

By: Schatzline

H.B. No. 1375

A BILL TO BE ENTITLED

AN ACT

relating to civil liability for obscenity.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 98C to read as follows:

CHAPTER 98C. LIABILITY FOR OBSCENITY

Sec. 98C.001. DEFINITIONS. In this chapter:

(1) "Commercial entity" includes a corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legally recognized business entity.

(2) "Harmful material" has the meaning assigned by Section 43.24, Penal Code.

(3) "Minor" has the meaning assigned by Section 43.24, Penal Code.

(4) "News-gathering organization" includes:
(A) an employee of a newspaper, news publication, or news source, printed or on an online or mobile platform, of current news and public interest, who is acting within the course and scope of that employment and can provide documentation of that employment with the newspaper, news publication, or news source;
and

(B) an employee of a radio broadcast station, television broadcast station, cable television operator, or wire service who is acting within the course and scope of that employment

1 and can provide documentation of that employment.

2 (5) "Obscenity" means conduct that constitutes an
3 offense under Subchapter B, Chapter 43, Penal Code.

4 Sec. 98C.002. LIABILITY FOR OBSCENITY. A defendant is
5 liable, as provided by this chapter, to a person harmed for damages
6 arising from obscenity if the defendant:

7 (1) engages in the obscenity; or

8 (2) knowingly or intentionally benefits from
9 participating in an entity that engages in the obscenity.

10 Sec. 98C.003. COMMERCIAL ENTITY LIABILITY. A commercial
11 entity is liable, as provided by this chapter, to a person harmed
12 for damages arising from the distribution, transmission, or display
13 of harmful material to a minor if, knowing the character and content
14 of the material, the entity knowingly or intentionally benefits
15 from participating in the distribution, transmission, or display of
16 harmful material to a minor by facilitating, aiding, encouraging,
17 or contributing to the distribution, transmission, or display in a
18 manner that:

19 (1) is readily accessible to minors; or

20 (2) includes a minor's visual image, audio voice, or
21 participation in any manner.

22 Sec. 98C.004. SHAREHOLDER AND MEMBER LIABILITY. (a) This
23 section applies to a legal entity governed by Title 2, 3, or 7,
24 Business Organizations Code.

25 (b) Notwithstanding any provision of the Business
26 Organizations Code, a shareholder or member of a legal entity
27 described by Subsection (a) that is liable under this chapter is

1 jointly and severally liable with the entity to the person harmed by
2 the obscenity if the person demonstrates that the shareholder or
3 member caused the entity to be used for the purpose of engaging in
4 obscenity and that the conduct was for the direct personal benefit
5 of the shareholder or member.

6 Sec. 98C.005. PROHIBITED DEFENSES. It is not a defense to
7 liability under this chapter that the defendant:

8 (1) has been acquitted or has not been prosecuted or
9 convicted under Subchapter B, Chapter 43, Penal Code;

10 (2) has been convicted of a different offense or a
11 different type or class of offense for the conduct that is alleged
12 to give rise to liability under this chapter;

13 (3) claims ignorance or mistake of law;

14 (4) has a belief that the requirements of this chapter
15 are unconstitutional or were unconstitutional;

16 (5) relies on any court decision that has been
17 overruled on appeal or by a subsequent court, even if that court
18 decision had not been overruled when the defendant engaged in the
19 conduct that violates this chapter; or

20 (6) relies on any state or federal court decision that
21 is not binding on the court in which the action has been brought.

22 Sec. 98C.006. DAMAGES. (a) A court shall award a claimant
23 who prevails in an action under this chapter:

24 (1) actual damages, including damages for mental
25 anguish even if an injury other than mental anguish is not shown;

26 (2) court costs; and

27 (3) reasonable attorney's fees.

1 (b) In addition to an award under Subsection (a), a claimant
2 who prevails in an action under this chapter may recover exemplary
3 damages.

4 Sec. 98C.007. CAUSE OF ACTION CUMULATIVE. (a) The cause of
5 action created by this chapter is cumulative of any other remedy
6 provided by common law or statute.

7 (b) Each occurrence of obscenity that harms a person,
8 regardless of whether the occurrence is part of a pattern of
9 conduct, gives rise to a separate claim for civil liability under
10 this chapter.

11 Sec. 98C.008. JOINT AND SEVERAL LIABILITY. A person who
12 engages in conduct described by Section 98C.002 or 98C.003 and is
13 found liable under this chapter or other law for any amount of
14 damages arising from that conduct is jointly and severally liable
15 with any other defendant for the entire amount of damages arising
16 from that conduct.

17 Sec. 98C.009. LIBERAL CONSTRUCTION AND APPLICATION. (a)
18 This chapter shall be liberally construed and applied to promote
19 its underlying purpose to protect persons from obscenity and
20 provide adequate remedies to those who are harmed by obscenity.

