

By: Representatives Eubanks, Williamson

To: Judiciary B

HOUSE BILL NO. 1091

1 AN ACT TO REQUIRE A COMMERCIAL ENTITY THAT PUBLISHES MATERIAL
 2 HARMFUL TO MINORS ON THE INTERNET TO BE HELD CIVILLY LIABLE
 3 WHENEVER THE ENTITY FAILS TO PERFORM REASONABLE AGE VERIFICATION
 4 METHODS ON PERSONS SEEKING ACCESS TO THE MATERIAL; TO PROHIBIT A
 5 COMMERCIAL ENTITY FROM RETAINING IDENTIFYING INFORMATION OF
 6 PERSONS SEEKING ACCESS TO THE MATERIAL; TO DECLARE LEGISLATIVE
 7 FINDINGS; TO DEFINE CERTAIN TERMS; AND FOR RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 **SECTION 1.** (1) The Legislature finds and declares the
 10 following:

11 (a) Pornography is creating a public health crisis and
 12 having a corroding influence on minors.

13 (b) Due to advances in technology, the universal
 14 availability of the Internet, and limited age verification
 15 requirements, minors are exposed to pornography earlier in age.

16 (c) Pornography contributes to the sexualization of
 17 teens and prepubescent children and may lead to low self-esteem,
 18 body image disorders, an increase in problematic sexual activity
 19 at younger ages, and increased desire among adolescents to engage
 20 in risky sexual behavior.



21 (d) Pornography also may impact brain development and
22 functioning, contribute to emotional and medical illnesses, shape
23 deviant sexual arousal, and lead to difficulty in forming or
24 maintaining positive, intimate relationships, as well as promoting
25 problematic or harmful sexual behaviors and addiction.

26 (2) The purpose of this section is to provide a civil remedy
27 for damages against commercial entities that distribute material
28 harmful to minors.

29 (3) For purposes of this section, the following words and
30 phrases have the meaning ascribed in this subsection unless the
31 context clearly requires otherwise:

32 (a) "Commercial entity" means a corporation, limited
33 liability company, partnership, limited partnership, sole
34 proprietorship or other legally recognized entity.

35 (b) "Distribute" means to issue, sell, give, provide,
36 deliver, transfer, transmute, circulate or disseminate by any
37 means.

38 (c) "Internet" means the international computer network
39 of both federal and non-federal interoperable packet switched data
40 networks.

41 (d) "Material harmful to minors" means all of the
42 following:

43 (i) Material that the average person would find,
44 applying contemporary community standards and taking the material



45 as a whole and with respect to minors, is designed to appeal to,
46 or is designed to pander to, the prurient interest;

47 (ii) Material that exploits, is devoted to, or
48 principally consists of descriptions of actual, simulated, or
49 animated display or depiction of any of the following in a manner
50 patently offensive with respect to minors:

51 1. Pubic hair, anus, vulva, genitals or
52 nipple of the female breast;

53 2. Touching, caressing or fondling of
54 nipples, breasts, buttocks, anuses or genitals; or

55 3. Sexual intercourse, masturbation, sodomy,
56 bestiality, oral copulation, flagellation, excretory functions,
57 exhibitions or any other sexual act; and

58 (iii) Material, when taken as a whole, lacking
59 serious literary, artistic, political or scientific value for
60 minors.

61 (e) "Minor" means a person under the age of eighteen
62 (18) years.

63 (f) "News-gathering organization" means any of the
64 following:

65 (i) A news publication or news source of current
66 news and public interest, whether printed or on an online or
67 mobile platform; or

68 (ii) A radio broadcast station, television
69 broadcast station, cable television operator or wire service.



70 (g) "Publish" means to communicate or make information
71 available to another person or entity on a publicly available
72 Internet website.

73 (h) "Reasonable age verification method" means a method
74 to verify that the person seeking to access the material is
75 eighteen (18) years of age or older by using one (1) of the
76 following methods:

77 (i) Provide an identification card in electronic
78 format, as provided for in Section 45-35-3; or

79 (ii) Require the person attempting to access the
80 material to comply with a commercial age verification system that
81 verifies in one or more of the following ways:

82 1. Government-issued identification; or

83 2. A commercially reasonable method that
84 relies on public or private transactional data to verify that the
85 age of the person attempting to access the information is at least
86 eighteen (18) years.

87 (i) "Substantial portion" means more than thirty-three
88 and one-third percent (33 1/3%) of total material on a website
89 which is material harmful to minors.

90 (j) "Transactional data" means a sequence of
91 information that documents an exchange, agreement or transfer
92 between an individual, commercial entity or third party used for
93 the purpose of satisfying a request or event. Transactional data



94 includes, but is not limited to, records from mortgage, education
95 and employment entities.

96 (4) (a) A commercial entity that knowingly and
97 intentionally publishes or distributes material harmful to minors
98 on the internet from a website that contains a substantial portion
99 of such material must be held liable if the entity fails to
100 perform reasonable age verification methods to verify the age of
101 individuals attempting to access the material.

102 (b) A commercial entity or third party that performs
103 the required age verification may not retain any identifying
104 information of the individual after access has been granted to the
105 material.

106 (c) (i) A commercial entity that is found to have
107 violated this section is liable to an individual for damages
108 resulting from a minor's accessing the material, including court
109 costs and reasonable attorney fees as ordered by the court.

110 (ii) A commercial entity that is found to
111 knowingly have retained identifying information of the individual
112 after access has been granted to the individual is liable to the
113 individual for damages resulting from retaining the identifying
114 information, including court costs and reasonable attorney fees as
115 ordered by the court.

116 (5) (a) This section does not apply to a bona fide news or
117 public interest broadcast, website video, report, or event and may



118 not be construed to affect the rights of a news-gathering
119 organization.

120 (b) An Internet service provider or its affiliates or
121 subsidiaries, search engine, or cloud service provider may not be
122 held to have violated this section solely for providing access or
123 connection to or from a website or other information or content on
124 the Internet or a facility, system or network not under that
125 provider's control, including transmission, downloading,
126 intermediate storage, access software or other, to the extent the
127 provider is not responsible for the creation of the content of the
128 communication that constitutes material harmful to minors.

129 **SECTION 2.** This act shall take effect and be in force from
130 and after July 1, 2023.

