

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

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 mature~~
3 ~~content; to provide a penalty; and to provide an effective date.~~ for an Act to create and enact a
4 new section to chapter 51-07 of the North Dakota Century Code, relating to a commercial
5 entity's liability for publishing or distributing sexual material harmful to a minor; to provide a
6 penalty; and to provide for application.

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

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

10 ~~—~~ **Liability for publishing or distributing mature content – Age verification requirement –**

11 **Penalty.**

12 ~~—~~ 1. As used in this section:

13 ~~—~~ a. "Covered manufacturer" means a manufacturer of a device, operating system for
14 a device, or an application store.

15 ~~—~~ b. "Device" means an electronic tool or gadget designed for and capable of
16 communicating with other computers or devices across a computer network for
17 the purpose of transmitting, receiving, or storing data, including a desktop
18 computer, laptop computer, tablet, or cell phone.

- 1 ~~c. "Mature content" means actual or simulated sexual intercourse, sodomy,~~
2 ~~bestiality, oral copulation, flagellation, or excretory functions or exhibitions, or any~~
3 ~~other sexual act or sexually explicit conduct defined in 18 U.S.C. 2256.~~
- 4 ~~d. "Minor" means an individual under eighteen years of age.~~
- 5 ~~e. "Operating system provider" means an entity that develops, distributes, or~~
6 ~~maintains an operating system for a device. The term includes the design,~~
7 ~~programming, and supply of an operating system for various devices, including a~~
8 ~~smartphone, tablet, or other digital equipment.~~
- 9 ~~f. "Substantial portion" means more than one-third of the total material on a~~
10 ~~website, application, or online service.~~
- 11 ~~2. A covered manufacturer shall take commercially reasonable and technically feasible~~
12 ~~steps to:~~
- 13 ~~a. Determine or estimate the age of the primary user upon activation of a device;~~
14 ~~and~~
- 15 ~~b. Provide a website, application, application store, or online service with a digital~~
16 ~~signal notifying if a primary user is over or under eighteen years of age through a~~
17 ~~real-time applications programming interface.~~
- 18 ~~3. A covered manufacturer shall include in operating system updates the provisions of~~
19 ~~subdivision a of subsection 2 for any device sold before August 1, 2026.~~
- 20 ~~4. When a website, application, or online service makes available a substantial portion of~~
21 ~~mature content, the website, application, or online service shall:~~
- 22 ~~a. Recognize and receive digital age signals and block access to the website,~~
23 ~~application, or online service if an age signal is received indicating a user is~~
24 ~~under eighteen years of age.~~
- 25 ~~b. Provide a disclaimer that the website, application, or online service contains~~
26 ~~mature content; and~~
- 27 ~~c. Label the website, application, or online service as restricted to adults.~~
- 28 ~~5. When a website, application, or online service makes available less than a substantial~~
29 ~~portion of mature content, the website, application, or online service shall:~~

- 1 ~~a. Recognize and receive digital age signals and block access to any known mature~~
2 ~~content on the website, application, or online service if an age signal is received~~
3 ~~indicating a user is under eighteen years of age; and~~
- 4 ~~b. Provide a disclaimer the website, application, or online service contains mature~~
5 ~~content.~~
- 6 ~~6. A covered manufacturer shall impose the same restrictions and obligations on a~~
7 ~~website, application, or online service as the covered manufacturer is required to~~
8 ~~impose on third parties. A covered manufacturer may not use any data collected under~~
9 ~~this section for any other purpose.~~
- 10 ~~7. The attorney general may adopt rules as necessary to enforce this section.~~
- 11 ~~8. The attorney general has exclusive authority to enforce this section.~~
- 12 ~~9. If the attorney general believes a covered manufacturer is in violation of this section,~~
13 ~~the attorney general shall provide written notice to the covered manufacturer~~
14 ~~identifying the specific provision of this section alleged in the violation. The covered~~
15 ~~manufacturer has forty-five days from the date of receipt to correct the violation and~~
16 ~~provide the attorney general a written statement informing the alleged violation has~~
17 ~~been corrected. The attorney general may initiate an action under this section if the~~
18 ~~covered manufacturer continues to violate this section or fails to correct a violation and~~
19 ~~provide a written statement within forty-five days.~~
- 20 ~~10. A covered manufacturer that violates this section is subject to a fine of ten thousand~~
21 ~~dollars for each violation.~~
- 22 ~~11. A covered manufacturer is not subject to liability for failure to comply with this section if~~
23 ~~the covered manufacturer has taken commercially reasonable and technically feasible~~
24 ~~steps to determine or estimate the age of a user.~~
- 25 ~~11. This section does not create a private right of action.~~
- 26 ~~12. This section does not apply to any bona fide news or public interest broadcast,~~
27 ~~website video, report, or event, and does not affect the rights of any news-gathering~~
28 ~~organization.~~
- 29 ~~13. An internet service provider or its affiliates or subsidiaries, a search engine, or a cloud~~
30 ~~service provider may not be held to have violated this section solely for providing~~
31 ~~access or connection to or from a website or other information or content on the~~

