

HB441 INTRODUCED



1 RUWWNY-1
2 By Representatives Robbins, Kiel, Stadthagen
3 RFD: Judiciary
4 First Read: 09-May-23
5
6 2023 Regular Session



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SYNOPSIS:

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

This bill would prohibit the distribution of material harmful to minors under 18 years of age.

This bill would require distributors of material harmful to minors to take certain reasonable measures to ensure their published material is not distributed to minor children by use of age-verification procedures.

This bill would require distributors of material harmful to minors to pay a licensing fee to distribute pornography in this state and would provide for the distribution of the fee.

This bill would also provide penalties for violations.

Section 111.05 of the Constitution of Alabama of 2022, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or



HB441 INTRODUCED

29 provides a local source of revenue, to the entity for
30 the purpose.

31 The purpose or effect of this bill would be to
32 require a new or increased expenditure of local funds
33 within the meaning of the amendment. However, the bill
34 does not require approval of a local governmental
35 entity or enactment by a 2/3 vote to become effective
36 because it comes within one of the specified exceptions
37 contained in the amendment.

38

39

40

41

A BILL

42

TO BE ENTITLED

43

AN ACT

44

45 Relating to consumer protection; to provide legislative
46 findings; to provide definitions; to provide prohibitions on
47 the online distribution of material harmful to minors; to
48 require a license for the distribution of material harmful to
49 minors; and to provide civil and criminal penalties for
50 violations; and in connection therewith would have as its
51 purpose or effect the requirement of a new or increased
52 expenditure of local funds within the meaning of Section
53 111.05 of the Constitution of Alabama of 2022.

54 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

55 Section 1. The Legislature finds and declares the
56 following:



HB441 INTRODUCED

57 (1) The pervasive use of pornography is creating a
58 public health crisis.

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

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

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

67 (5) Pornography normalizes violence and abuse, often
68 depicts rape and abuse as being harmless fun, and increases
69 the demand for sex trafficking, prostitution, and child
70 pornography.

71 (6) Pornography is a public health crisis leading to a
72 broad spectrum of individual and public health impacts and
73 societal harms. This state has a compelling governmental
74 interest to take action, and this act serves as the most
75 narrowly tailored approach to prevent pornography exposure and
76 addiction to children and to educate individuals and families
77 concerning its very serious harms.

78 Section 2. As used in this act, the following terms
79 have the following meanings:

80 (1) COMMERCIAL ENTITY. The term includes corporations,
81 limited liability companies, partnerships, limited
82 partnerships, sole proprietorships, or other legally
83 recognized entities.

84 (2) DISTRIBUTE. To issue, sell, give, provide, deliver,



HB441 INTRODUCED

85 transfer, circulate, or disseminate online.

86 (3) DIVISION. The Consumer Protection Division of the
87 Office of the Attorney General.

88 (4) HARMFUL TO MINORS. The term as defined under
89 Section 13A-12-200.1, Code of Alabama 1975.

90 (5) MINOR. An individual under 18 years of age.

91 (6) NEWS-GATHERING ORGANIZATION. Any of the following:

92 a. A newspaper, news publication, or news source,
93 printed or on an online platform, of current news and public
94 interest.

95 b. A radio broadcast station, television broadcast
96 station, or cable television operator.

97 (7) PUBLISH. To communicate or make information
98 available to another person on a publicly available Internet
99 website.

100 (8) REASONABLE AGE VERIFICATION METHODS. Verifying that
101 the individual seeking to access the material is 18 years of
102 age or older by requiring the person attempting to access the
103 material to comply with a commercial age verification system
104 that verifies age in one or more of the following ways:

105 a. Government-issued identification.

106 b. Any commercially reasonable method that relies on
107 public or private transactional data to verify the age of the
108 individual attempting to access the information is at least 18
109 years of age or older.

110 (9) SUBSTANTIAL PORTION. More than 33 1/3 percent of
111 total material on a website.

112 (10) TRANSACTIONAL DATA. A sequence of information that



HB441 INTRODUCED

113 documents an exchange, agreement, or transfer between an
114 individual, commercial entity, or third party used for the
115 purpose of satisfying a request or event. The term includes,
116 but is not limited to, records from mortgage, education, and
117 employment entities.

118 Section 3. (a) Any commercial entity that knowingly and
119 intentionally publishes or distributes material harmful to a
120 minor on the Internet from a website that contains a
121 substantial portion of material harmful to minors shall be
122 held liable if the entity fails to perform reasonable age
123 verification methods to verify the age of individuals
124 attempting to access the material.

125 (b) A commercial entity that is found to have violated
126 this section shall be liable to an individual for damages
127 resulting from a minor accessing the material harmful to
128 minors, including court costs and reasonable attorney fees as
129 ordered by the court.

130 Section 4. (a) Any commercial entity or third party
131 that performs the required age verification shall not retain
132 any identifying information to the individual after access has
133 been granted to the material.

