

ACT No. 216

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

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

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

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

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

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

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

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

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

1 D. For purposes of this Section:

2 (1) "Commercial entity" means corporations, limited liability companies,
3 partnerships, limited partnerships, sole proprietorships, or other legally recognized
4 entities.

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

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

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

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

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

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

17 (ii) Touching, caressing, or fondling of nipples, breasts, buttocks, anuses, or
18 genitals.

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

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

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

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

25 (a) An employee of a newspaper, news publication, or news source, printed
26 or on an online or mobile platform, of current news and public interest, while
27 operating as an employee as provided in this Subparagraph, who can provide
28 documentation of such employment with the newspaper, news publication, or news
29 source.

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

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

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

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

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

11 (i) Government-issued identification.

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

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

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____