409 child sexual abuse material, pursuant to Section 13A-12-191,  
410 Code of Alabama 1975.

411 Section 4. Civil liability pursuant to Section 2 shall  
412 consist of all of the following:

413 (1) The full actual damages incurred.

414 (2) Court costs and reasonable attorney fees.

415 (3)a. Punitive damages, if the plaintiff proves by  
416 clear and convincing evidence that the defendant consciously  
417 or deliberately engaged in wantonness or malice with regard to  
418 the plaintiff, as defined in Section 6-11-20, Code of Alabama  
419 1975.

420 b. Punitive damages awarded pursuant to paragraph a.





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421 shall consist of up to twenty-five thousand dollars (\$25,000)  
422 per image.

423 Section 5. The State Board of Education shall require  
424 each local board of education to do all of the following  
425 before the start of the 2024-2025 school year:

426 (1) Develop a written policy on student discipline and  
427 education related to the distribution of private images as  
428 defined in Section 13A-6-240, Code of Alabama 1975, and the  
429 distribution, dissemination, public display, advertising,  
430 promoting, presenting, soliciting, possession, possession with  
431 intent to distribute, and production of child sexual abuse  
432 material as defined in Division 4 of Article 4 of Chapter 12  
433 of Title 13A, Code of Alabama 1975.

434 (2) Include within the written policy a prohibition of  
435 private, explicit, or pornographic images generated with  
436 artificial intelligence.

437 (3) Broadly disseminate the policy following its  
438 adoption.

439 (4) Distribute copies of the policy to all teachers,  
440 staff, parents, and students.

441 Section 6. Section 13A-12-195, Code of Alabama 1975,  
442 relating to the commercial exploitation of obscene material,  
443 is repealed.

444 Section 7. Although this bill would have as its purpose  
445 or effect the requirement of a new or increased expenditure of  
446 local funds, the bill is excluded from further requirements  
447 and application under Section 111.05 of the Constitution of  
448 Alabama of 2022, because the bill defines a new crime or



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449 amends the definition of an existing crime.

450 Section 8. This act shall become effective on October

451 1, 2024.