HB164

25GWSSK-2

By Representatives Robbins, DuBose, Faulkner

RFD: Judiciary

First Read: 14-Feb-24

A BILL

TO BE ENTITLED

AN ACT

Relating to consumer protection; to provide legislative findings; to provide definitions; to provide age-verification requirements for the distribution of sexual material harmful to minors through certain adult websites, applications, and digital and virtual platforms; to prohibit the retention of certain personally identifying information; to assess an additional tax on the gross proceeds received through sales, distribution, memberships, subscriptions, and performances of material deemed harmful to minors; to require notice to be given of the dangers of pornography under certain conditions; to provide civil and criminal penalties for violations; to amend Section 13A-6-240, Code of Alabama 1975, as amended by Act 2023-464, 2023 Regular Session, to require written consent to distribute a private image of another, with exceptions; and to further provide for the enforcement authority of the Attorney General; 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:

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

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

(3) 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.

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

(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:

(1) ADULT WEBSITE. A website, application, or digital or virtual platform that uses the Internet to facilitate the

dissemination of pictures, videos, or other content, a substantial portion of which is sexual material harmful to minors.

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

(3) CONSUMER INTEREST DIVISION. The Consumer Interest Division of the Office of the Attorney General.

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

(5) HARMFUL TO MINORS. The term as defined under 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 broadcast station, or cable television operator.

(8) PUBLISH. To communicate or make information 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.

(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 individuals under 18 years of age cannot access the material harmful to minors.

(b) Nothing in this section shall apply to a bona fide news-gathering organization.

Section 4. (a) Any commercial entity or third party that performs the required age-verification under Section 3 shall not retain any personally identifying information of the individual after access has been granted to the sexual 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.

(c) Nothing in this section shall apply to a bona fide news-gathering organization.

Section 5. No Internet service provider, or its affiliates or subsidiaries, search engine, or cloud service provider shall be held to have violated Sections 1 through 10 of this act or Section 13A-6-240, Code of Alabama 1975, 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 sexual material harmful to minors.

Section 6. (a) Any individual injured by a violation of Section 3, Section 8, or Section 9 may bring a civil action 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.

(b) Upon commencement of any action brought under this section, the clerk of the court shall mail a copy of the complaint or other initial pleading to the Attorney General and upon entry of any judgment or decree in the action, shall mail a copy of 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.

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.

(b) The written consent required by this section shall be signed by the individual depicted and sworn to by a notary public. The commercial entity shall maintain records of the written consent for not less than five calendar years following the publication or distribution of the private image.

Section 9. (a) A commercial entity required to use reasonable age verification methods under Section 3 shall do all of the following:

(1) Display the following notices on the home or landing page of the adult website on which sexual material harmful to minors is published or distributed and all advertisements thereof:

"ALABAMA HEALTH AND HUMAN SERVICES WARNING: Pornography is potentially biologically addictive, is proven to harm human brain development, desensitizes brain reward circuits, increases conditioned responses, and weakens brain function."

"ALABAMA HEALTH AND HUMAN SERVICES WARNING: Exposure to this content is associated with low self-esteem and body image, eating disorders, impaired brain development, and other emotional and mental illnesses."

"ALABAMA HEALTH AND HUMAN SERVICES WARNING: Pornography increases the demand for prostitution, child exploitation, and child pornography."

(2) Display the following notice on every page of the adult website:

"U.S. SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES

ADMINISTRATION HELPLINE:

"1-800-662-HELP (4357)

"THIS HELPLINE IS A FREE, CONFIDENTIAL INFORMATION SERVICE (IN ENGLISH OR SPANISH) OPEN 24 HOURS PER DAY, FOR INDIVIDUALS AND FAMILY MEMBERS FACING MENTAL HEALTH OR SUBSTANCE USE DISORDERS. THE SERVICE PROVIDES REFERRAL TO LOCAL TREATMENT FACILITIES, SUPPORT GROUPS, AND COMMUNITY-BASED ORGANIZATIONS."

(b) A violation of this section shall be punished as provided under Section 6 or Section 7.

(c) Each notice required under this section shall be displayed in 14 point font or greater and in a conspicuous manner.

Section 10. (a) In addition to all other taxes of every kind, there is levied and shall be collected a tax at the rate of 10 percent upon the gross receipts of any commercial entity operating an adult website for all sales, distributions, memberships, subscriptions, performances, and all other content amounting to material harmful to minors that is produced, sold, filmed, generated, or otherwise based in 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.

(c) Any taxes collected under this section 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, and shall be distributed to the Department of Mental Health for the care and treatment of individuals with behavioral health needs, including prevention, treatment, and recovery services and supports.

Section 11. Section 13A-6-240, Code of Alabama 1975, as amended by Act 2023-464, 2023 Regular Session, is 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 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 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~~sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, ~~as defined in Section 13A-12-190,~~ genital nudity, or other sexual conduct, as those terms are defined under Section 13A-12-190. 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 setting or made with prior written consent in a 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.

(g) If the Attorney General has reason to believe a person has engaged in, or is engaging in, a violation of this section, the Attorney General may petition for an emergency injunction or other necessary relief to enjoin the violation, and may order the person to provide a copy of the written consent required by this section.

(h) No Internet service provider, or its affiliates or subsidiaries, search engine, or cloud service provider shall be held to have violated this section 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 a private image."

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. The Department of Revenue may adopt rules for the implementation and administration of Sections 1 through 10 of this act.

Section 14. Section 10 of this act shall become effective September 1, 2025; the remaining sections of this act shall become effective on October 1, 2024.

House of Representatives

Read for the first time and referred 14-Feb-24
to the House of Representatives
committee on Judiciary

Read for the second time and placed 21-Feb-24
on the calendar:
4 amendments

Read for the third time and passed 29-Feb-24
as amended
Yeas 101
Nays 1
Abstains 0

John Treadwell
Clerk