2025 HOUSE JUDICIARY

HB 1593

2025 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1593
2/12/2025

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

9:02 a.m. Chairman Klemin opened the hearing.

Members Present: Chairman Klemin, Vice-Chairman Karls, Vice-Chairman Vetter, Representatives Christianson, Henderson, Hoverson, Johnston, McLeod, S. Olson, Satrom, Tveit, VanWinkle, Wolff, Schneider

Discussion Topics:

- Different age verification methods
- Use of VPNs to access restricted content
- Websites accessing location data
- Tracking of online data

9:03 a.m. Representative Jared Hendrix, North Dakota Representative for District 10, introduced the bill and provided testimony #37346 and #37356.

9:24 a.m. Iain Corby, Global Trade Body for Suppliers of Age Assurance Technology at The Age Verification Providers Association, testified in favor and provided testimony #37149.

9:34 a.m. Mark Jorritsma, Executive Director at North Dakota Family Alliance Legislative Action, testified in favor and provided testimony #37259.

9:38 a.m. Rose Feliciano, TechNet, testified in favor and provided testimony #36375.

9:46 a.m. Representative S. Olson moved to Amend LC: 25.0746.01001, testimony #37346, as well as adopting the amendments proposed in testimony #37356.

9:47 a.m. Representative Tveit seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Steve Vetter	N
Representative Nels Christianson	N
Representative Donna Henderson	Y
Representative Jeff Hoverson	Y
Representative Daniel Johnston	Y
Representative Carrie McLeod	Y
Representative SuAnn Olson	Y

Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Bill Tveit	Y
Representative Lori VanWinkle	Y
Representative Christina Wolff	Y

9:56 a.m. Motion passed 12-2-0

9:56 a.m. Representative Tveit moved a Do Pass as Amended.

9:56 a.m. Representative VanWinkle seconded the motion.

9:58 a.m. Representative Tveit withdrew his motion

9:58 a.m. Representative Johnston moved to Amend and strike page 5 line 31.

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Steve Vetter	Y
Representative Nels Christianson	Y
Representative Donna Henderson	Y
Representative Jeff Hoverson	Y
Representative Daniel Johnston	Y
Representative Carrie McLeod	Y
Representative SuAnn Olson	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Bill Tveit	Y
Representative Lori VanWinkle	Y
Representative Christina Wolff	Y

10:01 a.m. Motion passed 14-0-0

10:01 a.m. Representative Tveit moved a Do Pass as Amended.

10:01 a.m. Representative VanWinkle seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	N
Representative Steve Vetter	N
Representative Nels Christianson	Y
Representative Donna Henderson	Y
Representative Jeff Hoverson	Y
Representative Daniel Johnston	Y
Representative Carrie McLeod	Y

Representative SuAnn Olson	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Bill Tveit	Y
Representative Lori VanWinkle	Y
Representative Christina Wolff	Y

10:06 a.m. Motion passed 11-3-0

11:07 a.m. Representative Tveit will carry the bill.

Additional written testimony:
Pamela Corby, Parent, submitted testimony in opposition #36791.

11:07 a.m. Chairman Klemin closed the hearing.

Wyatt Armstrong, Committee Clerk

25.0746.01002
Title.02000

Adopted by the Judiciary Committee

February 12, 2025

2-12-25
JB 1086

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1593

Introduced by

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

Senators Boehm, Paulson, Castaneda, Clemens

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

~~**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:~~

HB 2486

~~(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~~

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

~~(a) Government-issued identification; or~~

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

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

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

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

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

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

SB 3006

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

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

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

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

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

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

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

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

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

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

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

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

~~b. Compensatory and exemplary damages; and~~

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

JB 4066

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

~~8. An internet service provider or its affiliates or subsidiaries, a search engine, or a cloud service provider may not be held to have violated this section solely for providing 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 sexual material harmful to a minor.~~

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

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 requirements - Damages.

