

Senate File 2159 - Introduced

SENATE FILE 2159

BY SALMON

A BILL FOR

1 An Act relating to materials used for prurient purposes,
2 including age verification requirements for certain commercial
3 entities, prohibitions on the publication, distribution,
4 creation, or development of prohibited material, and
5 prohibitions on child sexual exploitation material, and
6 providing civil penalties.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

unofficial

DIVISION I

PROHIBITED MATERIALS ON THE INTERNET

Section 1. NEW SECTION. **554J.1 Definitions.**

For purposes of this chapter:

1. "*Child sexual abuse material*" means the same as child pornography as that term is defined in 18 U.S.C. §2256.
2. "*Commercial entity*" means any entity or natural person that operates in whole or in part for the purpose of earning pecuniary gain, whether or not such gain is actually realized.
3. "*Creation or development*" includes the use of algorithms in a manner that a person knows allows, or is substantially likely to allow, an individual using an internet site to access prohibited material.
4. "*Digitized identification card*" means a data file described by all of the following:
 - a. The data file contains all of the data elements visible on the front and back of a state-issued license or identification card and displays, including but not limited to whether the license or identification card is currently valid.
 - b. The data file is available through the internet from a state-approved source that allows a mobile device to download the data file from a state agency or an authorized agent of a state agency.
5. "*Distribute*" means to issue, sell, give, provide, deliver, transfer, transmute, circulate, or disseminate by any means.
6. "*Information content provider*" means a person responsible, in whole or in part, for creating or developing information provided through an interactive computer service.
7. "*Interactive computer service*" means the same as defined in 47 U.S.C. §230.
8. "*Knowingly and intentionally*" means intentionally engaging in conduct, including the use of algorithms, in a manner that the actor knows will allow, or is substantially likely to allow, an internet site user to access certain content.
9. "*Material harmful to minors*" means all of the following:

1 a. Material that the average person, applying contemporary
2 community standards, would find taking the material as a whole
3 and with respect to minors, is designed to appeal to, or is
4 designed to pander to the prurient interest.

5 b. Material that exploits, is devoted to, or principally
6 consists of descriptions of actual, simulated, or animated
7 display or depiction of any of the following, in a manner
8 patently offensive with respect to minors:

9 (1) Pubic hair, anus, vulva, genitals, or nipple of the
10 female breast.

11 (2) Touching, caressing, or fondling of nipples, breasts,
12 buttocks, anuses, or genitals.

13 (3) Sexual intercourse, masturbation, sodomy, bestiality,
14 oral copulation, flagellation, excretory functions, exhibitions,
15 or any other sexual act.

16 c. Material that taken as a whole lacks serious literary,
17 artistic, political, or scientific value for minors.

18 10. "Minor" means an individual that is under eighteen years
19 of age.

20 11. "News-gathering organization" means any of the following,
21 or an employee of the following who is operating within the scope
22 of the employee's employment and who can provide documentation of
23 such employment:

24 a. A newspaper, news publication, or news source that is
25 printed, online, or available through a mobile platform.

26 b. A radio broadcast station.

27 c. A television broadcast station or cable television
28 operator.

29 d. A wire service.

30 12. "Obscene material" means all of the following:

31 a. Material that the average person, applying contemporary
32 community standards, would find taking the material as a whole,
33 lacks serious literary, artistic, political, or scientific value,
34 and is designed to appeal to, or is designed to pander to the
35 prurient interest.

1 b. Any of the following material that exploits, is devoted
2 to, or principally consists of descriptions of actual, simulated,
3 or animated display or depiction of any of the following, in a
4 manner patently offensive:

5 (1) Pubic hair, anus, vulva, genitals, or nipple of the
6 female breast.

7 (2) Touching, caressing, or fondling of nipples, breasts,
8 buttocks, anuses, or genitals.

9 (3) Sexual intercourse, masturbation, sodomy, bestiality,
10 oral copulation, flagellation, excretory functions, exhibitions,
11 or any other sexual act.

12 c. Material that taken as a whole lacks serious literary,
13 artistic, political, or scientific value.

14 13. "*Prohibited material*" means all of the following:

15 a. Child sexual abuse material.

16 b. Material harmful to minors that is publicly available and
17 can be accessed without reasonable age verification.

18 c. Obscene material.

19 14. "*Reasonable age verification*" means verifying that an
20 individual is not a minor by using any of the following:

21 a. Requiring the individual to provide a digitized
22 identification card or mobile identification.