~~internet or a facility, system, or network not under the provider's control, including
transmission, downloading, intermediate storage, access software, or other forms of
access or storage to the extent the provider is not responsible for the creation of the
content of the communication that constitutes mature content.~~

~~SECTION 2. EFFECTIVE DATE. This Act becomes effective August 1, 2026.~~

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

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

1. As used in this section:

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

b. "Distribute" means to issue, sell, give, provide, deliver, transfer, transmute, circulate, or disseminate by any means.

c. "Minor" means an individual under eighteen years of age.

d. "News-gathering organization" means an employee of a:

(1) 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 scope of employment and can provide documentation of employment with the newspaper, news publication, or news source; or

(2) Radio broadcast station, television broadcast station, cable television operator, or wire service, who is acting within the scope of employment and can provide documentation of employment with the radio broadcast station, television broadcast station, cable television operator, or wire service.

e. "Publish" means to communicate or make information available to another person on a publicly available internet website.

f. "Reasonable age verification methods" includes verifying the individual seeking to access the material is eighteen years of age or older by using:

(1) A digitized identification card; or

1 (2) Requiring the individual attempting to access the material to comply with a
2 commercial age verification system including the use of:

3 (a) Government-issued identification;

4 (b) A commercially available database regularly used by a business or
5 government entity for the purpose of age and identity verification; or

6 (c) Any commercially reasonable method that relies on public or private
7 transactional data to verify the age of the individual attempting to
8 access the information is eighteen years of age or older.

9 g. "Sexual material harmful to a minor" includes material that:

10 (1) The average individual applying contemporary community standards would
11 find, taking the material as a whole and with respect to a minor, is designed
12 to appeal to or pander to the prurient interest;

13 (2) In a manner patently offensive with respect to a minor, exploits, is devoted
14 to, or principally consists of descriptions of actual, simulated, or animated
15 displays or depictions of:

16 (a) An individual's pubic hair, anus, genitals, or the nipple of the female
17 breast;

18 (b) Touching, caressing, or fondling of nipples, breasts, buttocks, anuses,
19 or genitals; or

20 (c) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation,
21 flagellation, excretory functions, exhibitions, or any other sexual act;
22 and

23 (3) Taken as a whole, lacks serious literary, artistic, political, or scientific value
24 for a minor.

25 h. "Substantial portion" means if more than thirty-three and one-third percent of total
26 material on a website is sexual material harmful to a minor.

27 i. "Transactional data" means a sequence of information that documents an
28 exchange, agreement, or transfer between an individual, commercial entity, or
29 third party used for the purpose of satisfying a request or event. The term
30 includes records from mortgage, education, and employment entities.

1 2. A commercial entity that knowingly publishes or distributes sexual material harmful to
2 a minor on the internet from a website that contains a substantial portion of the
3 material must be held liable if the entity fails to perform reasonable age verification
4 methods to verify the age of an individual attempting to access the material.

5 3. A commercial entity or third party that performs the required age verification may not
6 retain any identifying information of the individual after access has been granted to the
7 material.

8 4. A commercial entity found to have violated subsection 2 or 3 is liable for damages.

9 5. A civil action may be brought against any commercial entity, or third party that
10 performs the required age verification on behalf of the commercial entity, by:

11 a. A parent or guardian whose minor child was allowed access to the material in
12 violation of subsection 2; or

13 b. An individual whose identifying information is retained in violation of subsection 3.

14 6. An individual authorized to bring a civil action under subsection 5 may seek and the
15 court may award:

16 a. An injunction to enjoin continued violation of this section;

17 b. Compensatory and exemplary damages; and

18 c. Costs and fees, including reasonable attorney fees.

19 7. This section does not apply to any bona fide news or public interest broadcast,
20 website video, report, or event, and may not be construed to affect the rights of any
21 news-gathering organization.

22 8. An internet service provider or its affiliates or subsidiaries, a search engine, or a cloud
23 service provider may not be held to have violated this section solely for providing
24 access or connection to or from a website or other information or content on the
25 internet or a facility, system, or network not under the provider's control, including
26 transmission, downloading, intermediate storage, access software, or other forms of
27 access or storage to the extent the provider is not responsible for the creation of the
28 content of the communication that constitutes sexual material harmful to a minor.

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