

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

Introduced by **HOUSE BILL NO. 1593**

Representatives Hendrix, Bolinske, VanWinkle, K. Anderson, M. Ruby, McLeod, Frelich,
Steiner

Senators Boehm, Paulson, Castaneda, Clemens

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

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 sexual material harmful to minors – Age~~
11 ~~verification requirement – Damages:~~

12 ~~1. As used in this section:~~

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

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

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

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

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

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

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

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

11 ~~SECTION 2. APPLICATION. This Act applies to websites accessed on or after the effective~~
12 ~~date of this Act.~~

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

15 Liability for publishing or distributing sexual material harmful to minors - Age
16 verification requirements - Damages.

17 1. As used in this section:

18 a. "Covered platform" means an entity that is a website that in the regular course of
19 business creates, hosts, or makes available content that meets the definition of
20 material harmful to a minor.

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

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

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

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

28 (1) A state-issued operator's license;

29 (2) A state-issued identification;

30 (3) A government-issued identification;

31 (4) A digital identification;

- 1 (5) A credit card or debit card;
- 2 (6) Bank account information; or
- 3 (7) Any commercially reasonable method that relies on public or private
- 4 transactional data to verify the age of the individual attempting to access the
- 5 information is eighteen years of age or older.
- 6 f. "Sexual material harmful to a minor" includes material that:
- 7 (1) The average individual applying contemporary community standards would
- 8 find, taking the material as a whole and with respect to a minor, is designed
- 9 to appeal to or pander to the prurient interest;
- 10 (2) In a manner patently offensive with respect to a minor, exploits, is devoted
- 11 to, or principally consists of descriptions of actual, simulated, or animated
- 12 displays or depictions of:
- 13 (a) An individual's pubic hair, anus, genitals, or the nipple of the female
- 14 breast;
- 15 (b) Touching, caressing, or fondling of nipples, breasts, buttocks, anuses,
- 16 or genitals; or
- 17 (c) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation,
- 18 flagellation, excretory functions, exhibitions, or any other sexual act;
- 19 and
- 20 (3) Taken as a whole, lacks serious literary, artistic, political, or scientific value
- 21 for a minor.
- 22 2. A covered platform that knowingly publishes or distributes sexual material harmful to a
- 23 minor on the internet from a website must be held liable if the entity fails to perform
- 24 reasonable age verification methods to verify the age of an individual attempting to
- 25 access the material and fails to prevent access to the material by a minor.
- 26 3. A covered platform shall apply due diligence based on available technology and may
- 27 not rely solely on the internet protocol address to confirm the location of an individual
- 28 seeking to access the material.
- 29 4. This section only applies to a minor who:
- 30 a. Is a permanent resident in this state;
- 31 b. Resides in the state for more than one year; and

- 1 c. Has been present in the state for at least thirty-one consecutive days.
- 2 5. A covered platform or third party that performs the required age verification may not
- 3 retain any identifying information of the individual after access has been granted to the
- 4 material.
- 5 6. A covered platform found to have violated subsection 2 or 3 is liable for damages and
- 6 subject to a fine of ten thousand dollars for each day the violation occurs.
- 7 7. The attorney general shall enforce this section.
- 8 8. A civil action may be brought against any covered platform, or third party that performs:
- 9 the required age verification on behalf of the covered platform, by:
- 10 a. A parent or guardian whose minor child was allowed access to the material in
- 11 violation of subsection 2; or
- 12 b. An individual whose identifying information is retained in violation of subsection 5.
- 13 9. An individual authorized to bring a civil action under subsection 8 may seek and the
- 14 court may award:
- 15 a. An injunction to enjoin continued violation of this section;
- 16 b. Compensatory and exemplary damages; and
- 17 c. Costs and fees, including reasonable attorney fees.
- 18 10. This section does not apply to any bona fide news or public interest broadcast,
- 19 website video, report, or event, and may not be construed to affect the rights of any
- 20 news-gathering organization.
- 21 11. An internet service provider or its affiliates or subsidiaries, a search engine, or a cloud
- 22 service provider app store may not be held to have violated this section solely for
- 23 providing access or connection to or from a website or other information or content on
- 24 the internet or a facility, system, or network not under the provider's control, including
- 25 transmission, downloading, intermediate storage, access software, or other forms of
- 26 access or storage to the extent the provider is not responsible for the creation of the
- 27 content of the communication that constitutes sexual material harmful to a minor.