

SENATE INDUSTRY AND BUSINESS COMMITTEE
JEFF BARTA, CHAIRMAN

TESTIMONY OF ELIN ALM
OFFICE OF ATTORNEY GENERAL
HOUSE BILL NO. 1561

Mr. Chairman, members of the Senate Industry and Business Committee.

I am Elin Alm, Director of the Consumer Protection and Antitrust Division of the Attorney General's Office, and I appear on behalf of the Attorney General in support of House Bill 1561.

This bill is about protecting North Dakota children from pornographic content online. If enacted, it will restrict children from accessing such websites, whether it is by accident, referral, curiosity, or purpose. This proposed legislation requires that an owner of a website containing harmful sexual material must verify, by using a reasonable age verification method, that the visitor is not a minor before allowing access to the website. Websites are not required to verify a visitor's *specific age*, but simply whether the individual falls above or below the 18-year-old threshold.

Online age verification before accessing websites is not a novel idea, as it is employed by other businesses such as gambling, alcohol, tobacco, or vaping retailers that are required to comply with applicable state laws regarding minimum age requirements. Retailers are restricted from distributing harmful products to

minors, and this bill will add a similar age restriction on the online distribution to minors of sexual material that is harmful, inappropriate, or offensive.

Twenty other states¹ have recently passed laws mandating that pornography websites verify their users' ages. House Bill 1561 is primarily modeled on the law enacted in Utah that took effect in March of 2023 and that has withstood legal challenges.² This bill vests enforcement authority with private citizens, such as parents and guardians of a child that was allowed access to a pornographic website or a user whose identifying information was unlawfully retained, through a private civil action. The bill does not provide for enforcement by the State.

This law will only apply to commercial entities that knowingly publish or distribute sexual material harmful to a minor, on the internet, from a website where one-third of the total material is sexual material harmful to a minor. It does not apply to any news or public interest broadcast, website video, report, or event. It also does not apply to internet service providers, search engines, app stores, or cloud service providers who solely provide access to internet content but who are not responsible for the creation of the content. This law is intended to apply only to what would be considered a pornographic website.

¹Alabama, Arkansas, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Montana, Nebraska, Oklahoma, North Carolina, South Carolina, South Dakota, Tennessee, Texas, Utah, and Virginia.

²*Free Speech Coalition v. Anderson*, 685 F.Supp.3d 1299 (D. Utah 2023); *Free Speech Coalition v. Anderson*, 119 F.4th 732 (10th Cir. 2024).

To comply with the bill, a website would have to use a “reasonable” age verification method. Online age verification or age check has historically been more of an honor system, where the user must click on a box that says “I’m over 18” to gain access to a website. However, digitized ID is now becoming more realistic through the development of applications that can interact with a website to provide remote verification of the website user’s age. This bill requires the use of either (1) a digitized identification card, or (2) a commercial age verification system, as further defined in the bill. The idea is that digitized ID can be created through an age verification mobile app that can operate independently from the website where it is used. Such an app can also be agnostic to which website a person is using. Although North Dakota currently does not have digitized ID, it is anticipated and realistic that the demand for such IDs from this and similar types of legislation around the country will result in the development of mobile applications that can meet the demand and the requirements of the law. Additionally, the definition of "reasonable age verification methods" in House Bill 1561 includes the term “commercially reasonable method,” which is a somewhat flexible term that can adjust with time and technology.

House Bill 1561 protects the user’s privacy and security by prohibiting the entity performing the age verification from retaining the information used to verify age after access to the website has been granted. This prohibition will reduce the

risk to the website user's privacy and security from potential data breaches. This provision also prevents the entity from using or selling the personal information for financial gain such as targeted advertisement. Further, it precludes disclosure of the website user's identity or personal information to government agencies.

This law is not intended to undermine the rights of adults who visit these websites. However, we know that children are accessing pornographic websites at an alarming rate.³ The Attorney General believes that this bill, if enacted, will help protect children from accessing harmful and inappropriate content, and from the variety of harmful effects that online pornography can have on underage viewers, including sexism and objectification, sexual aggression or violence, sexual promiscuity, negative self-esteem, and mental health issues.

Therefore, the Attorney General supports a "Do Pass" recommendation on House Bill No 1561. Thank you for your time and consideration.

³A Common Sense Media survey of teenagers aged 13-17 found 73% reporting seeing online pornography(<https://www.common sense media.org/kids-action/articles/teens-are-watching-pornography-and-its-time-to-talk-about-it>)