

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

ENGROSSED SENATE BILL NO. 2380

Introduced by

Senators Boehm, Beard, Paulson

Representatives VanWinkle, Steiner, Klemin

1 A BILL for an Act to create and enact a new section to chapter 51-07 of the North Dakota
2 Century Code, relating to a commercial entity's liability for publishing or distributing sexual
3 material harmful to a minor; to provide a penalty; and to provide for application.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 51-07 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Liability for publishing or distributing sexual material harmful to minors - Age**
8 **verification requirement - Damages.**

9 1. As used in this section:

- 10 a. "Commercial entity" includes a corporation, limited liability company, partnership,
11 limited partnership, sole proprietorship, or other legally recognized business
12 entity.
- 13 b. "Distribute" means to issue, sell, give, provide, deliver, transfer, transmute,
14 circulate, or disseminate by any means.
- 15 c. "Minor" means an individual under eighteen years of age.
- 16 d. "News-gathering organization" means an employee of a:
17 (1) Newspaper, news publication, or news source, printed or on an online or
18 mobile platform, of current news and public interest, who is acting within the
19 scope of employment and can provide documentation of employment with
20 the newspaper, news publication, or news source; or

- 1 (2) Radio broadcast station, television broadcast station, cable television
2 operator, or wire service, who is acting within the scope of employment and
3 can provide documentation of employment with the radio broadcast station,
4 television broadcast station, cable television operator, or wire service.
- 5 e. "Publish" means to communicate or make information available to another person
6 on a publicly available internet website.
- 7 f. "Reasonable age verification methods" includes verifying the individual seeking to
8 access the material is eighteen years of age or older by using:
- 9 (1) A digitized identification card; or
10 (2) Requiring the individual attempting to access the material to comply with a
11 commercial age verification system including the use of:
- 12 (a) Government-issued identification;
13 (b) A commercially available database regularly used by a business or
14 government entity for the purpose of age and identity verification; or
15 (c) Any commercially reasonable method that relies on public or private
16 transactional data to verify the age of the individual attempting to
17 access the information is eighteen years of age or older.
- 18 g. "Sexual material harmful to a minor" includes material that:
- 19 (1) The average individual applying contemporary community standards would
20 find, taking the material as a whole and with respect to a minor, is designed
21 to appeal to or pander to the prurient interest;
- 22 (2) In a manner patently offensive with respect to a minor, exploits, is devoted
23 to, or principally consists of descriptions of actual, simulated, or animated
24 displays or depictions of:
- 25 (a) An individual's pubic hair, anus, genitals, or the nipple of the female
26 breast;
27 (b) Touching, caressing, or fondling of nipples, breasts, buttocks, anuses,
28 or genitals; or
29 (c) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation,
30 flagellation, excretory functions, exhibitions, or any other sexual act;
31 and

- 1 (3) Taken as a whole, lacks serious literary, artistic, political, or scientific value
2 for a minor.
- 3 h. "Substantial portion" means if more than thirty-three and one-third percent of total
4 material on a website is sexual material harmful to a minor.
- 5 i. "Transactional data" means a sequence of information that documents an
6 exchange, agreement, or transfer between an individual, commercial entity, or
7 third party used for the purpose of satisfying a request or event. The term
8 includes records from mortgage, education, and employment entities.
- 9 2. A commercial entity that knowingly publishes or distributes sexual material harmful to
10 a minor on the internet from a website that contains a substantial portion of the
11 material must be held liable if the entity fails to perform reasonable age verification
12 methods to verify the age of an individual attempting to access the material.
- 13 3. A commercial entity or third party that performs the required age verification may not
14 retain any identifying information of the individual after access has been granted to the
15 material.
- 16 4. A commercial entity found to have violated subsection 2 or 3 is liable for damages.
- 17 5. A civil action may be brought against any commercial entity, or third party that
18 performs the required age verification on behalf of the commercial entity, by:
- 19 a. A parent or guardian whose minor child was allowed access to the material in
20 violation of subsection 2; or
- 21 b. An individual whose identifying information is retained in violation of subsection 3.
- 22 6. An individual authorized to bring a civil action under subsection 5 may seek and the
23 court may award:
- 24 a. An injunction to enjoin continued violation of this section;
- 25 b. Compensatory and exemplary damages; and
- 26 c. Costs and fees, including reasonable attorney fees.
- 27 7. This section does not apply to any bona fide news or public interest broadcast,
28 website video, report, or event, and may not be construed to affect the rights of any
29 news-gathering organization.
- 30 8. An internet service provider or its affiliates or subsidiaries, a search engine, ~~or~~ a cloud
31 service provider, or an application store, may not be held to have violated this section

1 solely for providing access or connection to or from a website or other information or
2 content on the internet or a facility, system, or network not under the provider's control,
3 including transmission, downloading, intermediate storage, access software, or other
4 forms of access or storage to the extent the provider is not responsible for the creation
5 of the content of the communication that constitutes sexual material harmful to a
6 minor.

7 **SECTION 2. APPLICATION.** This Act applies to websites accessed on or after the effective
8 date of this Act.