1. As used in this section:
   a. "Covered platform" means an entity that is a website that in the regular course of business creates, hosts, or makes available content that meets the definition of material harmful to a minor.
   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. "Publish" means to communicate or make information available to another person on a publicly available internet website.
   e. "Reasonable age verification methods" includes verifying the individual seeking to access the material is eighteen years of age or older by using:
      (1) A state-issued operator's license;
      (2) A state-issued identification;
      (3) A government-issued identification;
      (4) A digital identification;

5 of 6

(5) A credit card or debit card;

(6) Bank account information; or

(7) Any commercially reasonable method that reliably and accurately can verify a user attempting to access a covered platform is a minor and prevent access by minors to the context on a covered platform.

f. "Sexual material harmful to a minor" includes material that:

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

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

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

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

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

(3) Taken as a whole, lacks serious literary, artistic, political, or scientific value for a minor; and

(4) Is obscene, indecent, or child pornography.

2. A covered platform that knowingly publishes or distributes sexual material harmful to a minor on the internet from a website must be held liable if the entity fails to perform reasonable age verification methods to verify the age of an individual attempting to access the material and fails to prevent access to the material by a minor.

3. A covered platform shall apply due diligence based on available technology and may not rely solely on the internet protocol address to confirm the location of an individual seeking to access the material.

4. This section only applies to a minor who is a permanent resident in this state and has been present in the state for at least thirty-one consecutive days.

HB 1486

5. A covered platform or third party must ensure that a reasonable age verification method is designed to anonymize an individual's identity, may not retain any identifying information of the individual after access has been granted to the material, and be incapable of being used to create a record of the individual's online activity.

6. A covered platform found to have violated subsection 2 or 3 is liable for damages and subject to a fine of ten thousand dollars for each day the violation occurs.

7. The attorney general shall enforce this section.

8. A civil action may be brought against any covered platform, or third party that performs the required age verification on behalf of the covered platform, by:

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

   b. An individual whose identifying information is retained in violation of subsection 5.

9. An individual authorized to bring a civil action under subsection 8 may seek and the court may award:

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

   b. Compensatory and exemplary damages; and

   c. Costs and fees, including reasonable attorney fees.

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

11. An internet service provider or its affiliates or subsidiaries, a search engine, a cloud service provider, or an application store may not be held to have violated this section solely for providing 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 sexual material harmful to a minor.

REPORT OF STANDING COMMITTEE
HB 1593

Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS (25.0746.01002)** and when so amended, recommends **DO PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1593 was placed on the Sixth order on the calendar.

TECHNET
THE VOICE OF THE INNOVATION ECONOMY

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February 8, 2025

The Honorable Lawrence R. Klemin
House Committee on Judiciary
State Capitol
600 East Boulevard Avenue
Bismarck ND 58505

RE: HB 1593 relating to a commercial entity's liability for publishing or distributing sexual material harmful to a minor.

Dear Chair Klemin:

I am Rose Feliciano, Executive Director of Washington + Northwest for TechNet. TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over 4.5 million employees and countless customers in the fields of information technology, artificial intelligence, e-commerce, the sharing and gig economies, advanced energy, transportation, cybersecurity, venture capital, and finance. TechNet has offices in Austin, Boston, Chicago, Denver, Harrisburg, Olympia, Sacramento, Silicon Valley, Tallahassee, and Washington, D.C.

TechNet and its member companies are committed to providing a safe, age-appropriate experience for young people online. TechNet agrees that protecting children is a top priority. This is why TechNet strongly support HB 1593.

I understand amendments may be proposed at the committee to require age-verification for devices or app-stores. Across the country, the courts have found several laws passed which attempt to restrict the access of minors to online content unconstitutional. TechNet believes HB 1593 strikes the right balance of verifying age for adult-content websites. Requiring online users to verify their age to enter an adult content website should be considered no different than verifying age for the purchase of alcohol or cigarettes.

We believe such amendments would inherently be ineffective in that many of these same websites can be accessed by desktop web browsers or through the sideloading of apps. Targeting devices or app-stores is only one part of the

ecosystem and the goal of helping kids keep safe online will not be achieved through this legislation.

I appreciate your consideration and strongly encourage you to pass SB 1593 as introduced.

Thank you for your consideration.

Sincerely,

Rose Feliciano
Executive Director
Washington + Northwest

Against 1593

Dear: Rep. Hendrix, Rep. K. Anderson, Sen. Boehm, Rep. Bolinske, Sen. Castaneda, Sen. Clemens, Rep. Frelich, Rep. McLeod, Sen. Paulson, Rep. M. Ruby, Rep. Steiner, Rep. VanWinkle

This bill aims to ensure minors don't see inappropriate things, but whose to say what inappropriate? THE PARENTS! If I feel something's inappropriate, I tell my children NO. I control my children's access to the Internet. Parents need to be parents. Kids are always going to be curious and do something they are not supposed to do. That should not lead to criminal charges. Have you not heard of grounding the child? Taking away privileges? Asked to do more chores?

