

By: Schatzline

H.B. No. 1375

Substitute the following for H.B. No. 1375:

By: Leach

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

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

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

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

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

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

(3) claims ignorance or mistake of law;

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

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

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

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

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

(2) court costs; and

(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 (c) A prevailing defendant in an action brought under this
12 chapter may recover reasonable attorney's fees and court costs.

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

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

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

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

27 (2) restrict a political subdivision from regulating

1 or prohibiting obscenity in a manner that is at least as stringent
2 as the laws of this state; or

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

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

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

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

26 (b) If any application of any statutory provision in this
27 Act to any person, group of persons, or circumstances is found by a

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

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

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

25 (e) If any provision of this Act is found by any court to be
26 unconstitutionally vague, the applications of that provision that
27 do not present constitutional vagueness problems shall be severed

1 and remain in force.

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

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

14 (2) is not a formal amendment of the language in a
15 statute; and

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

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

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

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

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

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

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