

HB161 ENGROSSED



1 HB161
2 Q6IQ551-2
3 By Representatives Moore (P), Woods, Butler, Bedsole
4 RFD: Judiciary
5 First Read: 14-Feb-24



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A BILL
TO BE ENTITLED
AN ACT

Related to crimes and offenses; to amend Section 13A-6-240, Code of Alabama 1975, as last amended by Act 2023-464, 2023 Regular Session; to prohibit a person from creating a private image; to further provide for the crime of distributing a private image; to provide for exceptions; to provide criminal penalties for violations; to make nonsubstantive, technical revisions to update the existing code language to current style; 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.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 13A-6-240, Code of Alabama 1975, as last amended by Act 2023-464, 2023 Regular Session, is amended to read as follows:

"§13A-6-240

(a) (1) A person commits the crime of distributing a private image if he or she knowingly posts, emails, texts, transmits, or otherwise distributes a private image when the



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29 depicted ~~person~~individual has not consented to the
30 transmission and the depicted ~~person~~individual had a
31 reasonable expectation of privacy against transmission of the
32 private image.

33 (2) A person commits the crime of creating a private
34 image if he or she knowingly creates, records, or alters a
35 private image when the depicted individual has not consented
36 to the creation, recording, or alteration and the depicted
37 individual had a reasonable expectation of privacy against the
38 creation, recording, or alteration of the private image.

39 (b) (1) For purposes of this section, "private image"
40 means a photograph, digital image, video, film, or other
41 recording of ~~a person~~an individual who is identifiable from
42 the recording itself or from the circumstances of its
43 transmission and who is engaged in any act of sadomasochistic
44 abuse, sexual intercourse, sexual excitement, masturbation,
45 breast nudity, ~~as defined in Section 13A-12-190,~~ genital
46 nudity, or other sexual conduct all as defined in Section
47 13A-12-190.

48 (2) The term includes both of the following:

49 a. ~~a~~A recording that has been edited, altered, or
50 otherwise manipulated from its original form.

51 b. A recording that a reasonable person would believe
52 actually depicts an identifiable individual, regardless of
53 whether any portion of the recording depicts another
54 individual or is artificially generated.

55 (c) (1) For purposes of this section, a "reasonable
56 expectation of privacy" includes, but is not limited to,



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57 either of the following circumstances:

58 a. The ~~person~~individual depicted in the private image
59 created it or consented to its creation believing that it
60 would remain confidential.

61 b. The sexual conduct depicted in the image was
62 involuntary.

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

66 (d) It is a defense to distributing a private image if
67 the distribution of the private image was made in the public
68 interest, including, but not limited to, the reporting of
69 unlawful conduct; the lawful and common practices of law
70 enforcement, legal proceedings, or medical treatment; or a
71 bona fide attempt to prevent further distribution of the
72 private image.

73 (e) ~~For the purposes of determining jurisdiction, the~~
74 ~~crime~~The crimes of distributing a private image and creating
75 a private image shall be considered to be committed in any
76 county in which any part of the crime took place, in the
77 county of residence of the victim or defendant, or any county
78 where the image is received.

79 (f) A violation of this section is a Class A
80 misdemeanor. A subsequent adjudication or conviction under
81 this section is a Class C felony.

82 (g) No Internet service provider, search engine, cloud
83 service provider, or affiliate or subsidiary of any of the
84 same, shall be held to have violated this section solely for



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85 providing access or connection to or from a website, other
86 information or content on the Internet, or a facility, system,
87 or network not under the control of the provider, including,
88 but not limited to, the transmission, download, or
89 intermediate storage of content that is a private image."

90 Section 2. Although this bill would have as its purpose
91 or effect the requirement of a new or increased expenditure of
92 local funds, the bill is excluded from further requirements
93 and application under Section 111.05 of the Constitution of
94 Alabama of 2022, because the bill defines a new crime or
95 amends the definition of an existing crime.

96 Section 3. This act shall become effective on October
97 1, 2024.



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House of Representatives

101 Read for the first time and referred14-Feb-24
102 to the House of Representatives
103 committee on Judiciary
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105 Read for the second time and placed21-Feb-24
106 on the calendar:
107 2 amendments
108
109 Read for the third time and passed22-Feb-24
110 as amended
111 Yeas 97
112 Nays 0
113 Abstains 2
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116 John Treadwell
117 Clerk
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