

2022 Regular Session

HOUSE BILL NO. 142

BY REPRESENTATIVES SCHLEGEL, ADAMS, BACALA, EDMONSTON, FIRMENT, FONTENOT, FREIBERG, HODGES, HORTON, MIKE JOHNSON, MOORE, CHARLES OWEN, PHELPS, RISER, ROMERO, SCHAMERHORN, VILLIO, AND ZERINGUE AND SENATORS BARROW AND MIZELL

LIABILITY/CIVIL: Provides for liability for publishers and distributors of material harmful to minors

1 AN ACT

2 To enact R.S. 9:2800.28, relative to material harmful to minors; to provide for liability for
3 the publishing or distribution of material harmful to minors on the Internet; to
4 provide for reasonable age verification; to provide for legislative intent; to provide
5 for individual rights of action; to provide for attorney fees, court costs, and punitive
6 damages; to provide for exceptions; to provide for definitions; and to provide for
7 related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 9:2800.28 is hereby enacted to read as follows:

10 §2800.28. Liability for publishers and distributors of material harmful to minors

11 A. The provisions of this Section are intended to provide a civil remedy for
12 damages against commercial entities who distribute material harmful to minors. As
13 recognized in House Concurrent Resolution No. 100 of the 2017 Regular Session of
14 the Legislature and Senate Concurrent Resolution No. 56 of the 2019 Regular
15 Session of the Legislature, pornography is creating a public health crisis and having
16 a corroding influence on minors. Due to advances in technology, the universal
17 availability of the Internet, and limited age verification requirements, minors are
18 exposed to pornography earlier in age. Pornography contributes to the hyper-

1 sexualization of teens and prepubescent children and may lead to low self-esteem,
2 body image disorders, an increase in problematic sexual activity at younger ages, and
3 increased desire among adolescents to engage in risky sexual behavior. Pornography
4 may also impact brain development and functioning, contribute to emotional and
5 medical illnesses, shape deviant sexual arousal, and lead to difficulty in forming or
6 maintaining positive, intimate relationships, as well as promoting problematic or
7 harmful sexual behaviors and addiction.

8 B.(1) Any commercial entity that publishes or distributes material harmful
9 to minors on the Internet from a website that contains a substantial portion of such
10 material shall be held liable to an individual for damages resulting from a minor
11 accessing the material if the entity fails to place reasonable age verification methods
12 to verify the age of individuals attempting to access the material.

13 (2) Any commercial entity or third party that performs the required age
14 verification shall not retain any identifying information of the individual after access
15 has been granted to the material unless contractually agreed upon by the commercial
16 entity or third party and the individual.

17 (3)(a) Any commercial entity that is found to have violated this Section shall
18 be liable to an individual for damages, including reasonable court costs and attorney
19 fees. The court may also grant relief as appropriate for exemplary damages not to
20 exceed ten thousand dollars per violation for any commercial entity that fails to
21 perform the required age verification as provided by this Section.

22 (b) The court may grant additional relief as appropriate for exemplary
23 damages not to exceed ten thousand dollars per violation for any commercial entity
24 or third party that performs the required age verification as provided by this Section
25 and knowingly retains any identifying information of the individual after access has
26 been granted to the individual.

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 organizations.

1 (2) No internet service provider, or its affiliates or subsidiaries, shall be held
2 to have violated the provisions of this Section solely for providing access or
3 connection to or from a facility, system, or network not under that provider's control
4 including transmission, downloading, intermediate storage, access software, or other
5 related capabilities that are incidental to providing such access or connection that do
6 not include the creation of the content of the communication.

7 D. For purposes of this Section:

8 (1) "Commercial entity" includes corporations, limited liability companies,
9 partnerships, limited partnerships, sole proprietorships, or other legally recognized
10 entities.

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

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

15 (4) "Material harmful to minors" is defined as all of the following:

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

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

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

23 (ii) Touching, caressing, or fondling of nipples, breasts, buttocks, anuses, or
24 genitals.

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

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

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

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

2 (a) An employee of a newspaper, news publication, or news source, printed
3 or on an online or mobile platform, of current news and public interest, who can
4 provide documentation of such employment with the newspaper, news publication,
5 or news source.

6 (b) An employee of a radio broadcast station, television broadcast station,
7 cable television operator, or wire service who can provide documentation of such
8 employment.

9 (7) "Publish" means to communicate or make information available to
10 another person or entity on a publicly available Internet website.

11 (8) "Reasonable age verification methods" include verifying that the person
12 seeking to access the material is eighteen years of age or older by using any of the
13 following methods:

14 (a) Provide a digitized identification card as defined in R.S. 51:3211.

15 (b) Require the person attempting to access the material to comply with a
16 commercial age verification system that verifies in one or more of the following
17 ways:

18 (i) Government-issued identification.

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

22 (9) "Substantial portion" shall mean an online website that contains, or is
23 comprised of, more than thirty-three and one-third percent of material, which meets
24 the definition of "material harmful to minors" as defined by this Section.

25 (10) "Transactional data" means a sequence of information that documents
26 an exchange, agreement, or transfer between an individual, commercial entity, or
27 third party used for the purpose of satisfying a request or event. Transactional data
28 can include but is not limited to records from mortgage, education, and employment
29 entities.

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)]

HB 142 Engrossed

2022 Regular Session

Schlegel

Abstract: Provides for a private right of action against commercial entities who publish or distribute information harmful to minors on the Internet without placing reasonable age verification methods.

Proposed law provides for legislative intent including the public health concern and influence of pornography on minors.

Proposed law provides for a private right of action against commercial entities that publish or distribute material harmful to minors and fail to place reasonable verification methods to verify the age of individuals attempting to access the material.

Proposed law provides that reasonable verification methods include the following:

- (1) Digitized Identification Card as defined in R.S. 51:3211.
- (2) Compliance with a commercial age verification system that verifies in one or more of the following ways:
 - (a) Government-issued identification.
 - (b) Any commercial reasonable method that relies on public or private transactional data to verify the age the person attempting to access the information is at least eighteen years of age or older.

Present law (R.S. 51:3211) defines "digitized identification card" as a data file available on any mobile device which has connectivity to the internet through a state-approved application that allows the mobile device to download the data file from the Dept. of Public Safety and Corrections that contains all of the data elements visible on a license or identification card and displays the current status of the license or identification card.

Proposed law provides that the commercial entity or a third party shall not retain any identifying information after access has been granted to the individual.

Proposed law provides for damages, including court costs and attorney fees. Proposed law also provides for exemplary damages of up to \$10,000 per violation for any commercial entity or third party that knowingly retains any identifying information after access has been granted to the individual.

Proposed law exempts bona fide news or public interest broadcasts, website videos, reports, or events.

Proposed law exempts internet service providers or their affiliates or subsidiaries.

Proposed law provides definitions for "commercial entity", "distribute", "Internet", "material harmful to minors", "minor", "news-gathering organization", "publish", "reasonable verification methods", "substantial portion", and "transactional data".

(Adds R.S. 9:2800.28)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Add that the website must be comprised of a substantial portion of materials harmful to minors.
2. Define "substantial portion".
3. Exempt internet service providers from being held liable under proposed law.
4. Make technical changes.