We do not need politicos from Devils Lake interfering in Minot nor do we need Mandan legislators prying in Fargo.

Parents sent to jail because their kid got around a filter and on to a porn site? Movie theater workers getting a criminal record over teenagers sneaking into a movie? Librarians jailed over a paperback novel a kid read? What happens if a salacious news story comes on at the doctor's office with children present? Do the newscasters get penalized for reporting the news? The office receptionist for allowing the TV to be on? The person who turned the channel from cartoons to the news? What happens if a child gets into a cable channel not meant for their eyes? Will we be jailing the cable installers or how about the Netflix stars? How will this be fairly applied? This is ridiculous! Your political party claims to be one of individual rights. Stop stomping on mine and my childrens'.

If we truly wish to protect our children sexually, vote against HB1231 and not allowing sex offenders to get off registries early! Investigate co-conspirators of child sex abuse. Fund safe touch and consent programs so our children can report abuse better.

Pamela Carswell

Literate North Dakotan

Sensible Mother of three teenagers

Objector to your nanny state!

The Age Verification Providers Association

Age Verification Providers Association
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Briefing Paper HOUSE BILL 1593

Age – not identity – verification

The essence of age verification (AV) is proving your age without disclosing your identity. HB1593 requires AV before accessing pornographic content. The latest version being proposed to the Judiciary Committee is an extremely well written Bill, which takes account of the discussions at the Supreme Court in January of a similar bill from Texas, for which we await the judgement but fully expect AV to meet the requirements of strict scrutiny applied to matters relating to the 1st Amendment. Indeed, HB 1593 pre-empts a number of constitutional concerns raised by other federal courts by, for example, only applying to the adult content within a site, not the site as a whole, and being clear that the use of a Virtual Private Network does not create a means of circumventing the obligation on the website to keep children from being exposed to obscene and harmful content.

This is not particularly hard to do from a technical perspective. If we can put a man on the moon, then we can use the latest cryptographic techniques, such as zero knowledge proof, to share the fact that a user is 18 or older with a website in a reliable way, without that user being identifiable by the site.

The AV sector was first established to address a new British law requiring age verification for pornography online. The adult websites realized their customers would be reluctant to share passports, drivers' licenses etc. with them directly, so a number of independent third-party providers were created, who would check the age of a user, and then simply tell the adult site "yes" or "no" without revealing any personal data.

Since then, AV providers have innovated to create many new ways to prove your age. As well as uploading documents, and a selfie image to compare to the photo in the document, users could provide details so the electoral roll or credit reports could be checked. Supplying an email address or cell phone number is also sufficient to ascertain if the user is an adult, based on where those same details have been used elsewhere – children don't check mortgage rates online very often, or sign up to utiltiies.

A range of age estimation tools have also been developed. Facial age estimation creates a mathematical map of the user's face, and then AI compares that map to millions of maps from people whose ages are already known, to estimate the age with surprisingly accurate results – the state of the art is a mean average error of +/- 1 year. Voice estimates are not far behind. And the latest method asks users to make shapes with their hands on video, and these can predict if they are an adult or a minor with 99% certainty.

Now if you want to impose an exact legal minimum age, then estimation is not sufficient for a user who is celebrating their 18th birthday. They'll need to find some ID. But for users over, say, 23, then statistically there is only the smallest of chances if they are estimated to look over 23 that they are still under 18 – results are probably just as reliable as any verification method.

Many of these processes can be completed on the user's own smartphone, so no personal data need leave the palm of their hand. Any personal data used for age assurance – the term that covers both verification and estimation, is always immediately deleted, unless there is a legal reason not to do so. This is standing legal requirement in Europe under GDPR data protection laws, but many US states have included this requirement in their own AV bills.

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As a result of some EU data protection authorities demanding even greater privacy protection, the use of privacy-enhancing technologies (PET) can be mandated, making it impossible for the adult site to identify the user or for the AV provider to know which sites the user then visits. And the AV industry has also developed interoperability, allowing users to prove their age once and then re-use the same check across multiple websites (see www.euCONSENT.eu).

