

CS FOR HOUSE BILL NO. 254(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/20/24

Referred: Rules

Sponsor(s): REPRESENTATIVES VANCE, Carpenter

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to liability for publishing or distributing pornography to minors on the**
2 **Internet."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 09.68 is amended by adding a new section to read:

5 **Sec. 09.68.140. Civil liability for publishing or distributing pornography to**
6 **minors on the Internet.** (a) A commercial entity that intentionally publishes or
7 distributes pornography on the Internet from an Internet website that contains a
8 substantial portion of pornography shall use a commercially reasonable age
9 verification method to verify that a person attempting to access the pornography is 18
10 years of age or older. A commercial entity that violates this subsection is liable to an
11 individual for damages resulting from a minor accessing the pornography. In this
12 subsection, "commercially reasonable age verification method" includes requiring the
13 person attempting to access the pornography to provide a digitized identification card,
14 requiring the person to comply with a commercial age verification system that verifies

1 age using government-issued identification, or another method that relies on public or
2 private transactional data.

3 (b) A commercial entity or third party may not retain identifying information
4 of an individual used to verify age under (a) of this section after access has been
5 granted to the pornography. A commercial entity that knowingly retains identifying
6 information of an individual after access has been granted to the individual is liable to
7 the individual for damages resulting from retaining the identifying information.

8 (c) The attorney general may investigate an alleged violation of (a) or (b) of
9 this section and may bring a civil action in superior court.

10 (d) In addition to damages under (a) or (b) of this section, a commercial entity
11 that knowingly violates (a) or (b) of this section is liable to the state in a civil action
12 for

13 (1) a civil penalty of \$10,000 for each day that the commercial entity is
14 in violation of (a) or (b) of this section;

15 (2) an additional civil penalty of not more than \$250,000 if, as a result
16 of the commercial entity's violation of (a) of this section, a minor accesses
17 pornography that the entity published or distributed; and

18 (3) full reasonable attorney fees and costs.

19 (e) When determining the amount of a civil penalty under (d)(2) of this
20 section, the superior court shall consider

21 (1) the seriousness of the violation, including the nature,
22 circumstances, extent, and gravity of the violation;

23 (2) the commercial entity's history of prior violations;

24 (3) the deterrent effect of the civil penalty;

25 (4) the economic effect of the civil penalty on the commercial entity;

26 (5) the commercial entity's knowledge of the requirements of this
27 section; and

28 (6) any other information that justice requires.

29 (f) This section does not apply to a news or public interest broadcast, Internet
30 website video, report, or event. This section may not be construed to affect the rights
31 of a

1 (1) printed, online, or mobile platform newspaper, news publication, or
2 news source of current news;

3 (2) radio broadcast station, television broadcast station, cable
4 television operator, or wire service; or

5 (3) an employee of an entity identified in (1) or (2) of this subsection.

6 (g) A commercial entity that is an Internet service provider, search engine,
7 cloud service provider, or affiliate or subsidiary of an Internet service provider is not
8 liable under this section if the entity

9 (1) is not responsible for the creation of the pornography; and

10 (2) solely provides access or connections to

11 (A) an Internet website;

12 (B) information or material on the Internet; or

13 (C) a system or network, not under the control of the entity, for
14 data transmission, intermediate storage, Internet access software, or another
15 service related to Internet access or connectivity.

16 (h) In this section,

17 (1) "commercial entity" includes a corporation, limited liability
18 company, partnership, limited partnership, sole proprietorship, or other entity
19 recognized by law;

20 (2) "distribute" means to issue, sell, give, provide, deliver, transfer,
21 transmit, circulate, or disseminate by any means;

22 (3) "Internet" means the international computer network of both
23 federal and nonfederal interoperable packet switched data networks;

24 (4) "minor" means a person under 18 years of age;

25 (5) "pornography" means material that

26 (A) the average person, applying contemporary community
27 standards, would find, taking the material as a whole and with respect to
28 minors, is designed to appeal to, or is designed to pander to, the prurient
29 interest;

30 (B) in a manner patently offensive with respect to minors,
31 exploits, is devoted to, or principally consists of a description or an actual,

1 simulated, or animated display or depiction of

2 (i) pubic hair, anuses, vulvas, genitals, or nipples of a
3 female breast;

4 (ii) touching, caressing, or fondling of nipples, breasts,
5 buttocks, anuses, or genitals; or

6 (iii) sexual intercourse, masturbation, sodomy,
7 bestiality, oral copulation, flagellation, excretory functions, exhibitions,
8 or any other sexual act; and

9 (C) when taken as a whole, lacks serious literary, artistic,
10 political, or scientific value for minors;

11 (6) "publish" means to communicate or make information available to
12 another person or entity on a publicly available Internet website;

13 (7) "substantial portion" means more than one-third of the total
14 material on an Internet website contains pornography;

15 (8) "transactional data" means a sequence of information that
16 documents an exchange, agreement, or transfer between an individual, commercial
17 entity, or third party used for the purpose of satisfying a request or event.