23 b. Using an independent, third-party age verification service
24 that compares the personal information entered by an individual
25 to information available from a commercially available database,
26 or aggregate of databases, that is regularly used by government
27 agencies and businesses for the purpose of age and identity
28 verification.

29 c. Using a commercially reasonable method that relies on
30 public or private transactional data to verify the individual is
31 not a minor.

32 15. "*Transactional data*" means a sequence of information
33 that documents an exchange, agreement, or transfer between
34 an individual, a commercial entity, or a third party.

35 "*Transactional data*" includes but is not limited to records from

1 a mortgage, education, or an employer.

2 Sec. 2. NEW SECTION. **554J.2 Liability — material harmful**
3 **to minors — allowing or facilitating internet access.**

4 1. a. A commercial entity that knowingly and intentionally
5 facilitates access to material harmful to minors on an internet
6 site, including social media, of which more than one-third of
7 the content is material harmful to minors, shall use reasonable
8 age verification to ensure that a user attempting to access the
9 internet site is not a minor.

10 2. A commercial entity that distributes material harmful to
11 minors on an internet site shall use reasonable age verification
12 to ensure that a user attempting to access the internet site is
13 not a minor.

14 3. A commercial entity that knowingly and intentionally is
15 responsible, in whole or in part, for the creation or development
16 of material harmful to minors on an internet site shall use
17 reasonable age verification to ensure that a user attempting to
18 access the internet site is not a minor.

19 4. A commercial entity, or a third party that performs
20 reasonable age verification for a commercial entity, shall
21 not retain identifying information about an individual after
22 performing reasonable age verification on the individual.

23 5. a. A commercial entity that violates subsection 1, 2, or
24 3 shall be civilly liable to a minor for the minor's access to
25 material harmful to minors.

26 b. A parent, legal guardian, or custodian for a minor may
27 bring an action under this section on behalf of the minor.

28 c. A minor may be awarded actual damages, reasonable
29 attorney fees, reasonable expert witness fees, court costs, and
30 noneconomic damages not less than five thousand dollars per
31 violation.

32 6. A commercial entity or third party that violates
33 subsection 4 shall be civilly liable for actual damages,
34 reasonable attorney fees, and court costs incurred by an
35 individual as a result of the commercial entity or third party

1 retaining identifying information.

2 Sec. 3. NEW SECTION. **554J.3 Liability — internet**
3 **distributors, creators, developers — prohibited material.**

4 1. A person shall not knowingly and intentionally allow or
5 facilitate access to, distribute, create, or develop prohibited
6 material on an internet site.

7 2. a. A person that violates subsection 1 shall be civilly
8 liable to all of the following as applicable:

9 (1) A minor depicted in or exposed to child sexual abuse
10 material.

11 (2) An individual depicted in or exposed to obscene material
12 that is not child sexual abuse material.

13 b. A parent, legal guardian, or custodian for a minor may
14 bring an action under this section on behalf of the minor.

15 c. A person may be awarded actual damages, reasonable
16 attorney fees, reasonable expert witness fees, court costs, and
17 noneconomic damages not less than five thousand dollars per
18 violation.

19 Sec. 4. NEW SECTION. **554J.4 Exemptions.**

20 1. This chapter shall not apply to a bona fide news or public
21 interest broadcast, internet video, report, or similar event.

22 2. This chapter shall not be construed to affect the rights
23 of a news-gathering organization or require a news-gathering
24 organization to perform reasonable age verification.

25 3. a. An interactive computer service provider shall not
26 be liable under this chapter on account of any action taken
27 voluntarily and in good faith to remove or prevent access
28 to prohibited material, or to enable or make available to
29 information content providers or others the technical means to
30 block or prevent access to the prohibited material.

31 b. This subsection shall not limit an interactive computer
32 service provider's liability if any of the following apply:

33 (1) The interactive computer service provider knew it would
34 induce, and intended to induce, other persons to post prohibited
35 material on the interactive computer service provider's internet

1 site.

2 (2) The interactive computer service provider contributed to
3 the character of the prohibited material.

4 (3) The interactive computer service provider knew that
5 the interactive computer service provider allowed, or knew it
6 was substantially likely that the interactive computer service
7 provider allowed, users to access prohibited material.

8 (4) The interactive computer service provider otherwise
9 contributes, in whole or in part, to the creation or development
10 of prohibited material.

11 Sec. 5. NEW SECTION. **554J.5 Attorney general — powers.**

12 The attorney general may seek injunctive and other equitable
13 relief against a person that is in violation of this chapter.

