RUWWNY-1

By Representatives Robbins, Kiel, Stadthagen

RFD: Judiciary

First Read: 09-May-23

2023 Regular Session
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
provides a local source of revenue, to the entity for
the purpose.

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

A BILL
TO BE ENTITLED
AN ACT

Relating to consumer protection; to provide legislative
findings; to provide definitions; to provide prohibitions on
the online distribution of material harmful to minors; to
require a license for the distribution of material harmful to
minors; and to provide civil and criminal penalties for
violations; 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. The Legislature finds and declares the
following:
The pervasive use of pornography is creating a public health crisis.

Pornography is contributing to the hypersexualization of children and teens in our society.

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

Pornography treats people as objects and commodities for the viewer's use.

Pornography normalizes violence and abuse, often depicts rape and abuse as being harmless fun, and increases the demand for sex trafficking, prostitution, and child pornography.

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

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

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

(2) DISTRIBUTE. To issue, sell, give, provide, deliver,
transfer, circulate, or disseminate online.

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

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

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

(6) NEWS-GATHERING ORGANIZATION. Any of the following:
   a. A newspaper, news publication, or news source, printed or on an online platform, of current news and public interest.
   b. A radio broadcast station, television broadcast station, or cable television operator.

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

(8) REASONABLE AGE VERIFICATION METHODS. Verifying that the individual seeking to access the material is 18 years of age or older by requiring the person attempting to access the material to comply with a commercial age verification system that verifies age in one or more of the following ways:
   b. Any commercially reasonable method that relies on public or private transactional data to verify the age of the individual attempting to access the information is at least 18 years of age or older.

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

(10) TRANSACTIONAL DATA. A sequence of information that
documents an exchange, agreement, or transfer between an
individual, commercial entity, or third party used for the
purpose of satisfying a request or event. The term includes,
but is not limited to, records from mortgage, education, and
employment entities.

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

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

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

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

Section 5. Nothing in this act shall apply to a bona
fide broadcast, website video, report, or event of a news-gathering organization and shall not be construed to affect the rights of any news-gathering organization.

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

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

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

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

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

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

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

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

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

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

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

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

Section 9. (a) If the Attorney General has reason to believe that a person has engaged in, or is engaging in, a practice that violates this act, he or she may administer oaths and affirmations, subpoena witnesses or matter, and collect evidence. The subpoena shall inform the party served of his or her rights under this subsection.
(b) The Attorney General may apply for an emergency injunction or other necessary relief to enjoin any violation of Section 3 or Section 4 until the violation is cured.

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

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

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

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

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

(c) Any violation of this act shall also be considered a violation of the Deceptive Trade Practices Act, Chapter 19,
Title 8, Code of Alabama 1975.

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

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