Age verification is quick – most of these methods take seconds – and cheap – the UK government estimates 12 cents per check per user per year, but predicts the price will fall through innovation and competition.

It can be hard to enforce against websites based overseas, but the UK's approach is to have powers to require that key business services are withdrawn from non-compliant sites – payment, hosting, search, advertising etc.

Some argue that the use of Virtual Private Networks undermines these state laws, but this overlooks the fact that no laws create an exception for kids who use VPNs. The obligation remains on the adult sites to keep children from those states off their platforms. So the sites would need to use the same technology already used to ensure bets can only be placed by customers located in states which permit online gambling – these use more than easily altered IP addresses for their due diligence on the user's location e.g. wifi networks, GPS, cell tower connections.

We would be pleased to provide further information and respond to any specific questions

Iain Corby

Executive Director

iain@avpassociation.com

NORTH DAKOTA Family Alliance LEGISLATIVE ACTION

Faith · Family · Freedom

Testimony Supporting House Bill 1593

Mark Jorritsma, Executive Director
North Dakota Family Alliance Legislative Action
February 12, 2025

Dear Chairman Klemin and honorable members of the House Judiciary Committee,

My name is Mark Jorritsma and I am the Executive Director of North Dakota Family Alliance Legislative Action. I am testifying on behalf of our organization in support of House Bill 1593 and respectfully request that you render a "DO PASS" on this bill.

Our organization and its constituents feel strongly that we must eliminate child access to obscene and pornographic materials from online sources. I have heard time and again that parents worry about what their children see on internet sites, despite ad blockers, malware suppression programs, and software designed to let parents prevent their child's access to these types of sites.

There is ample evidence of the harm from pornography and obscenity (hereafter collectively "pornography"), particularly as it relates to children, such as: "increased rates of depression, anxiety, acting out and violent behavior, younger age of sexual debut, sexual promiscuity, increased risk of teen pregnancy, child sex abuse, sexual trafficking, and a distorted view of relationships between men and women."[1] It would seem that ensuring our children do not have access to these materials, while simultaneously ensuring that companies producing and displaying it do not have their constitutional rights violated, would be the best possible solution. That is precisely what this bill seeks to do.

House Bill 1593 would require age verification for accessing pornographic materials. There are currently "age verification" mechanisms for internet pornography sites, but these are self-regulated by the companies and consist of no more than clicking a button that says the viewer is over 18 years of age. That is hardly any type of effective age verification. Instead, this bill would require a government-issued document or other independent digital source of age verification.

[1] American College of Pediatricians. https://acpeds.org/position-statements/the-impact-of-pornography-on-children

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A second major feature of this bill is that civil action may be brought against companies who violate this law. It puts teeth into the bill, which is refreshing and creates greater incentive for compliance.

That being said, I would like to address some of the concerns expressed about this bill. First, we have heard the adage that we should not get to decide what children read and see. However, we decide what children can read and see all the time. This includes restricting children from watching R-rated movies, seeing the covers of pornographic magazines in stores, deleting phishing scam emails at the server level before they ever reach your inbox, or even stopping threats to public safety such as shutting down internet sites that contain detailed plans on terrorist training. We (and our government) are able to, and in certain cases are morally obligated to, restrict what others can see or read. On top of all that is the fact that parents are the final arbiters of what happens to their children.

Another objection to this type of legislation is the assertion that it is the job of a parent/legal guardian to filter content for their child. We agree, however, children can be exposed to pornography their parents wouldn't approve of before the parents even discover it. In other words, you can't opt out your child from accessing pornographic materials if you don't know where it might exist, and companies who produce these materials have no compulsion nor incentive to inform parents of this. Further, if a child locates a source of pornography, it is very likely that they will at some point share that content with their best friend and perhaps others their age. In fact, experience and an understanding of child social dynamics suggests that the more enticing the subject matter, the higher the likelihood it will be shared.

This bill has nothing to do with trampling constitutional rights or trying to have our children grow up in a bubble. This bill has everything to do with protecting our children from pornography and having their innocence stolen from them by inappropriate materials.