14 Sec. 6. NEW SECTION. **554J.6 General provisions.**

15 1. This chapter is intended to create a statutory cause
16 of action for knowing and intentional acts in violation of
17 this chapter. The duties and liabilities created under this
18 chapter do not depend on whether the violator would be considered
19 a publisher or distributor of prohibited content or would be
20 considered in breach of a standard of care under one or more
21 common law causes of action.

22 2. An individual may assert a violation of this chapter as a
23 claim in any judicial or administrative proceeding without regard
24 to whether the proceeding is brought by or in the name of the
25 government, any private person, or any other party.

26 3. An action under this chapter may be commenced, and relief
27 may be granted, in a court of the state without regard to whether
28 the individual commencing the action has sought or exhausted
29 available administrative remedies.

30 4. Sovereign immunity shall not be an affirmative defense in
31 any action pursuant to this chapter.

32 5. Individual claims that satisfy the generally applicable
33 standards for joinder or class action elsewhere provided by law
34 or rules of court, as applicable, may combine their claims in a
35 single action.

1 6. A person that has violated this chapter in a manner
2 that satisfies the standards for imposition of punitive damages
3 elsewhere provided by law may be held liable for punitive
4 damages.

5 7. The remedies available under this chapter may be awarded
6 without regard to whether the conduct giving rise to the remedy
7 resulted in a criminal conviction.

8 8. In an action under this chapter, contributory fault shall
9 not bar a claimant's recovery, and no claimant shall be allocated
10 fault under chapter 668. One hundred percent of the fault in any
11 such action shall be allocated under section 668.3 to persons,
12 other than the claimant or claimants, found to be causally at
13 fault. No party may disclose to the trier of fact the impact of
14 this subsection.

15 9. A judge, agent, or employee of a court, or an attorney
16 or agent or employee of an attorney, who views obscene material,
17 or material that depicts, describes, or promotes child sexual
18 abuse material, is not criminally responsible or civilly liable
19 when viewing or possessing such material in good faith during
20 the course of a judicial process or the representation of a
21 client or potential client, and while acting within the scope
22 of such judicial process, representation, employment, or agency
23 relationship.

24 DIVISION II

25 CHILD SEXUAL EXPLOITATION MATERIAL

26 Sec. 7. Section 728.1, Code 2026, is amended by adding the
27 following new subsection:

28 NEW SUBSECTION. 01. "*Child sexual exploitation material*"
29 means an anatomically correct mannequin, robot, doll, device,
30 or image that is intended for use in sexual acts and that has
31 features that resemble a minor.

32 Sec. 8. NEW SECTION. **728.17 Devices and images resembling**
33 **minors.**

34 1. A person who knowingly buys, sells, delivers, possesses,
35 or distributes child sexual exploitation material violates this

1 section.

2 2. A person in violation of this section shall be subject to
3 a civil penalty in an amount not to exceed ten thousand dollars
4 for each violation. A civil penalty collected by the state under
5 this paragraph shall be deposited in the general fund of the
6 state.

7 3. a. An individual whose image or likeness is represented
8 by child sexual exploitation material shall have a cause of
9 action against a person who bought, sold, delivered, possessed,
10 or distributed the child sexual exploitation material that
11 represents the individual's image or likeness.

12 b. An individual with a cause of action under paragraph "a"
13 shall be entitled to actual damages, reasonable attorney fees,
14 reasonable expert witness fees, court costs, and noneconomic
15 damages in an amount not less than five thousand dollars per
16 violation.

17 EXPLANATION

18 The inclusion of this explanation does not constitute agreement with
19 the explanation's substance by the members of the general assembly.

20 This bill relates to materials used for prurient purposes.

21 DIVISION I — PROHIBITED MATERIALS ON THE INTERNET.

22 The bill defines "child sexual abuse material", "commercial
23 entity", "creation or development", "digitized identification
24 card", "distribute", "information content provider", "interactive
25 computer service", "knowingly and intentionally", "material
26 harmful to minors", "minor", "news-gathering organization",
27 "obscene material", "prohibited material", "reasonable age
28 verification", and "transactional data".

29 The bill provides that a commercial entity that knowingly
30 and intentionally publishes or distributes material harmful to
31 minors on an internet site, of which more than one-third of
32 the content is material harmful to minors, shall use reasonable
33 age verification to ensure that a user attempting to access
34 the internet site is not a minor. The bill makes the same
35 requirement for commercial entities that distribute material

1 harmful to minors on an internet site and commercial entities
2 that are responsible for the creation or development of material
3 harmful to minors.