21 (b) This chapter may not be construed to:

22 (1) wholly or partly repeal, either expressly or by
23 implication, any statute or part of a statute that prohibits
24 obscenity;

25 (2) restrict a political subdivision from regulating
26 or prohibiting obscenity in a manner that is at least as stringent
27 as the laws of this state; or

1 (3) legalize any conduct prohibited by this chapter or
2 Subchapter B, Chapter 43, Penal Code.

3 (c) This chapter does not apply to a bona fide news or public
4 interest broadcast, website video, report, or event and may not be
5 construed to affect the rights of a news-gathering organization.

6 (d) An Internet service provider, or its affiliates or
7 subsidiaries, a search engine, or a cloud service provider may not
8 be held to have violated this chapter solely for providing access or
9 connection to or from a website or other information or content on
10 the Internet or on a facility, system, or network not under that
11 provider's control, including transmission, downloading,
12 intermediate storage, access software, or other services to the
13 extent the provider or search engine is not responsible for the
14 creation of the content that constitutes the obscenity or harmful
15 material.

16 SECTION 2. (a) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137
17 (1996), in which in the context of determining the severability of a
18 state statute the United States Supreme Court held that an explicit
19 statement of legislative intent is controlling, it is the intent of
20 the legislature that every provision, section, subsection,
21 sentence, clause, phrase, or word in this Act, and every
22 application of the provisions in this Act, is severable from each
23 other.

24 (b) If any application of any statutory provision in this
25 Act to any person, group of persons, or circumstances is found by a
26 court to be invalid or unconstitutional, the remaining applications
27 of that statutory provision to all other persons and circumstances

1 shall be severed and may not be affected. All constitutionally
2 valid applications of this Act shall be severed from any
3 applications that a court finds to be unconstitutional or otherwise
4 invalid, leaving the valid applications in force, because it is the
5 legislature's intent and priority that the valid applications be
6 allowed to stand alone.

7 (c) Even if a reviewing court finds a substantial number of
8 a statute's applications under this Act to be unconstitutional,
9 judged in relation to this Act's plainly legitimate sweep, the
10 applications that do not presently violate the United States
11 Constitution or Texas Constitution shall be severed from the
12 remaining applications and shall remain in force, and shall be
13 treated as if the legislature had enacted a statute limited to the
14 persons, groups of persons, or circumstances for which the
15 statute's application does not violate the United States
16 Constitution or Texas Constitution.

17 (d) The legislature further declares that it would have
18 enacted this Act, and each provision, section, subsection,
19 sentence, clause, phrase, or word, and all constitutional
20 applications of this Act, irrespective of the fact that any
21 provision, section, subsection, sentence, clause, phrase, or word,
22 or applications of this Act, were to be declared unconstitutional.

23 (e) If any provision of this Act is found by any court to be
24 unconstitutionally vague, the applications of that provision that
25 do not present constitutional vagueness problems shall be severed
26 and remain in force.

27 (f) No court may decline to enforce the severability

1 requirements of Subsections (a), (b), (c), (d), and (e) of this
2 section on the ground that severance would rewrite the statute or
3 involve the court in legislative or lawmaking activity. A court
4 that declines to enforce or enjoins a state official from enforcing
5 a statutory provision does not rewrite a statute, as the statute
6 continues to contain the same words as before the court's decision.
7 A judicial injunction or declaration of unconstitutionality:

8 (1) is nothing more than an edict prohibiting
9 enforcement that may subsequently be vacated by a later court if
10 that court has a different understanding of the requirements of the
11 United States Constitution or Texas Constitution;

12 (2) is not a formal amendment of the language in a
13 statute; and

14 (3) no more rewrites a statute than a decision by the
15 executive not to enforce a duly enacted statute in a limited and
16 defined set of circumstances.

17 (g) If any federal or state court declares unconstitutional
18 or enjoins the enforcement of a provision in this Act and fails to
19 enforce the severability requirements of Subsections (a), (b), (c),
20 (d), (e), and (f) of this section, for any reason whatsoever, the
21 attorney general shall:

22 (1) adopt rules that enforce the requirements
23 described by this Act to the maximum possible extent while avoiding
24 the constitutional problems or other problems identified by the
25 federal or state court; and

26 (2) issue notice of those rules, not later than the
27 30th day after the date of the court ruling.

1 (h) If the attorney general fails to adopt the rules and
2 issue notice under Subsection (g) of this section, a person may
3 petition for a writ of mandamus requiring the attorney general to
4 adopt the rules and issue notice.

5 SECTION 3. The change in law made by this Act applies only
6 to a cause of action that accrues on or after the effective date of
7 this Act.

8 SECTION 4. This Act takes effect September 1, 2025.