

By: Toth

H.B. No. 2360

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the prosecution and punishment of the criminal offense  
3 of possession or promotion of lewd visual material depicting a  
4 child; increasing a criminal penalty.

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

6 SECTION 1. Section 43.262, Penal Code, is amended by  
7 amending Subsections (b) and (c) and adding Subsections (c-1) and  
8 (c-2) to read as follows:

9 (b) A person commits an offense if the person knowingly  
10 possesses, accesses with intent to view, or promotes visual  
11 material that:

12 (1) depicts the lewd exhibition of the genitals or  
13 pubic area of an unclothed, partially clothed, or clothed child who  
14 is younger than 18 years of age at the time the visual material was  
15 created; and

16 (2) appeals to the prurient interest in sex[~~, and~~  
17 [~~(3) has no serious literary, artistic, political, or~~  
18 ~~scientific value~~].

19 (c) Except as provided by Subsection (c-1) or (c-2), an [An]  
20 offense under this section is a state jail felony, except that the  
21 offense is:

22 (1) a felony of the third degree if it is shown on the  
23 trial of the offense that the person has been previously convicted  
24 one time of an offense under this section or Section 43.26; and

1           (2) a felony of the second degree if it is shown on the  
2 trial of the offense that the person has been previously convicted  
3 two or more times of an offense under this section or Section 43.26.

4           (c-1) Subject to Subsection (c-2), an offense under this  
5 section is a felony of the second degree if the offense is:

6                   (1) based on the promotion of visual material; and

7                   (2) committed by a corporation, association, limited  
8 liability company, or other entity or organization governed by the  
9 Business Organizations Code or an individual acting in the name of  
10 or in behalf of such an entity or organization.

11           (c-2) An offense otherwise punishable under Subsection  
12 (c-1) is a felony of the first degree if it is shown on the trial of  
13 the offense that the actor has been previously convicted one or more  
14 times of:

15                   (1) an offense punishable under Subsection (c-1); or

16                   (2) an offense under Section 43.26.

17           SECTION 2. The change in law made by this Act applies only  
18 to an offense committed on or after the effective date of this Act.  
19 An offense committed before the effective date of this Act is  
20 governed by the law in effect on the date the offense was committed,  
21 and the former law is continued in effect for that purpose. For  
22 purposes of this section, an offense was committed before the  
23 effective date of this Act if any element of the offense occurred  
24 before that date.

25           SECTION 3. This Act takes effect immediately if it receives  
26 a vote of two-thirds of all the members elected to each house, as  
27 provided by Section 39, Article III, Texas Constitution. If this

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- 1 Act does not receive the vote necessary for immediate effect, this
- 2 Act takes effect September 1, 2021.