4 The bill prohibits a commercial entity, or a third party that
5 performs reasonable age verification for a commercial entity,
6 from retaining identifying information about an individual after
7 performing reasonable age verification on the individual.

8 The bill makes a commercial entity that allows a minor to
9 access material harmful to minors civilly liable to the minor
10 as detailed in the bill. A commercial entity, or a third
11 party that performs reasonable age verification for a commercial
12 entity, will be civilly liable as detailed in the bill for
13 retaining identifying information after performing reasonable age
14 verification on an individual.

15 The bill prohibits any person from allowing or facilitating,
16 distributing, creating, or developing prohibited material on an
17 internet site, and makes a person in violation of this provision
18 of the bill civilly liable, as detailed in the bill, to a minor
19 depicted in or exposed to child sexual abuse material, or an
20 individual depicted in or exposed to obscene material that is not
21 child sexual abuse material.

22 The bill exempts bona fide news or public interest broadcasts,
23 internet videos, reports, or similar events from the bill's
24 provisions. The bill shall not be construed to affect the rights
25 of a news-gathering organization or require a news-gathering
26 organization to perform reasonable age verification.

27 The bill exempts an interactive computer service provider
28 (service provider) from liability under the bill on account
29 of any action taken voluntarily and in good faith to remove
30 or prevent access to prohibited material, or to enable or
31 make available to information content providers or others the
32 technical means to block or prevent access to the prohibited
33 material.

34 The bill details when a service provider is not exempt from
35 the bill.

1 The bill allows the attorney general to seek injunctive and
2 other equitable relief against a person in violation of the bill.

3 The bill is intended to create a statutory cause of action
4 for knowing and intentional acts in violation of the bill. The
5 duties and liabilities created in the bill do not depend on
6 whether a violator would be considered a publisher or distributor
7 of prohibited content or would be considered in breach of a
8 standard of care under one or more common law causes of action.

9 The bill allows an individual to assert a violation of the
10 bill as a claim in any judicial or administrative proceeding
11 without regard to whether the proceeding is brought by or in the
12 name of the government, any private person, or any other party.

13 The bill allows an action under the bill to commence, and
14 relief to be granted, in a court of the state without regard
15 to whether the individual commencing the action has sought or
16 exhausted available administrative remedies.

17 Sovereign immunity shall not be an affirmative defense in any
18 action pursuant to the bill.

19 The bill allows individual claims that satisfy the generally
20 applicable standards for joinder or class action elsewhere
21 provided by law or rules of court, as applicable, to combine
22 their claims in a single action.

23 The bill allows for the imposition of punitive damages if a
24 person violates the bill in a manner that satisfies the standards
25 for imposition of punitive damages elsewhere provided by law.

26 Remedies available under the bill may be awarded without
27 regard to whether the conduct giving rise to the remedy resulted
28 in a criminal conviction.

29 The bill does not allow contributory fault to bar a claimant's
30 recovery, and no claimant shall be allocated fault under Code
31 chapter 668 (liability in tort — comparative fault). One
32 hundred percent of the fault in any such action shall be
33 allocated to persons, other than the claimant or claimants, found
34 to be causally at fault. No party may disclose to the trier of
35 fact the impact of this provision.

1 The bill exempts a judge, agent or employee of a court, or an
2 attorney or agent or employee of an attorney, who views obscene
3 material, or material that depicts, describes, or promotes
4 child pornography or child sexual exploitation, from criminal
5 responsibility and civil liability when viewing or possessing
6 such material in good faith during the course of a judicial
7 process or the representation of a client or potential client,
8 and while acting within the scope of such judicial process,
9 representation, employment, or agency relationship.

10 DIVISION II — CHILD SEXUAL EXPLOITATION MATERIAL. The bill
11 defines "child sexual exploitation material" as an anatomically
12 correct mannequin, robot, doll, device, or image that is intended
13 for use in sexual acts and that has features that resemble a
14 minor.

15 A person who knowingly buys, sells, delivers, possesses,
16 or distributes child sexual exploitation material (CSEM) is in
17 violation of the bill. A person who violates this provision is
18 subject to a civil penalty in an amount not to exceed \$10,000
19 for each violation. Such a civil penalty collected by the state
20 shall be deposited in the general fund of the state.

21 The bill provides an individual whose image or likeness is
22 represented by CSEM a cause of action against a person who
23 bought, sold, delivered, possessed, or distributed the CSEM that
24 represents the individual's image or likeness, and allows the
25 individual to collect actual damages, reasonable attorney fees,
26 reasonable expert witness fees, court costs, and noneconomic
27 damages in an amount not less than \$5,000 per violation.