HB164 ENROLLED



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



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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 material harmful to minors through certain adult websites, 6 7 applications, and digital and virtual platforms; to prohibit the retention of certain personally identifying information; 8 9 to assess an additional tax on the gross proceeds received through sales, distribution, memberships, subscriptions, and 10 11 performances of material deemed harmful to minors; to require notice to be given of the dangers of pornography under certain 12 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 written consent to distribute a private image of another, with 16 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 or increased expenditure of local funds within the meaning of 20 21 Section 111.05 of the Constitution of Alabama of 2022. BE IT ENACTED BY THE LEGISLATURE OF ALABAMA: 22

- 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.



- 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 commodities for the viewer's use.

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- (5) 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.
 - (6) 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 minors and to educate individuals and families concerning its very serious harms.
- Section 2. As used in Sections 1 through 14 of this 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.
- (2) COMMERCIAL ENTITY. The term includes corporations,
 limited liability companies, partnerships, limited
 partnerships, sole proprietorships, or other legally
 recognized entities.



- 57 (3) CONSUMER INTEREST DIVISION. The Consumer Interest
 58 Division of the Office of the Attorney General.
- (4) DISTRIBUTE. To issue, sell, give, provide, deliver,transfer, circulate, or disseminate.
- 61 (5) HARMFUL TO MINORS. The term as defined under 62 Section 13A-12-200.1, Code of Alabama 1975.
 - (6) MINOR. An individual under 18 years of age.
- (7) NEWS-GATHERING ORGANIZATION. Any of the following:
- a. A newspaper, news publication, or other news source, whether in printed or electronic format, of current news and public interest.
- b. A radio broadcast station, television broadcaststation, or cable television operator.
- 70 (8) PUBLISH. To communicate or make information 71 available to another person through an online platform.
- (9) REASONABLE AGE-VERIFICATION METHOD. Any
 commercially available software, application, program, or
 methodology that, when enabled, provides reasonable assurances
 that any individual accessing certain published material is 18
 years of age or older.
- 77 (10) SUBSTANTIAL PORTION. More than 33 1/3 percent.
- Section 3. (a) Any commercial entity that knowingly and intentionally publishes or distributes sexual material harmful to minors through an adult website shall use a reasonable age-verification method to provide reasonable assurance that
- 82 individuals under 18 years of age cannot access the material
- 83 harmful to minors.

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



- 85 news-gathering organization.
- 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
- 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



- and punitive damages, court costs, and reasonable attorney's fees. If the injured individual is a minor, then a parent or
- 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.
- (c) Upon a finding by the court that a violation of
 Section 3, Section 8, or Section 9 has occurred, the Attorney
 General, upon petition to the court, may recover a civil
 penalty up to ten thousand dollars (\$10,000) per violation.
- Section 7. In addition to any other penalty provided by law, any violation of Section 3, Section 8, or Section 9 shall be considered a violation of the Deceptive Trade Practices Act under Chapter 19 of Title 8, Code of Alabama 1975.

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



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 landing page of the adult website on which sexual material 145 146 harmful to minors is published or distributed and all 147 advertisements thereof: "ALABAMA HEALTH AND HUMAN SERVICES WARNING: Pornography 148 149 is potentially biologically addictive, is proven to harm human brain development, desensitizes brain reward circuits, 150 151 increases conditioned responses, and weakens brain function." "ALABAMA HEALTH AND HUMAN SERVICES WARNING: Exposure to 152 153 this content is associated with low self-esteem and body 154 image, eating disorders, impaired brain development, and other 155 emotional and mental illnesses." "ALABAMA HEALTH AND HUMAN SERVICES WARNING: Pornography 156 157 increases the demand for prostitution, child exploitation, and 158 child pornography." (2) Display the following notice on every page of the 159 160 adult website: 161 "U.S. SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION HELPLINE: 162 "1-800-662-HELP (4357) 163 164 "THIS HELPLINE IS A FREE, CONFIDENTIAL INFORMATION 165 SERVICE (IN ENGLISH OR SPANISH) OPEN 24 HOURS PER DAY, FOR INDIVIDUALS AND FAMILY MEMBERS FACING MENTAL HEALTH OR 166 SUBSTANCE USE DISORDERS. THE SERVICE PROVIDES REFERRAL TO 167

LOCAL TREATMENT FACILITIES, SUPPORT GROUPS, AND



169 COMMUNITY-BASED ORGANIZATIONS."

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- 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 commercial entity operating an adult website for all sales, 178 179 distributions, memberships, subscriptions, performances, and all other content amounting to material harmful to minors that 180 is produced, sold, filmed, generated, or otherwise based in 181 182 this state.

- (b) The tax levied by this section shall be collected by the State Department of Revenue at the same time and in the same manner as state sales and use taxes are collected. On or prior to the date the tax is due, each person subject to the tax shall file with the department a report in the form 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 41-19-1192 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, including prevention, treatment, and recovery services and 195 196 supports.



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

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- (a) 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 depicted person individual has not consented in writing to the transmission and the depicted person_individual had a reasonable expectation of privacy against transmission of the private image.
- (b) For purposes of this section, "private image" means a photograph, digital image, video, film, or other recording 209 210 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 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 created it or consented to its creation believing that it 223 224 would remain confidential.



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

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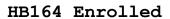
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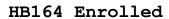
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- 227 (2) There is no reasonable expectation of privacy 228 against the transmission of a private image made voluntarily 229 in a public setting or made with prior written consent in a 230 commercial setting.
- (d) It is a defense to distributing a private image if the distribution of the private image was made in the public 233 interest, including, but not limited to, the reporting of unlawful conduct; the lawful and common practices of law enforcement, legal proceedings, or medical treatment; or a 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 consent required by this section. 251
 - (h) No Internet service provider, or its affiliates or





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	<pre>image."</pre>
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.





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286]	President and Presiding Officer	of the Senate
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292	was passe	d by the House 29-Feb-24, as ar	mended.
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