

2023 Regular Session

HOUSE BILL NO. 77

BY REPRESENTATIVES SCHLEGEL, AMEDEE, BACALA, BAGLEY, BUTLER, CARRIER, CREWS, DAVIS, ECHOLS, EDMONDS, EDMONSTON, EMERSON, FARNUM, FIRMENT, FONTENOT, FREIBERG, GAROFALO, GOUDEAU, HARRIS, HODGES, HORTON, ILLG, IVEY, MIKE JOHNSON, KERNER, MACK, MCMAHEN, MIGUEZ, MINCEY, MOORE, CHARLES OWEN, PRESSLY, RISER, ROMERO, SCHAMERHORN, SEABAUGH, ST. BLANC, STAGNI, TARVER, THOMAS, THOMPSON, VILLIO, AND WHITE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

ATTORNEY GENERAL: Provides for attorney general investigation for publishers and distributors of material harmful to minors

1 AN ACT

2 To enact Chapter 31-B of Title 51 of the Louisiana Revised Statutes of 1950, to be  
3 comprised of R.S. 51:2121, relative to liability for publishers and distributors of  
4 material harmful to minors; to provide for the investigation and pursuit of actions by  
5 the attorney general; to provide for civil penalties for failure to perform age  
6 verification; to provide for attorney fees and court costs; to provide for exceptions;  
7 to provide for definitions; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Chapter 31-B of Title 51 of the Louisiana Revised Statutes of 1950,  
10 comprised of R.S. 51:2121, is hereby enacted to read as follows:

11 CHAPTER 31-B. COMMERCIAL PUBLICATION AND  
12 DISTRIBUTION OF MATERIAL HARMFUL TO MINORS

13 §2121. Enforcement of age verification by publishers and distributors of material  
14 harmful to minors

15 A.(1) Any commercial entity that knowingly and intentionally publishes or  
16 distributes material harmful to minors on the internet from a website that contains  
17 a substantial portion of such material shall be subject to civil penalties as provided

1 in this Section if the entity fails to perform reasonable age verification methods to  
2 verify the age of individuals attempting to access the material.

3 (2) The attorney general may conduct an investigation of the alleged  
4 violation and initiate a civil action in the Nineteenth Judicial District Court for the  
5 parish of East Baton Rouge on behalf of the state to assess civil penalties. Prior to  
6 asserting a cause of action, the attorney general shall provide the commercial entity  
7 with a period of time of not less than thirty days to comply with this Section.

8 B.(1) Any commercial entity that violates this Section may be liable for a  
9 civil penalty, to be assessed by the court, of not more than five thousand dollars for  
10 each day of violation to be paid to the Department of Justice, in order to fund the  
11 investigation of cyber crimes involving the exploitation of children. In addition to  
12 the remedies provided in this Section, the attorney general may request and the court  
13 may impose an additional civil penalty not to exceed ten thousand dollars for each  
14 violation of this Section against any commercial entity found by the court to have  
15 knowingly failed to perform reasonable age verification methods to verify the age  
16 of individuals attempting to access the material. The civil penalty shall be paid to  
17 the Department of Justice in order to fund the investigation of cyber crimes involving  
18 the exploitation of children.

19 (2) Each violation may be treated as a separate violation or may be combined  
20 into one violation at the option of the attorney general.

21 (3) Any commercial entity that violates this Section may be liable to the  
22 attorney general for all costs, expenses, and fees related to investigations and  
23 proceedings associated with the violation, including attorney fees.

24 (4) If the court assesses a civil penalty pursuant to this Section, the  
25 Department of Justice shall be entitled to legal interest as provided in R.S. 9:3500  
26 from the date of imposition of the penalty until paid in full.

27 C.(1) This Section shall not apply to any bona fide news or public interest  
28 broadcast, website, video, report, or event and shall not be construed to affect the  
29 rights of any news-gathering organization.

1           (2) No internet service provider, or its affiliates or subsidiaries, search  
2           engine, or cloud service provider shall be held to have violated the provisions of this  
3           Section solely for providing access or connection to or from a website or other  
4           information or content on the internet or a facility, system, or network not under the  
5           control of that provider, including transmission, downloading, intermediate storage,  
6           access software, or other related capabilities, to the extent such provider is not  
7           responsible for the creation of the content of the communication that constitutes  
8           material harmful to minors.

9           D. For purposes of this Section:

10           (1) "Commercial entity" means corporations, limited liability companies,  
11           partnerships, limited partnerships, sole proprietorships, or other legally recognized  
12           entities.

13           (2) "Distribute" means to issue, sell, give, provide, deliver, transfer,  
14           transmute, circulate, or disseminate by any means.