Protecting children from this type of content is something that we at North Dakota Family Alliance Legislative Action agree with wholeheartedly. Because of this reason, we ask that you render a "DO PASS" on House Bill 1593.

Thank you for the opportunity to testify and I would be happy to stand for any questions.

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25.0746.01001
Title.

Prepared by the Legislative Council staff for Representative Hendrix
February 11, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1593

Introduced by

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

Senators Boehm, Paulson, Castaneda, Clemens

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

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

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

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

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

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

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

~~b. Compensatory and exemplary damages; and~~

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

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

~~8. An internet service provider or its affiliates or subsidiaries, a search engine, or a cloud service provider may not be held to have violated this section solely for providing 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 sexual material harmful to a minor.~~

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

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 requirements - Damages.

1. As used in this section:
   a. "Covered platform" means an entity that is a website that in the regular course of business creates, hosts, or makes available content that meets the definition of material harmful to a minor.
   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. "Publish" means to communicate or make information available to another person on a publicly available internet website.
   e. "Reasonable age verification methods" includes verifying the individual seeking to access the material is eighteen years of age or older by using:
      (1) A state-issued operator's license;
      (2) A state-issued identification;
      (3) A government-issued identification;
      (4) A digital identification;

(5) A credit card or debit card;

(6) Bank account information; or

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

f. "Sexual material harmful to a minor" includes material that:

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

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

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

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

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

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

2. A covered platform that knowingly publishes or distributes sexual material harmful to a minor on the internet from a website must be held liable if the entity fails to perform reasonable age verification methods to verify the age of an individual attempting to access the material and fails to prevent access to the material by a minor.

3. A covered platform shall apply due diligence based on available technology and may not rely solely on the internet protocol address to confirm the location of an individual seeking to access the material.

4. This section only applies to a minor who:

a. Is a permanent resident in this state;

b. Resides in the state for more than one year; and

c. Has been present in the state for at least thirty-one consecutive days.

5. A covered platform or third party that performs the required age verification may not retain any identifying information of the individual after access has been granted to the material.

6. A covered platform found to have violated subsection 2 or 3 is liable for damages and subject to a fine of ten thousand dollars for each day the violation occurs.

7. The attorney general shall enforce this section.

8. A civil action may be brought against any covered platform, or third party that performs the required age verification on behalf of the covered platform, by:

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

b. An individual whose identifying information is retained in violation of subsection 5.

9. An individual authorized to bring a civil action under subsection 8 may seek and the court may award:

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

b. Compensatory and exemplary damages; and

c. Costs and fees, including reasonable attorney fees.

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

11. An internet service provider or its affiliates or subsidiaries, a search engine, or a cloud service provider app store may not be held to have violated this section solely for providing 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 sexual material harmful to a minor.

Summary – HB 1593
This legislation is a forward-thinking, comprehensive, and constitutional approach to ensuring minors are protected from harmful, primarily pornographic, online content. The goal is to prevent this harm to minors by requiring websites which provide obscene or indecent material to verify the age of their users before they access that material. The harm we are addressing here—mental, emotional, and developmental—is well-documented in academic and legal discourse. Courts have long upheld states' compelling interest in shielding children from harmful content, and this bill aligns with that established precedent.

A bill with similar objectives from Texas was considered last month at an oral hearing by the United States Supreme Court. We do not yet have the benefit of their judgement in that case, which is likely to come in June. Nonetheless, those who have worked with me to draft HB 1593 took careful note of the various lines of questioning from the Justices, and the findings of lower federal courts, and we have tailored this statute to address many of the topics that were debated in that case.

"Covered Platform" and "Regular Course of Business" Standard.
On Page 4, Lines 18-20, we define "covered platform" and use a standard of "in the regular course of business", as opposed to similar bills, which use a "substantial portion" standard, often indicating a one-third threshold (or 33%) of harmful content. However, the substantial portion standard is vague, and it will be a challenge for a court to determine what sites have more than 33% of this content. Using the standard in HB 1593 will also make it easier to target harmful content on major pornography websites which specifically seek to profit from pornography. This avoids potentially affecting a broader range of websites and encountering non-harmful content protected by the First Amendment. This also makes it more difficult for sites to manipulate the law by adding non-adult content to stay below an arbitrary threshold.

