

By: Schatzline

H.B. No. 3357

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

(2) "Information content provider" and "interactive computer service" have the meanings assigned by Section 43.01, Penal Code.

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

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

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

(1) engages in the obscenity; or

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

Sec. 98C.003. INFORMATION CONTENT PROVIDER AND INTERACTIVE COMPUTER SERVICE LIABILITY. An information content provider or

1 interactive computer service is liable, as provided by this
2 chapter, to a person harmed for damages arising from the
3 distribution, transmission, or display of harmful material to a
4 minor if, knowing the character and content of the material, the
5 provider or service knowingly or intentionally benefits from
6 participating in the distribution, transmission, or display of
7 harmful material to a minor by facilitating, aiding, encouraging,
8 or contributing to the distribution, transmission, or display in a
9 manner that:

- 10 (1) is readily accessible to minors; or
11 (2) includes a minor's visual image, audio voice, or
12 participation in any manner.

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

16 (b) Notwithstanding any provision of the Business
17 Organizations Code, a shareholder or member of a legal entity
18 described by Subsection (a) that is liable under this chapter is
19 jointly and severally liable with the entity to the person harmed by
20 the obscenity if the person demonstrates that the shareholder or
21 member caused the entity to be used for the purpose of engaging in
22 obscenity and that the conduct was for the direct personal benefit
23 of the shareholder or member.

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

- 26 (1) has been acquitted or has not been prosecuted or
27 convicted under Subchapter B, Chapter 43, Penal Code;

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

4 (3) claims ignorance or mistake of law;

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

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

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

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

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

17 (2) court costs; and

18 (3) reasonable attorney's fees.

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

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

25 (b) Each occurrence of obscenity that harms a person,
26 regardless of whether the occurrence is part of a pattern of
27 conduct, gives rise to a separate claim for civil liability under

1 this chapter.

2 Sec. 98C.008. JOINT AND SEVERAL LIABILITY. A person who
3 engages in conduct described by Section 98C.002 or 98C.003 and is
4 found liable under this chapter or other law for any amount of
5 damages arising from that conduct is jointly and severally liable
6 with any other defendant for the entire amount of damages arising
7 from that conduct.

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

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

13 (1) wholly or partly repeal, either expressly or by
14 implication, any statute or part of a statute that prohibits
15 obscenity;

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

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

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

1 other.

2 (b) If any application of any statutory provision in this
3 Act to any person, group of persons, or circumstances is found by a
4 court to be invalid or unconstitutional, the remaining applications
5 of that statutory provision to all other persons and circumstances
6 shall be severed and may not be affected. All constitutionally
7 valid applications of this Act shall be severed from any
8 applications that a court finds to be unconstitutional or otherwise
9 invalid, leaving the valid applications in force, because it is the
10 legislature's intent and priority that the valid applications be
11 allowed to stand alone.

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

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

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

5 (f) No court may decline to enforce the severability
6 requirements of Subsections (a), (b), (c), (d), and (e) of this
7 section on the ground that severance would rewrite the statute or
8 involve the court in legislative or lawmaking activity. A court
9 that declines to enforce or enjoins a state official from enforcing
10 a statutory provision does not rewrite a statute, as the statute
11 continues to contain the same words as before the court's decision.
12 A judicial injunction or declaration of unconstitutionality:

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

17 (2) is not a formal amendment of the language in a
18 statute; and

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

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

27 (1) adopt rules that enforce the requirements

1 described by this Act to the maximum possible extent while avoiding
2 the constitutional problems or other problems identified by the
3 federal or state court; and

4 (2) issue notice of those rules, not later than the
5 30th day after the date of the court ruling.

6 (h) If the attorney general fails to adopt the rules and
7 issue notice under Subsection (g) of this section, a person may
8 petition for a writ of mandamus requiring the attorney general to
9 adopt the rules and issue notice.

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

13 SECTION 4. This Act takes effect September 1, 2023.