15           (3) "Internet" means the international computer network of both federal and  
16           non-federal interoperable packet switched data networks.

17           (4) "Material harmful to minors" means all of the following:

18           (a) Any material that the average person, applying contemporary community  
19           standards would find, taking the material as a whole and with respect to minors, is  
20           designed to appeal to, or is designed to pander to, the prurient interest.

21           (b) Any of the following material that exploits, is devoted to, or principally  
22           consists of descriptions of actual, simulated, or animated display or depiction of any  
23           of the following, in a manner patently offensive with respect to minors:

24           (i) Pubic hair, anus, vulva, genitals, or nipple of the female breast.

25           (ii) Touching, caressing, or fondling of nipples, breasts, buttocks, anuses, or  
26           genitals.

27           (iii) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation,  
28           flagellation, excretory functions, exhibitions, or any other sexual act.

1           (c) The material taken as a whole lacks serious literary, artistic, political, or  
2           scientific value for minors.

3           (5) "Minor" means any person under the age of eighteen years.

4           (6) "News-gathering organization" means any of the following:

5           (a) An employee of a newspaper, news publication, or news source, printed  
6           or on an online or mobile platform, of current news and public interest, while  
7           operating as an employee as provided in this Subparagraph, who can provide  
8           documentation of such employment with the newspaper, news publication, or news  
9           source.

10          (b) A radio broadcast station, television broadcast station, cable television  
11          operator, wire service, or an employee thereof.

12          (7) "Publish" means to communicate or make information available to  
13          another person or entity on a publicly available internet website.

14          (8) "Reasonable age verification methods" means verifying that a person  
15          seeking to access the material is eighteen years of age or older by using any of the  
16          following methods:

17          (a) Providing a digitized identification card as defined in R.S. 51:3211.

18          (b) Requiring the person attempting to access the material to comply with  
19          a commercial age verification system that verifies in any of the following ways:

20          (i) Government-issued identification.

21          (ii) Any commercially reasonable method that relies on public or private  
22          transactional data to verify the age of the person attempting to access the information  
23          is at least eighteen years of age or older.

24          (9) "Substantial portion" means more than thirty-three and one-third percent  
25          of total material on a website, which meets the definition of "material harmful to  
26          minors" as defined by this Section.

27          Section 2. This Act shall be known and may be cited as the "Pornography Age  
28          Verification Enforcement Act" or the "PAVE Act".

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 77 Reengrossed

2023 Regular Session

Schlegel

**Abstract:** Provides for the attorney general investigation and pursuit of actions for commercial entities that knowingly and intentionally publish or distribute material harmful to minors and that fail to perform reasonable age verification.

Proposed law provides that commercial entities that knowingly and intentionally publish or distribute material harmful to minors shall be subject to civil fines if the entity fails to perform reasonable age verification methods to verify the age of individuals attempting to access the material.

Proposed law provides that the attorney general may conduct an investigation and initiate a civil action in the 19th J.D.C. for civil penalties. Proposed law provides that the attorney general shall provide the commercial entity with no less than 30 days to comply with reasonable age verification prior to initiating a civil action.

Proposed law authorizes the court to assess a civil penalty of not more than \$5,000 for each day of violation, and, for entities that knowingly failed to perform reasonable age verification, an additional civil penalty of \$10,000 per violation. The civil penalties shall be paid to the Department of Justice, in order to fund the investigation of cyber crimes involving the exploitation of children.

Proposed law provides that commercial entities in violation of proposed law may be liable to the attorney general for all costs, expenses, and fees related to the investigations and proceedings, as well as legal interest as provided in present law (R.S. 9:3500).

Present law (R.S. 9:3500) provides for the rates of legal and conventional interest.

Proposed law provides that bona fide news and public interest entities, internet service providers, their affiliates and subsidiaries, search engines, and cloud service providers shall be exempt from proposed law.

Proposed law defines "commercial entity", "distribute", "internet", "material harmful to minors", "minor", "news-gathering organization", "publish", "reasonable age verification methods", and "substantial portion".

Proposed law provides that proposed law shall be known and cited as the "Pornography Age Verification Enforcement Act" or the "PAVE Act".

(Adds R.S. 51:2121)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Commerce to the original bill:

1. Add a radio broadcast station, television broadcast station, cable television operator, and wire service to the definition of a news-gathering organization.
2. Add a chapter name.

3. Make technical changes.

The House Floor Amendments to the engrossed bill:

1. Permit instead of mandate the attorney general to hold liable any commercial entity that violates proposed law.
2. Change the definition of material harmful to minors to include patently offensive material as defined in present law.