134 (b) A commercial entity that is found to have knowingly
135 retained identifying information of the individual, as
136 prohibited in subsection (a), shall be liable to the
137 individual for damages resulting from retaining the
138 identifying information, including court costs and reasonable
139 attorney fees as ordered by the court.

140 Section 5. Nothing in this act shall apply to a bona



HB441 INTRODUCED

141 fide broadcast, website video, report, or event of a
142 news-gathering organization and shall not be construed to
143 affect the rights of any news-gathering organization.

144 Section 6. No Internet service provider, or its
145 affiliates or subsidiaries, search engine, or cloud service
146 provider shall be held to have violated this act solely for
147 providing access or connection to or from a website or other
148 information or content on the Internet or a facility, system,
149 or network not under that provider's control, including
150 transmission, downloading, intermediate storage, or access
151 software to the extent the provider is not responsible for the
152 creation of the content of the communication that constitutes
153 material harmful to minors.

154 Section 7. (a) A commercial entity shall not publish
155 online or allow access on a website to material that is
156 harmful to minors in this state only by satisfying both of the
157 following conditions:

158 (1) The person registers with the division and pays to
159 the division a one-time registration fee and an annual license
160 fee each year thereafter. The division, by rule, may establish
161 the required fees.

162 (2) The person certifies meeting the age verification
163 requirements of Section 3.

164 (b) Any fees collected under this section shall be
165 deposited as follows and shall be budgeted and allotted in
166 accordance with Sections 41-4-80 through 41-4-96, Code of
167 Alabama 1975, and Sections 41-19-1 through 41-19-12, Code of
168 Alabama 1975, but shall not be limited by the fiscal year



HB441 INTRODUCED

169 appropriation cap:

170 (1) Fifty percent of fees collected shall be deposited
171 into the State General Fund to the credit of the Office of the
172 Attorney General.

173 (2) Fifty percent of fees collected shall be deposited
174 into the Special Mental Health Trust Fund in the State
175 Treasury.

176 (c) The Office of the Attorney General may adopt rules
177 to implement and administer this section.

178 Section 8. (a) Any person who engages in any act or
179 practices that violate Section 3 or 4 shall be liable for a
180 civil penalty of up to two thousand dollars (\$2,000) for each
181 violation.

182 (b) The Office of the Attorney General may recover the
183 civil penalty by either of the following:

184 (1) Civil action against the person engaging in the
185 violative act or practice.

186 (2) Agreement and settlement of a civil action filed by
187 stipulation of terms by the person engaging in the violative
188 act or practice and the director of the division by authority
189 of the Attorney General, and by payment of any agreed upon
190 amount by the person against whom the claim was filed.

191 Section 9. (a) If the Attorney General has reason to
192 believe that a person has engaged in, or is engaging in, a
193 practice that violates this act, he or she may administer
194 oaths and affirmations, subpoena witnesses or matter, and
195 collect evidence. The subpoena shall inform the party served
196 of his or her rights under this subsection.



HB441 INTRODUCED

197 (b) The Attorney General may apply for an emergency
198 injunction or other necessary relief to enjoin any violation
199 of Section 3 or Section 4 until the violation is cured.

200 Section 10. (a) In any civil action or investigation
201 involving a violation of this act, except as provided in
202 subsection (b), the Office of the Attorney General shall
203 receive reasonable attorney fees and costs from the
204 nonprevailing party.

205 (b) In any civil litigation initiated by the division
206 resulting in a judgment or administrative order, the court may
207 award to the prevailing party reasonable attorney fees and
208 costs if the court finds that there was a complete absence of
209 a justiciable issue of either law or fact raised by the losing
210 party or if the court finds bad faith on the part of the
211 losing party.

212 (c) The attorney for the prevailing party shall submit
213 a sworn affidavit of his or her time spent on the case and his
214 or her costs incurred.

215 Section 11. (a) An individual shall have a private
216 cause of action against a person who violates Section 3 if the
217 individual is a parent or guardian of a minor and, as a result
218 of the violation of Section 3, the minor accessed obscene
219 material or material harmful to minors.

220 (b) In addition to any other penalties or remedies
221 provided under law, the individual may recover compensatory
222 damages, actual costs, court costs, and attorney fees.

223 (c) Any violation of this act shall also be considered
224 a violation of the Deceptive Trade Practices Act, Chapter 19,



HB441 INTRODUCED

225 Title 8, Code of Alabama 1975.

226 Section 12. Although this bill would have as its
227 purpose or effect the requirement of a new or increased
228 expenditure of local funds, the bill is excluded from further
229 requirements and application under Section 111.05 of the
230 Constitution of Alabama of 2022, because the bill defines a
231 new crime or amends the definition of an existing crime.

232 Section 13. This act shall become effective on the
233 first day of the third month following its passage and
234 approval by the Governor, or its otherwise becoming law.