Methods of Age Verification
On Page 4, Line 26, we define reasonable age verification measures, ensuring that compliance methods are practical, widely available, and protective of user privacy. This list includes state-issued identification, bank account verification, and other commercially reasonable methods. Importantly, the bill prohibits covered platforms and their suppliers from retaining personally identifiable information specifically collected for age verification purposes once access has been granted. This ensures privacy protection without unduly restricting business operations.

Ensuring Accountability
On Page 4, starting on Line 22, requires compliance from covered platforms—websites that regularly distribute harmful material for profit. It makes clear that if they fail to implement reasonable age verification, they will be held liable. The liability in HB 1593 is much stronger than similar bills, which is done in two ways.

First, subsections 8 and 9 establish who may bring civil action against a covered platform. This private right of action ensures enforcement without requiring additional

state resources. Importantly, it also allows users to sue platforms and their suppliers that retain identifying information collected for verification after access has been granted, addressing privacy concerns.

Second, subsections 6 establishes a fine for noncompliance, by charging a fee of $10,000 per day each day as violation occurs of failing to age verify. Proving specific injury could be very difficult to do in the circumstances of a child accessing porn. Meanwhile, a provided could go unpunished. This two-pronged approach to violations strengthens enforcement and guarantees immediate consequences for violating the law.

Location & Geographic Scope

Page 5, starting on Line 26, we address a key component missing in all over age verification bills – the VPN fallacy. This is a response to arguments that could be used by pornographic websites that the use of a virtual private network to pretend to be located outside of the state somehow undermines the effectiveness of the legislation. None of the 20 other states has ever created an exception to permit kids smart enough to use a VPN to see pornography. The language added here makes it clear that adult sites, just like online gambling operators who do this already very effectively, must use more than just an Internet Protocol – IP – address to confirm that a user is not in one of those states where age verification is required – for example GPS, wifi networks and cell tower connections.

Page 5, starting on Line 29, defines the geographic scope of the law, ensuring it applies only when a minor has clear residency or presence in the state. This helps the bill withstand potential legal challenges under the Commerce Clause, as the state is not attempting to regulate conduct entirely outside its jurisdiction.

Limitations and Exemptions

On Page 6, Lines 18-27, clear exemptions are made for news organizations, internet service providers, search engines, and cloud service providers, which are not liable under this bill. This ensures that the bill targets content publishers rather than infrastructure providers.

Recommended changes:

Finally, while the bill has already been “hog-housed”, there are a few final missing pieces which are necessary or highly recommended.

1. On Page 5, starting on Line 3, we should change the wording very slightly to the following: *“Any <u>other</u> commercially reasonable <u>means or</u> method that ~~relies on public or private transactional data to verify the age of the individual attempting to access information is eighteen years of age or older~~ <u>reliably and accurately can determine a user of a covered platform is a minor and prevent access by minors to the content on a covered platform.</u>”* Since new methods for verification continue to develop and become available that are anonymous and privacy-protecting for adults, this language will be preemptive to allowing a wide array of

future technological methods. This might include hand motions, or other biometrics.

2. On Page 5, Line 6, it lists the material considered “sexual material harmful to a minor”. I would recommend adding to this section at the end on Page 5, Line 22: *(4) is obscene, indecent or child pornography*. The reason is that these terms – "child pornography," "obscene," and "indecent" are rooted in existing federal law and Supreme Court rulings. These three elements, while in some ways redundant, could enhance the list of items considered "material harmful to minors" so it mirrors those definitions already upheld as constitutionally sound. Clarifying that these legal thresholds fall within the scope of regulation, can help avoid concerns of overreach or vagueness.
3. On Page 6, Line 22, there is a grammatical error. It should read, *“An internet service provider or its affiliates or subsidiaries, a search engine, ~~or~~ a cloudservice provider ~~app store~~, or an application store may…”* The intention is to apply clear liability protection on these.
4. On Page 6, Line 2, subsection 5 should be rewritten to read, “*A covered platform or third party must ensure that any reasonable age verification method is designed to anonymize an individual’s identity, may not retain any identifying information of the individual after access has been granted to the material, and be incapable of being used to create a record of the individual’s online activity.“* This would strengthen the privacy standards of the bill.

Thank you for your kind consideration.

Representative Jared Hendrix
State House - District 10 - Fargo