HB168

YTY1N66-1

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

RFD: Judiciary

First Read: 14-Feb-24

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

dependent.

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

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

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

This bill would direct the State Board of

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

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

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 section. 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 section.

A BILL

TO BE ENTITLED

AN ACT

Relating to child sexual abuse material; to amend Sections 13A-6-240, as last amended by Act 2023-464, 2023 Regular Session, 13A-12-190, 13A-12-191, 13A-12-192, 13A-12-193, 13A-12-194, 13A-12-196, 13A-12-197, and 13A-12-198, Code of Alabama 1975; to further provide for the age of a child for offenses involving child sexual abuse material; to provide a cause of action for certain offenses involving child sexual abuse material; to authorize a court to award punitive damages against an individual who commits certain offenses involving child sexual abuse material; to direct the State Board of Education to require local school boards to develop policies related to certain crimes; to repeal Section 13A-12-195, Code of Alabama 1975, relating to the commercial exploitation of child sexual abuse material; 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. This act shall be known and may be cited as the Alabama Child Protection Act of 2024.

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

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

"§13A-6-240

(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 to the transmission and the depicted ~~person~~ individual had a reasonable expectation of privacy against transmission of the private image.

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

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

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

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

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

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

(d) It is a defense to distributing a private image if the distribution of the private image was made in the public 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 private image.

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

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

"§13A-12-190

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~2. Is patently offensive.~~

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

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

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

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

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

visual depiction.

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

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

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

"§13A-12-191

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

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

conduct shall be guilty of a Class B felony."

"§13A-12-192

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

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

"§13A-12-193

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

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

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

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

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

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

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

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

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

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

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

"§13A-12-194

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

"§13A-12-196

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

"§13A-12-197

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

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

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

"§13A-12-198

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

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

(1) Distributing a private image, pursuant to Section

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

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

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

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

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

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

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

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

(1) The full actual damages incurred.

(2) Court costs and reasonable attorney fees.

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

b. Punitive damages awarded pursuant to paragraph a.

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

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

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

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

(3) Broadly disseminate the policy following its adoption.

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

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

Section 7. 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 8. This act shall become effective on October 1, 2024.